OUTER HOUSE, COURT OF SESSION

[2026] CSOH 60

A26/21

OPINION OF LORD SANDISON

In the cause

(FIRST) MEGAN COCKBURN; (SECOND) JAMES COCKBURN; AND (THIRD) CONNER COCKBURN

Pursuers

against

CAROLE HOPE

Defender

Pursuers: Parties (J Moriarty, Lay Representative)
Defender: McKinlay, Milloy; DAC Beachcroft Claims Scotland LLP

23 June 2026

Introduction

[1] By this action the pursuers seek payment of £1,000,000 each from the defender in respect of losses arising from claimed deficiencies in the latter's actions and omissions as judicial factor on the estate of the late Scott Cockburn. Mr Cockburn died on 6 June 2015, leaving a will dated 15 July 2013. The pursuers are children of Mr Cockburn and the residuary beneficiaries under the will.

[2] The defender is a solicitor who was appointed interim judicial factor on Mr Cockburn's estate by interlocutor of the Sheriff of Lothian and Borders at Edinburgh on 26 November 2015 and permanently appointed as such on 23 March 2016, on the application

of the first pursuer, who had become concerned about the way in which the estate was being dealt with by Tracey Cockburn, who was nominated as executrix in Scott Cockburn's will, and Steven Cockburn, whom Tracey had purported to assume as an additional executor despite not herself having been confirmed in her own role. In due course the defender applied for her discharge to the sheriff, and after sundry procedure that application was sisted to await the outcome of these proceedings. An earlier opinion in the matter, [2024] CSOH 69, is reported at 2024 SLT 1089, 2024 SCLR 518, [2024] PNLR 31. As previously, the pursuers were permitted the assistance of a lay representative, Jaci Moriarty, despite Ms Moriarty's involvement in the *res gestae*.

The proof

[3] I heard the evidence of fifteen witnesses over a proof diet of the same number of days. In addition to 241 pages of pleadings and associated material and 228 pages of witness statements, parties agreed that 16,617 pages of documentary material should be treated as having been read into the evidence. In the following account of the evidence I heard, some details of lesser importance have been omitted in the interests of (relative) brevity, but all aspects of the evidence were considered fully in the formulation of my decision.

Pursuers' proof

Jaci Moriarty

[4] Jaci Moriarty gave a witness statement in which she noted that she had lived with the late Scott Cockburn as his domestic partner for over three years; they were still together at the time of his death. She had joined Buckstone Roofing Ltd, Scott's Edinburgh-based

roofing company, in 2010 as office manager and set about putting proper systems in place so that the company's reputation could be matched by an efficient back office and consistent customer service. Between 2010 and 2015, her responsibilities included speaking with customers and preparing quotes; organising jobs and scheduling with Brian Tully, who managed the tradesmen; handling health and safety paperwork; issuing invoices and chasing overdue payments; recording daily income and expenditure; and maintaining high standards of customer service. She did not process payroll directly, other than preparing a spreadsheet of hours worked for the accountant, nor did she submit VAT returns. Instead, she collated quarterly figures and receipts into spreadsheets and passed them to the bookkeeper, who prepared and filed the VAT returns.

[5] In 2012, on the advice of the company accountant, Buckstone Roofing was split into two companies: Buckstone Roofing (Scotland) Ltd (hereafter referred to as "Roofing"), and Buckstone Scaffolding Ltd ("Scaffolding"), in order to take advantage of a VAT flat rate scheme. As part of the restructuring, Scaffolding purchased scaffolding equipment and vehicles from Roofing using an intercompany loan. Roofing then hired scaffolding services from Scaffolding, which invoiced accordingly.

[6] In April 2013, Scott had purchased a residential property at Oxgangs Road, Edinburgh, for £423,000. To fund the deposit, he borrowed £136,444 from Roofing. At that time the business was in a strong financial position, and he also had an offset mortgage which allowed money placed in their joint savings account to reduce his personal mortgage interest. On that basis, he transferred £290,000 from Roofing into the joint account. The arrangement meant the funds could be returned to the business at any time, but in practice much of it was used to pay for building works at Oxgangs Road. These transactions demonstrated how strong the company finances were at that point.

[7] Ms Moriarty had introduced systems to ensure jobs were organised, invoices went out promptly, payments were collected, and spending was controlled. The combination of Roofing's existing reputation and the improved organisation she brought to the office made the business profitable and growing by 2013, with enough liquidity to support both Scott's personal projects and the ongoing operations of the company.

[8] Soon after buying Oxgangs Road, Scott started work on converting it into an eight-bedroom property with a cinema room, gym, and multiple bathrooms. Most of the costs were paid from Roofing's funds. This steadily drained money from the business. Alan Scott was the professional responsible for dealing with the local council about planning and building control. He submitted a retrospective planning application in August 2014 to regularise changes made during construction. Retrospective permission was granted in December 2014 for most of those changes, but was refused for the new fence and gates at the frontage, with enforcement action instituted in relation to those elements. After the expiry of the main building warrant, hidden defects had been discovered. At no point had the defender been in touch with her to obtain any information about the works at Oxgangs Road or clarify bills owed to the builders' merchants.

[9] Scott Cockburn died suddenly on 6 June 2015. The following Monday Ms Moriarty was in the company offices when his half-brother Steven Cockburn arrived and said that he would be running the companies. He had previously been sacked by Scott for threatening behaviour. He had been unemployed for over five years, suffered health issues, and had no relevant business experience. On 16 June 2015, Brian Tully came into the office and informed Ms Moriarty that he had opened a new bank account and registered a company under the name Buckstone Roofing Ltd. He stated that his intention was to take on as many cash jobs as possible, claiming he did not want Steven to steal all the money to which he felt

entitled after years of working for Scott. Scott himself had previously raised concerns about Mr Tully's integrity, which had led to his removal as a director of Scaffolding in December 2014. From the outset, it felt as though Scott's memory and wishes were irrelevant. Steven began attending the office regularly. On 3 July 2015, he cancelled Ms Moriarty's access to the company bank account without warning and on 21 July 2015 dismissed her from her role, claiming that their relationship had broken down irretrievably.

[10] Meanwhile, Megan Cockburn (the first pursuer) and her siblings were becoming increasingly concerned about Steven's actions. They could not gain access to either of their father's properties, at Oxgangs Road and Buckstone Loan East. Scott's car and speedboat had disappeared. Rumours spread about how much money Steven suddenly seemed to have. Boxes labelled "Linda" (Scott's mother) and "Tracey" (Scott's sister) were seen in one of the properties. Conner Cockburn (the third pursuer) said he had seen some of his father's furniture in Linda's home. It was obvious that belongings were being removed while Scott's daughters were denied access. The family instructed a solicitor, Barbara Watson of ELP Arbuthnott McClanachan, to explore removing Steven. As Megan and her brothers James and Conner were the only residuary beneficiaries, and the boys were still both minors, an application to the sheriff court to seek to achieve that had to proceed in Megan's name.

[11] At the same time, Ms Moriarty contacted ACAS to challenge her own dismissal, with the aim of reinstatement. She and Ms Watson also traced the missing car and speedboat, discovering that both had been sold to Jim McColl, the same man from whom Scott had originally bought the boat. He confirmed he had no receipts for the sale and had paid £40,000 in total. He also said the family could have the boat back if they wanted it. The car had a book value of £57,000, and had been sold without authority or paperwork. On 6 November 2015, Steven registered a new company, Buckstone Roofing & Building Ltd,

showing his intention to bypass the estate entirely and exploit the Buckstone name and goodwill for his own benefit.

[12] Ms Watson gathered detailed evidence showing that Steven and Tracey were failing to protect the estate. On Megan's application to the court, the sheriff agreed they had to be removed and appointed the defender as interim judicial factor to safeguard the estate. The interlocutor was structured so that she could remove Steven from the companies quickly. Ms Watson passed all relevant information to her. Despite this, the defender was considering appointing Mr Tully as a director of the companies notwithstanding his removal as a director of Scaffolding six months before Scott's death. On 30 November 2015, Ms Watson wrote to the defender strongly advising against Mr Tully's appointment, highlighting his ties to Steven and the risks involved. She also requested that Ms Moriarty be reinstated to protect the companies. On 15 December 2015 it was confirmed that the defender had no intention of reinstating Ms Moriarty.

[13] From the outset, Ms Moriarty made it clear to the defender that she was willing to assist in any way she could, particularly in identifying what had been in Oxgangs Road and Buckstone Loan East. She had lived in both properties with Scott and knew what furniture, belongings, etc were present there at the date of his death. She prepared a spreadsheet of items and passed it to the defender through Ms Watson, who also stressed to the defender the need to act quickly. She expected the defender would contact her to verify items, or at least cross-check her list against what was there so that anything missing could be traced and recovered. That never happened. Ms Moriarty later discovered that the defender had relied on an old valuation which valued all of Scott's household belongings at just £370, a figure that was wholly unrealistic. New furniture had been bought in October, and Scott owned valuable collections of whisky, antique model cars, and model trains. There were

televisions and Xbox consoles in nearly every room, including a cinema-sized TV and several others still in their boxes, yet the inventory lodged with the court listed only two televisions.

[14] Ms Watson had also warned the defender to change the locks at the residential properties and secure the business assets which Mr Tully had taken into his lock-up as soon as Steven was appointed. This was never done. Steven still had keys to Oxgangs Road after he was removed by the sheriff, as the defender failed to change the locks at the outset. Important items such as Scott's collections, memorabilia, clothing, paintings, and equipment were never accounted for. An email from cleaners later confirmed they had found two paintings, but these never appeared on the inventory, and their whereabouts remained unknown. The defender made no attempt to recover the speedboat from Mr McColl.

[15] Ms Moriarty made it clear to the defender that she did not want compensation for her dismissal, but rather reinstatement, so she could use her five years of experience to protect the business for Scott's children. On the day of the defender's appointment in November 2015, Ms Watson had written directly to her, warning that Steven Cockburn was unfit to act as a director and should be removed immediately. Over the following weeks, Ms Watson continued to supply the defender with detailed documentation of Steven's dishonesty and misuse of company funds, reinforcing the concerns she had raised from the outset. Despite this, the defender delayed removing Steven. By then the defender knew that he had been improperly appointed by Tracey, that he lacked experience, and that he had leased a new Audi A4 through Roofing. There was no good reason to keep him in post, and reinstating Ms Moriarty would have resolved her unfair dismissal claim at no cost to the estate.

[16] Instead of addressing reinstatement, the defender liaised with Steven about how to avoid Ms Moriarty's return. By mid-January 2016, Young & Co, solicitors, had been appointed to defend her unfair dismissal claim. This made no sense, as Roofing already had free cover with Peninsula, arranged by Ms Moriarty herself. She challenged the defender about this, and she in turn blamed Steven. Peninsula was employed, but the defender still paid Young & Co. Finally, on 18 January 2016, the defender decided Steven should be removed, ten weeks after Ms Watson had urged it. However, she did not reinstate Ms Moriarty, but proposed appointing Megan Cockburn and Mr Tully as directors, neither of whom had managerial experience.

[17] Ms Moriarty was horrified at the prospect of Mr Tully being appointed without supervision, given his prior admission of doing cash jobs, and the facts that he had already registered a new company under the name Buckstone Roofing Ltd and had been removed as a director of Scaffolding six months before Scott Cockburn's death. On 30 November 2015 Ms Watson wrote to the defender explicitly warning against Mr Tully’s appointment. Ms Moriarty identified a specific job Scott Cockburn had planned and suggested that a simple check, consisting of phoning the customer to confirm the work had been done and then the office to confirm whether the payment had been banked, would have tested whether cash had been misappropriated. The defender considered it an uneconomical use of her time to do that. On 16 February 2016, a shareholders’ meeting took place: Steven was finally removed, but Mr Tully and Megan were appointed as directors.

[18] In May 2016, Megan told Ms Moriarty that Mr Tully had offered to carry out a cash job valued at £10,000 for which he and Megan would each receive £4,000 personally. Ms Moriarty was not surprised, and told Megan to inform the defender. A meeting was arranged with the defender on 26 May 2016, and she was told what had happened. It was

agreed that the only way to prove Mr Tully was stealing was to let the job play out. Megan would pass any money she received to the defender and gather evidence showing the work did not match the invoice.

[19] On 5 August 2016 Megan handed the customer's deposit to the defender. Later that day, she phoned Ms Moriarty to say that the defender wished Ms Moriarty to attend the office to review the company's finances. Ms Moriarty was given full access to the systems. It was immediately apparent to her that overheads and wages were far too high relative to turnover. The defender spoke about bringing her back on a consultancy basis. By email dated 3 August 2016, Ms Watson asked the defender to reinstate Ms Moriarty, but that was not done. On 24 August 2016 Megan telephoned Ms Moriarty in shock to say that the defender had told Mr Tully about the cash job. Tipping off Mr Tully had no purpose other than to protect him. The defender told Ms Watson that Mr Tully had confessed his criminal activity and agreed to resign. Yet she neither removed him nor suspended him.

[20] Rather than reinstate Ms Moriarty, the defender told Megan that she would be appointing an accountant recommended by Ms Watson, Philip Bald, as a director of the companies. He had no intention of working in the companies on a daily basis. The defender appointed him as a director on 30 September 2016. On 6 October 2016, Ms Moriarty's unfair dismissal claim came before the employment tribunal in Edinburgh. Liability was conceded, and the tribunal awarded her over £15,000. The defender had had numerous opportunities to reinstate her and avoid the tribunal claim.

[21] Around 11 October 2016, Mr Bald, Megan Cockburn and Ms Moriarty met with an employment solicitor, who advised that, due to the seven-week delay between Mr Tully's admitted misconduct (the cash job) and any action being taken, removing him at that stage would carry a high risk of an unfair dismissal claim, which the companies could not afford.

On 13 October 2016, Mr Bald reported this to the defender. That advice meant that the only way to remove Mr Tully was to prove he was incapable of doing his job. Towards the end of 2016, Mr Bald allowed Ms Moriarty back into the companies to monitor Mr Tully, review past jobs, and check his quotations to build a case for incompetence. By July 2017, enough evidence had been gathered to show that he was incapable of performing his role. On 15 August 2017, Mr Bald met with Mr Tully and presented the evidence. He resigned that day, but the following morning the defender received a constructive dismissal claim from him. By this point, the companies had already been severely depleted. Only days later, on 18 August 2017, Megan Cockburn discovered that he had opened another business, Tully Roofing Ltd, while still a director of Roofing, carrying out work on the side. This information was relayed to Mr Tully's solicitor and his constructive dismissal claim was withdrawn.

[22] Ms Cockburn was effectively thrown in at the deep end and was left to muddle along with no proper support. Ms Moriarty's circumstances had changed; she was tied into secure employment and carrying a heavy mortgage, and could no longer take the risk of returning full-time to the companies. Mr Bald was never involved in the day-to-day management of the companies. He was only brought in as a part-time finance director and took no remuneration. Ms Cockburn and Ms Moriarty worked all hours, with no support from anyone. The defender never once contacted Ms Cockburn to provide support or guidance.

[23] On 20 February 2018 the defender called a meeting to discuss the future of the companies. Ms Cockburn, Ms Moriarty and Mr Bald attended. During that meeting, the company valuations were discussed. They had been assessed on the basis of a redrafting of the company accounts without reference to Ms Moriarty. The situation was complex:

Scott Cockburn had transferred £290,000 of company funds into the joint account he held with Ms Moriarty to offset his mortgage, which he used to pay for works at Oxgangs Road. There was also significant crossover with the intercompany loans. No one had asked Ms Moriarty what had been spent or what was due back to Roofing. Without consulting her, the valuations were inevitably guesswork. Mr Bald, who had carried out the valuations, later admitted that the defender had told him not to contact Ms Moriarty about them.

[24] On 25 September 2019 the defender emailed Mr Bald, instructing him to press ahead with a plan to transfer the company shares to the pursuers, in the knowledge that this was against the wishes of Ms Cockburn. He resigned the following day.

[25] The defender had known for years that the estate was insolvent but pressed ahead with her application to be discharged as factor while concealing that insolvency from both the beneficiaries and the court, knowing that if discharge were granted on the basis of her reports, the truth would never be exposed.

[26] When Roofing went into liquidation, Ms Moriarty bought the assets from the liquidator to rebuild the business. The Buckstone name already carried weight and goodwill in the community; she concentrated on customer service and rebuilding trust. Her company today was profitable, as Roofing would have been had Ms Moriarty been reinstated to it earlier. The goodwill and trading base had been there all along. The collapse of Roofing and Scaffolding was not inevitable; it was the direct result of the defender ignoring warnings, refusing to reinstate Ms Moriarty despite repeated requests, and pressing ahead with an unworkable share transfer plan instead of protecting the business. Under the defender as judicial factor, the estate lost its value, the beneficiaries received nothing, and the companies were wound up insolvent. Under competent management, the

very same trading name produced healthy profits, paid real dividends, and built growing assets. The defender never even had a proper record of the business assets.

[27] In September 2021 the residuary beneficiaries received tax certificates (R185s) which suggested that each of them was due to receive a dividend of £12,321. The dividends were fictitious. There had never been sufficient distributable reserves in Roofing or Scaffolding lawfully to declare them. The tax certificates were issued to present a misleading picture of solvency to HMRC and to the Accountant of Court. They were not based on genuine profits, but on outdated and inaccurate accounts. Formal complaints about the false tax certificates and dividends were sent to the defender but the Accountant of Court failed to address these issues.

[28] In October 2021, the Accountant of Court prepared a draft report about the judicial factory. On 5 October, an officer in the accountant's office emailed the defender asking her to "run her eyes across the report" and to let him know if she wanted "any additional amendments." The defender then requested changes which removed reference to Scaffolding being in liquidation and instead inserted wording that it had "no longer any assets or liabilities" and was "about to be removed from the Companies House register." Roofing's accounts showed a loan of £54,705 advanced to Scaffolding, but this same liability was missing from Scaffolding's accounts. The latter had not traded since 2016. The estate itself held less than £26,000 in cash by November 2020, but it still owed £95,532 to Roofing and Scaffolding. Roofing had been deemed insolvent by an insolvency practitioner on 18 November 2020. In short, by late 2020 Roofing, Scaffolding, and the estate were all insolvent. Despite this, the final report submitted to the court on 7 October 2021 presented a picture of solvency and gave a closing balance of £364,272.54 as at 30 November 2020. This was based on outdated figures and ignored the fact that debts could not be repaid.

[29] Ms Moriarty knew the property at Oxgangs Road well. The defender had only renewed the insurance for the property in December 2015 after having been reminded by her to do so. In February 2016, a tree at the property came down in a storm. The defender never made an insurance claim for the damage. Instead, the estate paid directly for tree removal and fence repairs, an unnecessary cost which could have been avoided.

[30] In March 2016, the defender received a final demand from solicitors acting for Jewsons, the builders' merchants, for material supplied for works done at the property. The invoices in question were indeed payable, but the defender never consulted Ms Moriarty about them. Instead, she involved people who had no knowledge of the invoices, leading to months of delay, a defended court action, and over £6,400 in legal costs, all for sums that should have been settled immediately.

[31] This was part of a wider pattern. Ms Moriarty was never asked to assist in ingathering the estate, despite her knowledge of the companies and the properties. In effect, it was as if her experience and knowledge had been written out of the estate altogether. She saw the property at Oxgangs Road deteriorating because urgent roof repairs were not carried out. It took seven months and a direct request from Ms Watson before repairs were finally instructed, resulting in further damage. It was obvious that the estate did not have much in the way of liquid funds and would never have sufficient cash to pay for any significant building work to obtain a completion certificate. Waiting for seventeen months to commission structural surveys, only to sell the property "as seen" anyway, made no sense. It should have been marketed "as seen" in 2016 alongside Buckstone Loan East. The defender's personal dislike of Ms Moriarty should never have been allowed to influence her professional judgment to the detriment of the estate.

[32] In cross-examination, Ms Moriarty stated that she had not instructed Alan Scott in relation to any works at Oxgangs Road. He had been on the planning and consents side of things rather than on the actual construction side. She had passed his number to the defender and could have confirmed to her that the sums claimed by Jewsons were indeed due. That was clear at all times. Scott Cockburn had instructed Jewsons to do work at Oxgangs Road through Roofing. She had no paperwork related to the planning issues or to the Jewsons claim.

[33] Mr Tully was experienced and good at his job. He had the gift of the gab, but needed to be watched. Megan Cockburn could not provide the necessary supervision to him. Grave concerns about him had been intimated to the defender by Ms Watson, but they were only concerns, rather than proof of wrongdoing. They grew after Scott Cockburn's death. Steven Cockburn had appointed Jackie Skinner as office manager after he sacked Ms Moriarty. Ms Moriarty considered that she herself would have been a better appointment than Mr Tully as a director of the companies: she had experience and had the beneficiaries' interests at heart. Mr Tully was, however, opposed to her returning to the companies. He had set up a separate company and bank account with a view to stealing business from the Buckstone companies. She had intimated her unfair dismissal claim against Roofing as her only apparent means of getting back into the company.

[34] After Mr Bald was appointed a director, he never got involved in the operational side of the companies at all. Although his name had been suggested by Ms Watson as someone suitable to value and provide accounting services to the companies, he was not at all what they needed on a wider basis.

[35] The purchaser of Scott Cockburn's speedboat had told the defender that she could have it back. Scott had had a lot of possessions, worth far more than the £370 valuation

which had been obtained by Steven in respect of fewer things than he had actually owned. Things had been taken by other people, and the defender had been informed of this by Ms Watson. Steven still had keys to Scott's properties until the locks were changed in February 2016. The defender had written to him asking for the return of assets and payment, but no great effort had been made in that regard. A question had arisen in April 2017 as to whether or not it was worth pursuing him for the costs involved in securing the defender's appointment as judicial factor. Tracey Cockburn was also thought to have been responsible for the removal of some boxes containing Scott's property, and an inhibition could have been placed against her house. She was considered jointly liable with Steven for what had been taken from the estate. He had never been suitable to run the companies.

[36] Young & Co had been instructed to defend Ms Moriarty's employment claim against Roofing, on the suggestion of Steven's lawyers, but the company already had insurance cover for such representation from Peninsula, so that should not have happened.
Ms Moriarty would have come back into the companies at any time, and never expected her claim to progress as far as it did. When she received her settlement, she made use of it to help Conner and James Cockburn with the present action. Once she was taken back into the business, she was keeping an eye on Mr Tully and his quotes, looking to get him out. By that time, the business was always struggling.

[37] Ms Moriarty could have helped the defender understand various aspects of Scott Cockburn's financial affairs, but was not asked. Mr Bald told her that the defender had told him not to deal with Ms Moriarty in relation to such issues.

[38] At a meeting on 25 May 2016, the defender had been given full details of a cash job which Mr Tully was planning, to the detriment of Roofing. That was the whole point of the

meeting, to tell her what Megan Cockburn knew about the situation. The defender had agreed to let matters play out to try to catch Mr Tully in wrongdoing. When she later confronted him, he had offered to resign as a director.

Barbara Watson

[39] Barbara Watson provided a witness statement in which she declared that she was a solicitor and had acted in a professional capacity in matters relating to the estate of the late Scott Cockburn. On 12 October 2015 she met with members of his family, who had serious concerns about the administration of his estate. Present at the meeting were Mary Morham, being an ex-partner of Scott Cockburn, her four daughters from that relationship, being Megan, Chloe, Gabrielle and Chanel, and also Ms Moriarty, who was his last partner, as well as being the office manager of his roofing business. The family was unhappy about the way in which the estate was being administered. Mr Cockburn had a will which nominated his sister Tracey as executor and left his estate equally to three of his six children, being his two sons and Megan. The remaining children and his wife were entitled to legal rights.

[40] Ms Watson was formally instructed by Megan Cockburn but also received a great deal of information from Ms Moriarty. She judged them both to be truthful and honest. Scott had a large estate. He had owned two roofing businesses, being Roofing and Scaffolding, which were profitable and had an excellent reputation in the city. She was advised that he only worked in the business for approximately 20 days a year and the business was effectively run by Ms Moriarty and one of the roofers, Brian Tully. As well as the business, she was advised that he owned one-half of a property at Buckstone Loan East, the equity being around £100,000. He was also building a house at Oxgangs Road with estimated equity of over £500,000. He had conspicuous consumables such as a Range Rover,

a speedboat, expensive designer watches and the house contents in the new house which included four 50″ to 60″ plasma TVs still in their boxes as well as around £3,000 worth of gym equipment.

[41] The family was concerned as Tracey had purported to appoint her brother Steven to act along with her as executor. Steven had then supposedly been appointed as sole director of the company and had sacked Ms Moriarty from her job as manager of the businesses. The family advised her that Steven was not a stable person and that he had a diagnosis of schizophrenia. They told her he was also a recovering drug addict and alcoholic and that on one occasion he intentionally cut his finger off with an axe. They said that he had not worked for over five years and had little to no experience in the roofing business.

[42] She was advised that Steven had sold the Range Rover to someone he knew and that the speedboat had been included in the price. The price of £40,000 reported was well below the car's book value and moreover she was advised that a family friend had offered £50,000 for the car and Steven had turned it down. The house contents were given a very low value despite being of excellent quality and she ascertained from Aitken Nairn, the solicitors instructed to deal with the estate, that no mention had been made of the speedboat, a gold necklace or the cash that Mr Cockburn had had on his person. On 6 November a new company called Buckstone Roofing and Building Limited was set up by Steven. That could only have been to transfer the value of the real companies to himself.

[43] This was all stated in the summary application which Ms Watson instructed should be prepared asking for the appointment of a judicial factor, so the defender was or should have been aware of it. Ms Watson was instructed by Megan Cockburn to raise proceedings to remove the supposed executors and to have a judicial factor appointed. She appointed Ian Anderson, solicitor-advocate, to assist and the proceedings were brought due to

significant concerns about the mismanagement of the estate, including irregular sales, missing assets, and the passing of estate assets to non-beneficiaries. Ms Watson took statements from Ms Cockburn and Ms Moriarty and prepared affidavits by them which were provided to the court in support of the application for the appointment of the judicial factor.

[44] She was present in court at the hearing on 26 November 2015 where the court granted the interim appointment of the defender as judicial factor. Steven Cockburn gave evidence in support of his wish to remain as supposed executor. She found his demeanour and words disturbing. He spoke enthusiastically about how well he was doing in the business and that he was doing this for his nephews, being Scott Cockburn's sons. His manner was confrontational and he dismissed the case as coming from "someone in the office his brother had an affair with" (i.e. Ms Moriarty) and denied the allegation that he had sold the car and boat at undervalue, saying that Ms Watson had intimidated the purchaser of those items. He also made a comment on the cause of his brother's death which was misleading, again in a manner Ms Watson believed was intended to delegitimise others to his own advantage. He told the court that he had given up a business employing fifteen people in order to run his brother's business, although Ms Watson had been advised by both Ms Cockburn and Ms Moriarty that he had not worked for around five years.

[45] The defender was appointed interim judicial factor on 26 November 2015. Ms Watson emailed her on that date stating that power had been granted by the court to appoint new directors so that Steven could be removed by majority vote. She also reported to the defender that, although Steven was plausible, he had not really worked for five years. Ms Watson's main concerns were (a) to have Steven removed as claimed director of the companies; (b) to recover the keys to the heritable properties so that Steven no longer had

access to them; (c) to reinstate Ms Moriarty to ensure the efficient running of the business; and (d) to identify and secure the companies' specialist roofing equipment. With the potential exception of (b), which she was not sure about, these things were not done.

[46] She was repeatedly contacted by Ms Cockburn and Ms Moriarty with reports of bad business practice and money being stolen. The defender was intending to speak to some of the employees and asked Ms Watson if she had any feelings about whether Mr Tully (formerly Scott Cockburn's right-hand man) had any relationship with Steven which might be compromising. Ms Watson emailed the defender on 30 November in detail, concluding that her view was that Mr Tully should not be a director. On 9 December Ms Cockburn called Ms Watson to say that Steven had bought or leased a 2015 Audi, presumably through the business, and that it was parked outside his house. The defender subsequently confirmed there was no benefit to the company to acquiring this vehicle, which cost an initial payment of £2,880, with monthly costs of £374.86. She also confirmed that he had added his own Vectra car to the company insurance policy and registered it with the garage for company petrol.

[47] On 16 December 2015, Ms Watson received from Ms Moriarty a copy of a letter from the Scottish Drugs Forum dated April 2015 (two months before Scott's death) addressed to Roofing and seeking a reference for Steven, who had applied for the role of "Trainee Addiction Worker" at a salary of £10,545. She believed that a requirement for the job was to have a "personal history of drug abuse or problematic alcohol use" and "the ability to move from benefits to paid employment". This letter was emailed to the defender on the same day, and Ms Watson suggested that Steven lied and what he said could not be trusted. Ms Moriarty also indicated that she had been speaking to some of the employees who told

her that the reputation of the business was going downhill. There were long delays and customers were complaining.

[48] On 17 December 2015, the defender emailed Ms Watson stating that while Steven had received the equivalent of a salary since beginning work at the company and becoming a director, there did not appear to be any large-scale removal of funds. Ms Watson was very frustrated at the defender's refusal to accept what appeared to her to be very obvious: that Steven was, and had been from the very start, out to take as much as he could from his brother's estate. She replied to the defender on the same day, setting out her concerns in detail. Her preference from the outset was to reinstate Ms Moriarty, as she had run the business for the last five years and it had been successful with a good reputation. That view was also shared by Ms Cockburn. The defender would not agree to this and did not give any reason for her refusal to reinstate the key employee who had run the business successfully.

[49] On 13 January 2016 she emailed the defender setting out again the reasons why Steven was unfit to be either executor or director of the companies. On 14 January she received a call from Ms Cockburn, who was in tears. A roofer called Andy Lindores had resigned, saying that the business was an absolute shambles and was not being run properly at all. Ms Cockburn had also heard the same thing from another roofer, who said that the workers were finding it really hard to watch how badly everything was being run. In addition, she had been told that the roofers were looking to do as many jobs as they could for cash. It was now well known in the industry that Roofing was doing cash jobs.

[50] Ms Watson spoke to the defender by telephone on 21 January 2016 and the latter again expressed her view that she did not believe that money had actually been stolen from the business, but Steven was simply getting a higher salary than his input to the business

warranted. She was planning to have Steven removed as director and appoint Ms Cockburn and Mr Tully in his place. On 15 February Ms Watson received another call from Ms Cockburn to say that Steven had taken so much money out of the business that it had run out of money. She reported that Mr Tully was apparently talking about remortgaging his house to keep the business going. She had been told that Steven had been giving a relative, Alan Meyer, around £17,000 over the last few months. Ms Watson called the defender and she said Steven had been taking money he was not entitled to take and she intended to pursue him for this. She did not know who Alan Meyer was, but Ms Cockburn confirmed it was either Steven's uncle or his cousin. The defender thereafter raised an action for recovery of £70,000 against Steven.

[51] Ms Watson recalled being very frustrated with the defender's refusal to remove Steven. It was clear to her that the defender should not have permitted Steven to remain as sole company director. The summary application regarding her appointment as judicial factor set out in detail the numerous concerns. Her appointment as judicial factor was predicated on the fact that Steven was unsuitable to act as executor on the basis of dishonesty and acting in his own interests rather than those of the beneficiaries. Those facts made him doubly unsuitable to act as sole company director. On 16 February Steven was removed as director and Ms Cockburn and Mr Tully were appointed as directors. There had already been serious doubts cast on Mr Tully's loyalty and reports of him doing cash jobs. The questions about his loyalty had been made known to the defender in November, but she still refused to reinstate Ms Moriarty.

[52] Ms Watson wrote to the defender on 16 June 2016, at which point she was instructed both by Ms Cockburn and by Clare Innes, the mother and legal guardian of Scott's two sons Connor and James. She expressed her concerns that (a) although Ms Cockburn was a

director she was not being given full access to the companies' records and accounts and (b) Mr Tully had no experience of running companies and as a result they were underperforming. She also reported that she had been told that Mr Tully was doing cash jobs and that one was underway at the time. Ms Cockburn had told her that she was going along with this to obtain evidence against him. Ms Watson asked the defender not to alert Mr Tully so that Ms Cockburn could gather the evidence that he was cheating the companies.

[53] Ms Watson also advised the defender that both Ms Cockburn and Ms Innes, who represented all residuary beneficiaries, wanted Ms Moriarty to be reinstated as office manager immediately. On 19 September 2016 she wrote to the defender insisting she remove Mr Tully on the basis of his fraud. She warned that Mr Tully could have a claim for unfair dismissal if she delayed his removal. She also advised that Ms Moriarty would drop her claim for unfair dismissal if she was reinstated in line with the family's wishes. At this point her involvement was starting to tail off. She was contacted by Ms Cockburn again in February 2017 and was astonished to learn that Mr Tully was still in position as director. The defender indicated that she was surprised that he was still a director as he had agreed to resign over six months previously.

[54] In oral examination, Ms Watson stated that she had advised Ms Cockburn that the appropriate thing to do in the circumstances which she narrated was to seek the appointment of a judicial factor. She considered, along with the family, that once Steven had been removed from the companies, it would be best for continuity purposes to reinstate Ms Moriarty to run them, and had told the defender that frequently. She wanted to be reinstated notwithstanding having taken employment tribunal proceedings. She had spoken to the purchaser of Scott Cockburn's speedboat, who had said that he was content to

return it to the estate. The valuation undertaken of Scott's moveable estate was done after all the valuable things had been taken. Ms Watson had continually raised concerns about Steven Cockburn with the defender. Tracey Cockburn was jointly liable with him for the damage done to the estate, but no action was taken against either of them.

[55] The defender had asked Ms Watson for her views about Mr Tully, and she had expressed concerns that he was stealing from the companies and taking cash jobs. The defender had been told about a specific concern about a cash job in May 2016, and had been asked to let it play out. When it emerged that the concern was well-founded, Ms Watson expected action to be taken by the defender.

[56] Philip Bald was an accountant with clients and contacts in the roofing trade. He was cost-effective. A professional director was needed to keep an eye on things and supervise.

[57] In cross-examination, Ms Watson stated that she did not know the Cockburn family before the events with which the action was concerned. They all wanted Ms Moriarty re-instated. The defender appeared to be against Ms Moriarty for no obvious reason. She had run the businesses well and built up a good reputation for them. To keep Steven in place was very unwise in the face of all the evidence against him.

James Cockburn

[58] James Cockburn (18) provided a witness statement in which he narrated that his father Scott Cockburn had died suddenly in June 2015 when he was only eight years old. He had lived half the week with his mother and half with his father and Ms Moriarty. To him as a child, it felt like his father had everything, but the only thing he got from the estate was an old watch worth about £150. He did not understand how that could happen when his father had had so much. He was just a child when the defender was appointed as judicial

factor. His mother Clare Innes was his guardian, but she did not really understand what was happening.

[59] Ms Cockburn, Ms Moriarty and his mother tried to get him legal help as a child, but no one would take on the case. Any complaints made on his behalf were ignored because Ms Cockburn had raised a court action, although he was not part of it. The defender let his father's estate be run into the ground, and the Accountant of Court did nothing. Complaint after complaint was ignored. He found out that £81,000 was paid out in legal rights, and the defender received £158,000 for running his father's estate into the ground. That should never have been allowed to happen.

Conner Cockburn

[60] Conner Cockburn (23) provided a witness statement in which he stated that he was twelve when his father died, and his whole life was turned upside down. His father always made sure he had the best of everything and he felt like he had the best life. After his father's death, he believed he would be inheriting about £100,000, but by the time he was sixteen, he found out he was only going to get around £5,000 and his father's Rolex watch.

[61] The legal rights claimants had been paid over £81,000 in 2018, while the beneficiaries named in the will were left with nothing and the defender was paid over £158,000. He could not understand how that could ever be right. He had never met or spoken to the defender. When he was sixteen, she had tried to transfer company shares into his name. He had no idea what that would mean. He had also received a tax certificate but did not get a penny in cash. He had lost everything while an officer of the court was meant to be protecting the estate.

Andrew Paterson

[62] Andrew Paterson gave a witness statement in which he stated that he was a member of Murray Beith Murray LLP and currently head of its executry group and chairman of its management board. The defender's appointment by the court as judicial factor was personal to her. When appointed, she was a partner in Murray Beith Murray. She asked colleagues in the firm to provide assistance to her in her capacity as judicial factor. Her commission for acting as such was independently fixed by the Accountant of Court and invoices in that regard were then issued by Murray Beith Murray and paid from Scott Cockburn's estate. Mr Paterson understood that such fees to date totalled approximately £135,000 (excluding VAT and outlays). His own involvement in the judicial factory was very limited. He was not involved in the day-to-day administration of the case and it was not his role to provide oversight of the defender. That was provided by the Accountant of Court.

[63] Megan Cockburn had provided him with information and queries about the defender's decision not to reinstate Ms Moriarty, and allegations concerning Mr Tully's appointment and conduct. He did not recall any personal involvement in those matters. He was also provided with questions which referred to alleged discrepancies in the company accounts of Roofing and Scaffolding, relating to director's loan balances, dividend entries, and intercompany loan figures, which it was suggested might have had a subsequent effect on the estate’s date of death valuations and the legal rights payments made to beneficiaries. He had had no involvement in those matters either.

[64] He was aware that Ms Cockburn had previously raised a formal complaint in relation to the judicial factory. He understood that a number of topics were covered in the complaint but they were deemed ineligible by the Scottish Legal Complaints Commission as

either being without merit or time barred. He was not involved in the preparation, handling, or investigation of the complaint. He recalled sending an email to Ms Cockburn in March 2019 in response to an email she had sent to the defender on 28 February 2019, which contained language and allegations he considered inappropriate. He had told Ms Cockburn that the defender had been appointed by the court and had complied with her obligations.

[65] He was aware that, around September 2021, Murray Beith Murray had withdrawn from acting in relation to the defender's court application for a discharge and that she had then instructed Harper MacLeod LLP to act on her behalf in that regard. His recollection was that this was because Drew Taylor of Murray Beith Murray, who had been acting, experienced a period of ill health and was then in the process of retiring. Murray Beith Murray therefore no longer had capacity to deal with that particular aspect of the judicial factory and the defender instructed Harper Macleod to provide the required litigation support.

[66] Although he was copied into some internal emails between 2019 - 2021 during the later stages of the defender's administration, he did not prepare or formally approve valuations, tax returns, dividend declarations, a plan for share transfers, or the discharge application. Those matters were the responsibility of the defender. The purpose of internal emails being copied to him was so that he, as head of the executry group, was aware of the general progress towards concluding the judicial factory. He acted informally as an occasional sounding board for the defender but provided no formal advice as he was never aware of all the details of the case.

[67] In cross-examination, Mr Paterson stated that he was aware that complaints had been made, but not of their detail. He had written to Ms Cockburn saying that the language she had used in writing to the defender was unacceptable, and that all steps taken in the factory

had been approved by the Accountant of Court. Murray Beith Murray had assisted the defender in the performance of her duties as factor, and had reclaimed the VAT on her commission. He was aware in general terms that there was an issue about director's loans, and that Ms Cockburn did not agree to a proposal to issue shares to her.

John McHugh

[68] John McHugh provided a witness statement in which he noted that he was a solicitor with Harper MacLeod LLP. He was instructed by the defender in September 2021 regarding opposition to her application for directions and discharge. His role was limited to representing the defender procedurally in respect of that application. He was aware of ongoing complaints by Megan Cockburn concerning the administration of the estate, including the handling of the companies Roofing and Scaffolding. His colleague Alastair Johnston handled most of the day-to-day matters. The proceedings were sisted in April 2022 to accommodate this parallel Court of Session action.

[69] He was not instructed to assess the estate's solvency prior to participating in discharge proceedings. He relied entirely on documentation provided by the defender and did not independently verify asset valuations, company trading status, or tax declarations. He had no knowledge of the specifics of the finances of Roofing or Scaffolding. He was made aware by the defender from the outset that Roofing was in liquidation and his recollection was that he was told that Scaffolding had ceased trading, but he did not know the details of their finances.

[70] He had no involvement in the administration of the judicial factory and would not have been in a position to form a view as to whether the figures in the draft scheme of division accompanying the application for exoneration and discharge were accurate. He

was aware that the defender was in a responsible position both as judicial factor and as a solicitor and that she was working under the supervision of the Accountant of Court. He had no reason to think that any of the information provided by her was likely to be false. He did not prepare or review the Open Record submitted to the sheriff court on 21 January 2022. He expected that it would have been prepared by Mr Johnston. He had no knowledge of supposed omissions from the Open Record or how any such omissions occurred.

[71] He had no involvement in the tax affairs of the estate. He did not undertake any due diligence in the sense of examining or interrogating figures before the discharge application was submitted. The defender had produced all financial information and it was not his role to carry out any assessment of it. He had no reason to suspect any inaccuracy and had no cause for concern. He was copied into an email from the Accountant of Court dated 5 October 2021 describing the estate as "technically exhausted". He could not recall how he interpreted that at the time. He had no knowledge of the defender amending the Accountant of Court's report, which originally described Scaffolding as being "insolvent" to "no longer trading with no assets or liabilities". He had no basis to question the Accountant of Court's report dated 7 October 2021, citing an estate balance of £364,272.54 as at 30 November 2020. He had no knowledge of the defender requesting the liquidator of Roofing not to declare the estate a debtor of that company in May 2021. He was unaware that the amount secured by the defender's bond of caution had been reduced to £8,282, and did not raise concerns about its accuracy. He trusted that the information provided by the defender, overseen by the Accountant of Court, was accurate and submitted in good faith. He had no reason to believe otherwise.

[72] He could not recall the defender raising any concerns about insolvency when she transferred legal representation over to Harper MacLeod in September 2021. His firm did

not commission or undertake any verification of solvency prior to representing her in the discharge proceedings. He had no reason at the time to suspect material inaccuracies or omissions in the financial documentation. Representation of the defender did not imply endorsement of the underlying financial content of her application and he was not prepared to speculate whether awareness of these matters would have altered his professional approach.

[73] There were two versions of the executry account on his file. One was labelled "From 6 June 2015 (date of death) to 3 April 2019", which looked similar to the one apparently lodged with the sheriff court. He also had a second version entitled "from 6 June 2015 (Date of Death) to Date of Close of Account". The only copy of the scheme of division which he had on file was the one sent to him by the defender when his firm was first instructed. That was not a full copy.

[74] In cross-examination, Mr McHugh stated that he was unaware whether the scheme of division figures as presented to him were final or not. He was aware that a complaint of some sort had been made about the defender's handling of the factory.

Megan Cockburn

[75] Ms Cockburn provided a witness statement noting that she was one of the daughters of the late Scott Cockburn and one of three residuary beneficiaries of his estate, along with her two younger brothers, Conner and James. She had been 22 years old when her father died suddenly in June 2015, aged 41. Conner had then been twelve and James eight.

[76] The defender had had a duty to produce an inventory of the estate under her control within six months of her appointment, but had done so late and relying entirely on information passed to her by others, including Steven Cockburn, the former supposed

executor who had been removed by the court as unsatisfactory. The defender had not obtained valuations for Scott's businesses at the outset, and had no idea what they were worth or how much goodwill was in the relative companies. These omissions meant that critical decisions, like whether to sell or wind down the companies, were made without a proper understanding of their financial or commercial value.

[77] Tracey Cockburn, Scott's sister, was the nominated executor in his will, but from the start Steven Cockburn, his half-brother, had taken control and supposedly been assumed by Tracey as a co-executor. Her father's family had ransacked his house out of their own greed and for their own benefit. His car and speedboat had disappeared. Within weeks, Steven had taken control of her father's companies and sacked Jaci Moriarty, who had run the businesses alongside Scott for five years.

[78] It was decided with the benefit of legal advice to raise court proceedings to remove the apparent executors. During those proceedings, it was discovered that Steven had registered a new company on 6 November 2015, weeks after Scott's death, using almost exactly the same name as his business. On 26 November 2015, the sheriff had appointed the defender as interim judicial factor, pending a final decision, to protect the estate. However, despite having been given the power to remove him, the defender allowed Steven to stay in place at the companies.

[79] Within weeks of her appointment, Steven had leased a brand-new Audi through the company, continued making business decisions without oversight, and had full access to the bank accounts. It had later been discovered that he was paying himself twice over and had made a substantial payment to another family member, Alan Meyer. It was not until seven weeks after being appointed that the defender finally made the decision to remove Steven, and even then, he was not formally removed until 16 February 2016. Throughout

that entire period, Steven had sole access to the company finances. He continued to withdraw funds and make unauthorised payments.

[80] Ms Cockburn's solicitor, Barbara Watson, contacted the defender on 26 November 2015, the very day of her appointment, to say that removing Steven from the business was the priority for the family. From the outset, the defender had been given clear and credible warnings about the risks posed by Steven. Ms Watson had written to her repeatedly in December 2015 to report serious concerns, not just about Steven's conduct and spending, but also about the deteriorating state of the companies, Ms Moriarty's unfair dismissal, and the emotional impact on the family. She had provided proof that Steven had recently been on benefits, that his employment reference confirmed a personal history of addiction, and that his claims to the sheriff about running a business were false. Had the defender acted when the court appointed her and removed Steven immediately, reinstated Ms Moriarty, and put competent systems in place, the companies could have been stabilised and the inheritance preserved.

[81] Around 20 January 2016, the defender asked if Ms Cockburn would consider becoming a director of both of her father's companies, saying it would be a non-working role to give the family some representation and oversight. However, when Ms Cockburn heard there was talk of redundancies, she offered to step in and work full-time to help protect the business. The defender told her that she would appoint Brian Tully as a director at the same time so that the two of them could outvote Steven. Ms Moriarty had already warned Ms Cockburn about Mr Tully and his close ties to Steven, but Ms Cockburn was given no say in the matter.

[82] Mr Tully was always friendly to her and talked about her father with respect. She trusted him, and the defender had made it clear that she would not reinstate Ms Moriarty, so

Ms Cockburn felt that she had no choice but to accept the decision. She and Mr Tully were formally appointed as directors on 16 February 2016. Steven Cockburn was finally removed. On his way out, he paid himself a final weekly salary of £3,593—over five times his normal pay. The defender had told him only to pay himself his usual £650, but was powerless to stop him, since he was the only person with access to the bank account right up to the day he was removed. Ms Cockburn had hoped that once she became a director, she could bring Ms Moriarty back, resolve her unfair dismissal claim, and benefit from her experience to help steady the business, but Mr Tully did not want her involved, and Ms Cockburn could not overrule him. At the time, she was under the impression that the companies were still financially stable. She gave up a secure job at a bank to step into the role.

[83] From her very first week, she was in shock about what she saw. Mr Tully told her that Roofing did not have enough money to pay wages, and it had to cancel a cheque to HMRC just to keep the doors open. None of this had been disclosed to her. She was consumed by disbelief and panic. She would never have left her job at the bank if she had been told the truth. The defender never gave her any proper induction, access to business accounts, or warning that the company was already in financial crisis. She also failed to tell Ms Cockburn that Ms Watson had warned her against appointing Mr Tully, or that theft allegations had been raised against him but never investigated before his appointment.

[84] From the start, she was shut out of the office side of the business. The administrative assistant, Jackie Skinner, and Mr Tully refused to show her how things were run or involve her in any of the financial or administrative processes. She was a director in name, but not in practice. Ms Skinner even contacted the defender directly to question Ms Cockburn's role. The defender had then phoned her and said that her position should be like that of an office junior. She was not included in decisions, was not taught anything, and was given no

real responsibilities. She started working outside with the men, labouring on jobs, stripping roofs and helping with scaffolding, just to make her feel valued.

[85] In May 2016, Mr Tully approached her about doing a cash job. He explained that a customer would be given a written quote for £2,000 plus VAT, but the actual work involved a full strip and reslate, far more extensive than what was shown on paper. He said the real cost was £10,000 and told her the remaining £8,000 would be paid in cash directly to him. He suggested that they would split the cash, offering her £4,000. She was taken aback by the offer and did not know what to say. She told him she would think about it and immediately told her mother and Ms Moriarty. They both urged her to blow the whistle and tell the defender.

[86] Ms Moriarty arranged a meeting with the defender on 26 May 2016. At that meeting, Ms Moriarty reminded the defender that she had raised concerns about Mr Tully months earlier and had asked to be appointed as a director instead. It was agreed at the meeting that the only way to prove Mr Tully was stealing was to allow the cash job to play out fully. Once the job was completed, Mr Tully would collect the payment from the customer, hand half of the money to Ms Cockburn, and she would then pass it to the defender. Mr Tully would keep the other £4,000 for himself. Photos would show the true extent of the work, and the invoice at the end would show the work the customer had been invoiced for, which would not reflect the work actually carried out. As the money paid to Mr Tully would not have been banked, that would provide proof that he was stealing from the company. The defender said she would carry out her own investigation too.

[87] On 15 June 2016, Ms Cockburn emailed the defender and attached the quotation addressed to the customer for minimal roof repairs at a cost of £2,000 plus VAT. She confirmed in the email that she had spoken to the men on site, who told her that Mr Tully

had instructed them to carry out a full strip and reslate, including flashing and guttering, far beyond what was shown in the official quote. The next day, Ms Watson also wrote to the defender on behalf of all the pursuers, describing the situation as deeply concerning and urging her to exercise discretion and not to alert Mr Tully until proper evidence could be obtained. She queried whether Mr Tully should remain a director or employee and suggested that the situation justified appointing someone experienced to monitor time, materials and invoicing. She also highlighted that Ms Moriarty had successfully managed the company for five years, had exercised strict oversight of its operations, covering staff, finances, materials and customer service, and that under her leadership, the company was highly respected and successful. On 3 August 2016, she emailed the defender again to report that Ms Cockburn had received the first instalment of the cash job, £1,500, with half of it handed directly to her by Mr Tully. Ms Watson asked whether this was finally sufficient to justify reinstating Ms Moriarty and asked for urgent action.

[88] On 5 August 2016, the defender confirmed that she had received the envelope with the cash from Ms Cockburn and had placed it in her safe. She asked if she could meet with Ms Cockburn and Ms Moriarty to go over the financials after normal office hours in the company premises. The meeting took place on 9 August 2016, and during it the defender stated that it would be beneficial for Ms Moriarty to return in a consultancy role to help implement better financial oversight and systems. However, on 24 August, the defender telephoned to say that she had already confronted Mr Tully. She also sent an email to Ms Watson trying to justify her decision to confront him, claiming that the job was unlikely to be completed before the defender went on holiday on 31 August. She also claimed that Mr Tully had tendered his resignation, but no written resignation was ever received.

[89] The defender had the legal power to remove Mr Tully and could have taken immediate steps to protect the business. Instead, she stalled and allowed him to stay in place, at the companies' expense and to the detriment of the beneficiaries. Ms Cockburn was still expected to work beside Mr Tully, with him knowing that she had blown the whistle on him.

[90] On 26 August, the defender contacted Ms Cockburn and informed her that she would arrange for a potential new director, Philip Bald, a chartered accountant, to take office. Meanwhile, Mr Tully had not been suspended pending investigation. The defender waited five weeks before appointing Mr Bald, who made clear that he would not be involved in the day-to-day running of the company. The company needed a full-time managing director, and that was not going to be Mr Bald.

[91] During a disciplinary hearing (the minutes of which were not placed on his file, nor shown to the company's HR services provider or to Ms Cockburn), Mr Tully admitted the salient facts about the cash job. Despite that, the defender failed to remove or suspend him, and failed to find anyone to supervise the business. On 31 August 2016, she wrote to the Accountant of Court saying that steps were being taken to remove Mr Tully as a director and that arrangements were in hand to find a replacement, which was not true. After the disciplinary meeting, no meaningful action was taken. On 19 September Ms Watson wrote to the defender, urging the immediate removal of Mr Tully as both a director and employee. She warned that delay weakened the case and could give him grounds for unfair dismissal. On 11 October, Mr Bald, Ms Moriarty and Ms Cockburn met with an employment lawyer and were advised that because of the defender's delay, Mr Tully could no longer be removed without the risk of an unfair dismissal claim. There was no way the companies could afford

the cost of defending such a claim. Mr Tully remained in post and continued running the companies with no supervision.

[92] By late July 2017, evidence had been gathered to show that Mr Tully was failing in his duties. On 15 August, Mr Bald, Ms Cockburn and Mr Tully met to discuss these failings and Mr Tully resigned then and there. The following day, however, Roofing received a constructive dismissal claim. On 18 August, it was discovered that Mr Tully had already set up a roofing and scaffolding company and had been working on the side, poaching work from Roofing, offering cash jobs, and trying to secure future business for himself. After contact with his solicitor, the constructive dismissal claim was dropped on 31 August. It transpired later that Mr Tully had been flagged to the defender as a serious concern before he was ever appointed as a director, by Ms Moriarty and Ms Watson. The defender had paid no heed to these concerns. After Mr Tully's departure, she simply left Ms Cockburn to get on with running matters on her own, along with such limited help as Ms Moriarty was able to offer while holding down another full-time job.

[93] Ms Cockburn had discovered that the financial figures relied upon by the defender to value the estate were deeply flawed. The company accounts for 2013 to 2015 were retrospectively redrafted without consulting Ms Moriarty, who was the office manager at the time and had daily oversight of the figures. On 1 June 2018 the director's loan in Scaffolding was reduced from £89,961 to £39,961 without any supporting documentation, dividend declaration or explanation, on the same day the defender met with her solicitor and Mr Bald to discuss estate solvency concerns. Around the same time, the £54,750 intercompany loan from Scaffolding to Roofing disappeared from Scaffolding's accounts, yet continued to appear in Roofing's books.

[94] This accounting mismatch undermined the integrity of the estate's declared financial position. Ms Cockburn was never shown these valuations at the time and was never consulted. These false assumptions were then used artificially to inflate the estate's value and justify the payment of legal rights, even though known liabilities remained unpaid. No business asset inventory was ever taken at the outset of the defender's appointment. There was never any independent valuation of the scaffolding, vans, or tools. Only £370 was allocated for the entire contents of Scott Cockburn's house, including furniture, electronics, designer clothing, gym equipment, artwork, sporting memorabilia, and his model train, model car and whisky collections. That artificially low figure was then used in the legal rights calculations.

[95] The defender had had full authority, as legal representative of the estate and controller of the companies, to declare dividends in favour of the estate and apply those dividends to reduce or eliminate the outstanding director's loan accounts. That could have been done without the need to transfer shares to individual beneficiaries, as the estate remained the legal shareholder. Despite this, she failed to take such steps and repeatedly claimed that dividends could not be paid until share transfers were completed. Had proper action been taken, the director's loans could have been cleared, the estate's value preserved, and liquidation potentially avoided.

[96] In February 2019, the defender transferred £20,000 from the estate to Roofing, without the consent of Ms Cockburn or of Clare Innes, the guardian of the two other pursuers. She had transferred the money without ensuring a proper solvency position or corporate resolution, and without safeguarding the estate's value. The defender appeared not to like Ms Cockburn, and that got worse after the latter complained about the defender's actions. She was subjected to endless scrutiny over petty and irrelevant matters. False

allegations were made by the defender against her, including the suggestion that she had stolen proceeds from the sale of lead and copper, and was involved in the disappearance of cash from the company safe.

[97] In November 2018, a meeting was held to discuss the distribution of legal rights, the future of the companies, and the division of the estate. It was attended by the defender, Clare Innes (a legal rights claimant) and her solicitor, and Mr Bald. Ms Cockburn was not invited or told the detail of what was to be discussed. A draft executry account had been prepared and shared in advance with Ms Innes's solicitor, but not with Ms Cockburn.

[98] On 15 November 2018, the defender had told Mr Bald that there was insufficient cash to repay the director's loans in full to Roofing and Scaffolding and that accordingly on the residue page of the executry account, she had netted off the loans against the values for the companies. That meant that she had used inflated and outdated company valuations to artificially cancel out over £95,000 in unpaid estate debts, rather than settling them. That exaggerated the estate's solvency on paper and enabled her to justify paying out £81,057 in legal rights, despite knowing the estate was balance sheet insolvent, and using proceeds from the sale of a heritable asset. Only £4,000 was reserved for fees, despite over £158,000 later being paid to the defender's firm.

[99] On 30 November 2018, Ms Cockburn emailed the defender confirming that she was happy to accept the proposed scheme of division, because she was under the clear impression that she would be receiving around £100,000 as her share of the estate, that being what she understood from the figures shown on the draft scheme she had received in 2017. She was never advised that that calculation was based on date of death company valuations that were no longer realisable. In February 2019, she discovered that her inheritance would consist of just over £6,000 in cash and a one-third share in Roofing and in Scaffolding (which

was no longer actively trading). She told the defender that she did not want the shares transferred into her name. However, the defender made no alternative arrangements. She did not appoint a new director. She did not apply to the court for directions. She simply proceeded as if Ms Cockburn had consented to the transfers and informed Ms Innes that the estate was ready for distribution. On 28 February 2019, Ms Cockburn asked the defender to sell Roofing, but she refused to do so. Ms Cockburn felt pressured to take on personal risk just to finalise the estate.

[100] In May 2019, the defender and her solicitors proposed a share transfer and dividend strategy to finalise the estate. This involved issuing dividends from Roofing and Scaffolding to the estate, applying those dividends to write off the outstanding director's loans, and transferring shares to the beneficiaries. Although it was theoretically lawful to declare dividends to the estate and apply them against a director's loan, that could only be done if the companies were solvent, had distributable reserves, and passed valid board resolutions. Neither Scaffolding nor Roofing met those conditions in May 2019. Scaffolding had not traded since 2016. Its 2017 accounts reported no turnover, a trading loss, and only £103 in the bank. There were no distributable reserves, and the company was technically insolvent. While a director's loan of £39,961 was shown as owed by the estate to Scaffolding, that debt was unrecoverable due to estate insolvency.

[101] Roofing was in no better position. Its 2017 accounts showed a modest net profit of £2,202 and retained earnings of £187,954, but this figure included outdated intercompany and director loan balances which were unrecoverable. There was a projected loss of £20,000 to £30,000 for 2018. No up-to-date accounts were available in May 2019, meaning any dividend declared would have been based on obsolete data. The estate held £64,848 in cash in early 2019, but £20,000 had been paid to Roofing in February, leaving £44,848. The

estimated 7.5% tax on the proposed dividend of £118,359 would require nearly £9,000, depleting most of what was left. Despite these issues, there was no valid board meeting, solvency statement, or dividend resolution filed. No provision was made for who would run or sell the companies once Ms Cockburn stepped down. The defender's plan relied on inflated valuations and outdated accounts, and ignored the reality of the companies' positions. It proceeded without valid shareholder or director resolutions and without securing informed consent from the beneficiaries.

[102] In 2020, Ms Cockburn had instructed solicitor Tim Edward at Dentons to assist with securing an expert report in support of her opposition to the defender's application for discharge. His role was limited, as she could not afford full legal representation. Despite this, the defender personally contacted him and attempted to pressurise him rather than to address the issues Ms Cockburn had raised.

[103] On 18 November 2020, the defender instructed an insolvency practitioner, Suzanne Adshead, to assess Roofing. Ms Adshead formally confirmed that the company was insolvent on both a cashflow and balance sheet basis and had no prospect of recovery. The defender did not inform Ms Cockburn, the sole director, of these matters, and did not step in to take control or initiate the liquidation herself.

[104] In September 2021, Ms Cockburn received an R185 tax certificate issued in her name, stating that she had received £12,321 in dividend income from Scaffolding for the 2020/2021 tax year. The other two pursuers each received the same. As the sole director of Scaffolding, Ms Cockburn would have expected to be told if a dividend was being declared from the company, but she never saw a board resolution, never attended a meeting, and never signed anything. She did not authorise the R185 tax certificate issued in her name, authorise any

dividend or know that the estate was filing its final tax return on the assumption that Scaffolding was solvent and distributing dividends.

[105] It transpired that on 3 September 2021 the defender had submitted an estate tax return declaring that the estate had been wound up on 5 April 2021, and listing £39,961 in dividends declared by Scaffolding. That company had been non-trading since 2016 and had filed no updated accounts since 30 November 2019, meaning there was no way to know if it had any distributable profits or retained earnings. No board meeting took place. No profits were confirmed. The three R185 tax certificates were issued showing that Ms Cockburn and her brothers had each received £12,321, totalling £36,963. The balance (£2,997) was paid to HMRC as "dividend tax," making the total £39,961, exactly to match the sum declared in the estate's return. The certificates were backdated to the previous tax year, even though Scaffolding was on the brink of compulsory strike-off on 29 October 2021 and was eventually struck off in June 2022. Roofing was formally liquidated in May 2021.

[106] When the Accountant of Court provided a draft report supporting her discharge, the defender amended it herself, reclassifying Scaffolding from "insolvent" to "non-trading with no assets or liabilities". The liquidator of Roofing never treated Scaffolding as a debtor, despite it owing £54,705 to Roofing. That debt had been visible in the accounts since 2015. Nor did the liquidator pursue the estate for the £55,571 director's loan owed to Roofing. The defender had privately warned that doing so "would push the estate into insolvency" and would mean her discharge would have to be "in different terms". That omission was not accidental. It served to protect the defender from scrutiny and allowed her to proceed with her discharge under false pretences.

[107] No full, final executry accounts explaining how the legal rights were calculated, how the director's loans were dealt with, or how the valuations were processed had been

produced, despite repeated requests. There were five different versions all dated 3 April 2019, none updated to reflect what actually happened. Legal rights claimants received £81,057. The defender and her firm received £158,000. The residuary beneficiaries received nothing. After everything collapsed, Ms Moriarty rebuilt the roofing company. She now had a thriving company with a great reputation. If the defender had done her job properly and reinstated Ms Moriarty back in December 2015, that success would have belonged to the residuary beneficiaries.

[108] In further oral examination, Ms Cockburn stated that she had thought that she could help in the businesses after her father's death, but was concerned at the prospect of becoming a director. She had had a good relationship with Mr Tully up to that point, but it changed. She had no relationship with the other person then working in the office, Jackie Skinner. When she was installed as a director by the defender, Mr Tully wanted nothing to do with her and she had no access to or control over anything. She discovered that he was doing jobs for cash and underquoting. She did not have much contact with the defender. She decided it was best to go and work with the roofers rather than remain in the office all the time.

[109] Mr Tully had suggested doing a cash job and sharing the money with her. She spoke to the defender about it, giving her all the details she knew, and agreed to gather evidence. After Mr Tully admitted having attempted to do the cash job to the defender, he was not removed from the companies. He got a letter to sign which would have resulted in his resignation as a director, but never signed it. Ms Cockburn was told nothing about what was happening and had to work with him for another year.

[110] Philip Bald was appointed as a director in September 2017. He was not managing the companies, just supervising the finances. She did not recall meeting him before his

appointment. After Mr Tully and Ms Skinner left, Ms Cockburn was left in charge of everything. She never prepared any accounts, leaving that in the hands of Alistair Simpson, the companies' external bookkeeper, and Ms Moriarty helped with the estimating.

Ms Cockburn requested that Roofing be paid £20,000 from the estate in February 2019. She understood that it was spare money, which would be useful to the company. It had also taken a bounce-back loan after the start of the Covid pandemic. When she was told what her ultimate share in the estate was likely to be, she could not believe it, and was devastated. She did not understand the financial issues at first. She refused to take the company shares she was offered, and asked for the companies to be sold. The defender never explained the implications of the proposed share transfer to her, and she did not agree to it. She felt very alone and thought that no one could help. She was on medication. Her trust in the defender was destroyed.

[111] In cross-examination, Ms Cockburn stated that no business asset list had been compiled by the defender. No inventory of the estate at large had been lodged with the Accountant of Court within the six-month period allowed for so doing, and Ms Innes maintained that there was more property at Oxgangs Road than appeared on the inventory which had been made. Ms Cockburn could not comment on the business valuations, and accepted that there were pros and cons to bringing Ms Moriarty back to work for the companies. However, the defender ought to have acted more quickly to remove Steven Cockburn from the businesses. She did not recall having spoken to Ms Watson about her own proposed appointment as a director. There were very few directors' meetings at any stage, and the defender gave her no warning about the state the businesses were in. Contact with the defender was minimal, and she did not recall having asked the defender to step back from dealing with the businesses.

[112] She had not had concerns about Mr Tully before his appointment as a director, but there were pros and cons about that appointment too. The defender had agreed to go along with the evidence-gathering exercise concerning him which was suggested at the meeting in May 2016. Mr Bald and Ms Cockburn would have been agreeable to re-instating Ms Moriarty, but Mr Tully was against that, and refused to work with her.

Clare Innes

[113] Clare Innes provided a witness statement in which she stated that she was the mother and legal guardian of James and Conner Cockburn, two of the three residuary beneficiaries of the estate of Scott Cockburn. At the time of Scott's death in June 2015, her sons were twelve and eight years old. Although she and Scott had been separated since March 2012 and were going through a divorce, they were still legally married when he died. She was also a legal rights claimant in the estate.

[114] She was not formally part of the court action that Megan Cockburn raised in 2015 to remove Tracey and Steven, but completely supported it. There were too many concerns about missing money and Scott's companies being taken over. She was a hairdresser and had never run a business or dealt with shares, tax, or anything to do with a company. She was never involved in Scott's companies and had had no say in what should have happened with them. She put all her trust in the defender to make the right decisions and to look out for her sons.

[115] When the defender removed Steven Cockburn as director, Ms Innes was told that the companies needed someone to help run them. The defender gave the impression that the choice was between Brian Tully and Jaci Moriarty. Ms Innes knew Ms Moriarty had been living with Scott and working in the companies before he died, but because of their personal

history, she naturally leaned toward Brian. The defender spoke very highly of him and said he had been managing the companies since Scott passed away, so Ms Innes just assumed he was the right person. She did not know why she was being asked in the first place; she was not in a position to know what or who was best for the companies in the long run.

[116] She was unaware that the defender had been warned in writing not to appoint Mr Tully by Ms Watson and Ms Moriarty. Had she known the truth, she would not have supported Mr Tully's appointment as director. After the episode of Mr Tully being accused of doing a cash job, Ms Cockburn was pushing for Ms Moriarty to be reinstated and asked for her support, which she gave willingly. She knew that Ms Moriarty had managed the business well alongside Scott, so never had any doubts about her capability.

[117] In late August 2016, she gave Ms Watson her full authority to act on behalf of her sons to protect their future. However, Ms Moriarty was not reinstated. Instead, the defender appointed Philip Bald as director on 30 September 2016. He never intended to work in the business. In August 2017, she heard that Mr Tully had finally resigned. By that time, he had already set up a new company in his wife's name, while still a director of Roofing. She did not understand why he was ever appointed in the first place. The whole situation, including the employment tribunal award in favour of Ms Moriarty, could have been avoided if the defender had just listened to Ms Watson and taken the right action at the time.

[118] As she was a legal rights claimant and not confident with financial matters, she instructed a solicitor in October 2018 when the defender was preparing to pay out legal rights. There was a meeting in November 2018 to discuss the legal rights payment and the future of the companies. Mr Bald represented the companies. She did not understand most of what was discussed. She trusted her solicitor to do the best for her. During the meeting,

she told the defender that Ms Cockburn was struggling. The defender said that she would find someone to help her, but she never did. Ms Innes received her legal rights payout in December 2018.

[119] Her solicitor wrote a letter to the defender raising concerns about a proposed payment of £25,000 from the estate to Roofing. She was told the money would come from what was left for the beneficiaries. She was uneasy about it, as she knew the company was clearly struggling. She now knew that Ms Cockburn had not been given the same financial information, thought there was more money available, and did not realise the estate was nearly empty. There was only about £64,000 left. Ms Innes also remembered being told that there were outstanding director's loans, but had no idea what that meant. She did not realise at the time that the estate was actually insolvent when legal rights were paid out. After February 2019, she had no legal representation.

[120] Ms Innes was the joint owner of Buckstone Loan East and the defender made it clear to her that her priority was always to sell that property before focusing on Oxgangs Road. Ms Innes was obviously happy with this, as she was keen to get her money. However, she had since found out that, instead of using the estate's limited funds to satisfy the enforcement notice at Oxgangs Road so that it could be sold, the defender spent money on other things that were far less urgent, including cleaning, visits, storage fees, council tax, maintenance work and grass cutting, but said that she did not have the money to remove the electric gates at Oxgangs Road in order to satisfy the enforcement order. That should have taken priority as Oxgangs Road could not be sold until then.

[121] On 4 November 2016, after Buckstone Loan East had been sold, the defender had indicated that she proposed to put Oxgangs Road into compliance with building and planning regulations and to sell it. However, no work at all was actually done at the

property. The structural survey reports to find out what needed to be done before it could be sold were not instructed until May 2017, and then the defender realised she did not have the money to carry out any work.

[122] The defender's proposal was to transfer the company shares into the names of Ms Innes (to hold for James) and Conner. Ms Innes felt uneasy. She did not fully understand it. Her brother explained to her that the shares came with financial risks, especially due to unresolved director's loans. Ms Innes made it clear to the defender that she did not want to be a director and did not want to hold shares that carried financial liabilities she did not understand. She felt like these decisions were being pushed forward without enough thought or explanation. However, she and Conner agreed to the share transfers in or around September 2019, not because they understood what it meant, but because she trusted that the defender was doing the right thing for her sons. No proper explanation of what it all meant was provided. The defender never spoke to Conner, who was sixteen at the time. She never told Ms Innes or Conner that Ms Cockburn did not want her shares, or that she had had enough and wanted out. The defender was pushing ahead with a plan to transfer shares without any clear plan for who would manage the companies.

[123] Ms Cockburn made a complaint about the defender in 2017, with the support of Ms Innes. Ms Cockburn and Ms Moriarty had complained on numerous occasions, but got nowhere. In January 2022 Ms Innes submitted her own complaint to the Accountant of Court on behalf of James. She got no proper reply. Even when she asked for it to be escalated, no investigation happened. It was heartbreaking. She could not obtain legal assistance. The defender had not protected the estate.

[124] In further oral examination, Ms Innes stated that she had no financial experience and initially trusted the defender, not questioning her judgment. She agreed with the removal of

Steven Cockburn from the businesses. As to Mr Tully, had she known about the concerns which existed about him, she would not have supported his appointment as a director. She was told that he was the best person to appoint. Ms Cockburn had told her about the cash job which Mr Tully had proposed to share with her, but she was not further involved in that matter.

[125] In relation to the sale of Buckstone Loan East, an initial sale agreement fell through. She was not informed about any chain-free offers, or about the cost of delaying a sale. She did not understand the proposed share transfer. Her solicitor had said it was not a good idea, but she got no further advice about it and agreed to it without any comprehension as to what it was about. There was no discussion about who was going to run the companies after the transfer. She could not remember any details of a meeting with the defender in May 2018. Her sons had not got a fair deal out of the factory; all they had got was a watch each, worth £5,000 and £150 respectively. She had tried without success to get legal representation for James.

[126] In cross-examination, Ms Innes stated that she had thought that Mr Tully was the right person for the job as director. As to legal rights, her lawyer had told her what she was entitled to, and she was otherwise occupied at the time. She thought it was the defender's job to make decisions.

Suzanne Adshead

[127] Suzanne Adshead stated that she had been an insolvency director at Johnston Carmichael for 20 years. She had met with Ms Cockburn and Ms Moriarty to discuss the solvency of Roofing, and had also liaised with the defender, before that company entered provisional liquidation on 2 March 2021. The company was insolvent on a balance sheet

basis and could not pay its debts as they fell due. Ms Adshead had warned Ms Cockburn about the risk of wrongful trading. Ms Cockburn had been quite upset, but had made the decision to petition for the liquidation. The defender was not directly involved. No list of business assets had ever been provided to Ms Adshead. A statement of affairs was approved by Ms Cockburn and Ms Moriarty.

[128] She spoke to the defender about the director's loan, and was told that the factory estate did not have the funds to repay the loan, after the costs and expenses of the factory had been paid. A decision was made not to try to pursue the loan in those circumstances.

[129] Scaffolding was seemingly dormant. It owed money to Roofing. Ms Cockburn and Ms Moriarty said that it had no assets.

Defender's proof

Carole Hope

[130] Miss Hope provided a witness statement in which she said that she qualified as a solicitor in 1981 and had practised continuously since then in private client work. She joined Murray Beith Murray as a partner in November 2002, having previously been a partner in another Edinburgh firm. In both firms she led the team dealing with executry administration. On 31 January 2019, she retired as a partner at Murray Beith Murray and became a consultant.

[131] Judicial factories were relatively rare. She had acted in connection with perhaps seven or eight of various types throughout her career. Her appointment as judicial factor to the estate of Scott Cockburn was made under section 11A of the Judicial Factors (Scotland) Act 1889, which provided for the appointment of a judicial factor on the estate of a deceased person. Scott Cockburn died unexpectedly on 6 June 2015 while in his forties. He was

survived by his wife, Clare Innes, from whom he was separated but not divorced at the time of his death. He was survived also by six children. The children were two sons, Conner and James, then aged about twelve and eight, whose mother was Clare Innes, and four adult daughters. Gabrielle and triplets Megan, Chloe and Chanel. His will, dated 15 July 2013 and registered in the Books of Council and Session on 9 June 2015, nominated his sister, Tracey Cockburn, whom failing his mother, Linda Cockburn, as his executor.

[132] Tracey Cockburn purported to assume her brother, Steven Cockburn, as an additional executor to act with her by unregistered Deed of Assumption dated 13 July 2015. In his will, Scott Cockburn left the residue of his estate to three of his six children, namely Megan and her two half-brothers, Conner and James. He made no provision in his will for the other three daughters. Clare Innes was entitled to claim legal rights equivalent to a sum equal to the value of one third of his net moveable estate and each of Chloe, Chanel and Gabrielle were entitled to claim a sum equal to the value of one eighteenth of his net moveable estate.

[133] Megan Cockburn had raised a court action in Edinburgh Sheriff Court around November 2015 to remove the two apparent executors and have a judicial factor appointed to take over administration of the estate because she felt that the executors were failing to administer the estate properly and in the interests of the beneficiaries.

[134] Miss Hope was appointed as judicial factor ad interim in November 2015 and permanently appointed on 23 March 2016. She remained in office. In January 2020, she had applied to Edinburgh Sheriff Court seeking adjudication by the court upon a scheme of division of the estate, an order for distribution of the estate accordingly, and thereafter for her exoneration and discharge. The application was opposed by Ms Cockburn. The last annual account approved by the Accountant of Court showed that the remaining assets of

the estate were the company shares and a balance of £25,272.54 held in cash. The scheme of division lodged in January 2020 had become out of date since it was lodged. A provisional liquidator was appointed to Roofing on 5 March 2021 and Scaffolding was not trading, no longer had assets or liabilities and was about to be struck off the Companies House register. There had been further administration expenses since 30 November 2020. The sum now held was £5,047.78. A draft updated account of charge and discharge had been prepared. On 3 May 2022 the discharge application was sisted pending the outcome of the current action.

[135] On appointment, her initial role was to investigate the assets and liabilities of the estate. When she took office, the apparent executors, Steven and Tracey Cockburn, had been acting since the date of death and, through solicitors acting on their behalf at the time, Aitken Nairn WS, had already obtained valuations of certain of the estate's assets. She had obtained considerable information on assets and liabilities from papers which Ms Cockburn and Ms Moriarty had prepared in connection with the application to the sheriff court. She obtained information from, and was able to verify details with, Scott Cockburn's bank and obtained such information and valuations as Aitken Nairn possessed. She reported on the extent and nature of the estate to the Accountant of Court on 18 January 2016 and again on 18 February 2016. That was outwith the normal time allowed for lodging the inventory with the Accountant of Court.

[136] On 27 November 2016 the Accountant of Court wrote to her stating that that office had failed to request a completed inventory from her at the time of her initial interim appointment and enclosing the inventory form for completion, with a request that it be lodged by 9 December 2016. That letter was received on 30 November 2016. The inventory was completed and lodged with the Accountant of Court on 8 December 2016 and

acknowledged on 9 December 2016. The form should have been issued by the Accountant of Court shortly after the interim appointment. The fact that she had failed to notice that it had not been issued was an oversight on her part. She had, however, provided the two initial reports to the Accountant of Court, dated 18 January 2016 and 18 February 2016. Those reports were both very detailed and summarised the assets of the estate as she understood them at each stage and also set out in detail the issues with each asset. She had also on 5 February 2016 sent valuations of both heritable properties to the Accountant of Court. The valuation of furniture and personal effects was also sent. By email of 23 February 2016 Mr Raish Allan confirmed on behalf of the Accountant of Court that he was content with her report and stated that it was clear she was taking steps to safeguard the estate and take control of various aspects of the estate in order to ascertain the true position. There was no new information in the inventory except the valuations of the companies, which she had by then obtained.

[137] As reported in the initial report to the Accountant of Court on 18 January 2016, the assets of the estate were as follows:

> Heritable Property: A half share in a property at Buckstone Loan East, Edinburgh; and full ownership of a property at Oxgangs Road, Edinburgh
>
> Moveable Property: The net proceeds of sale of the Range Rover car and Glastron Speedboat; watches; Buckstone Roofing (Scotland) Limited – two ordinary shares (100% shareholding); Buckstone Scaffolding Limited - one ordinary share (100% shareholding); Colinton Roofing Ltd — 100% shareholding transferred to Steven Cockburn on 8 June 2015; furniture and personal effects.

The report of 18 January 2016 set out in detail the issues that arose in relation to each of the assets. It recorded that Steven Cockburn had sold Scott Cockburn's Range Rover car to

Jim McColl of Broxburn Motorzone and that Miss Hope had requested, but was yet to receive, details of the contract for sale. It was reported that the net sale price, after repayment of outstanding borrowing on the vehicle of some £20,386, was paid into the bank account of Roofing, being the sum of £19,614.01. She had questioned Steven Cockburn about the sale and the allegation by Megan Cockburn that it was at an undervalue. He had stated that the boat had previously been owned by Jim McColl, that the Range Rover had been damaged in an accident prior to the sale and that, as Scott Cockburn still owed Mr McColl for parts and labour on his car repair, the boat had been included in the deal. She reported to the Accountant of Court that she had asked for more information and vouching in respect of these sales.

[138] She also reported that she had been able to ascertain that the funeral account and funeral catering for Scott's funeral had been paid from the Roofing bank account. She requested that Steven Cockburn remit to her the funds belonging to the estate still in the company's bank account and she received a payment from the company of £12,951.80, being the net proceeds of sale of the Range Rover less the funeral and other expenses. She informed the Accountant of Court that at that stage she held £10,988.85 of estate funds.

[139] In relation to the two trading companies, Roofing and Scaffolding, she informed the Accountant of Court that "the executors" had appointed Steven Cockburn as sole director of both companies with effect from 6 June 2015 and that he had awarded himself a substantial salary as director, on a par with the salary drawn by Scott Cockburn. She stated that she had a number of concerns about that, about the conflict of interest between his acting as executor and appointing himself a director, and in relation to payments made out of the company bank accounts.

[140] The report also set out the situation with the two heritable properties. Scott Cockburn owned a property at Oxgangs Road, Edinburgh, in his sole name and a half share in a property at Buckstone Loan East, Edinburgh, with his wife, Clare Innes. He was living at Buckstone Loan East at the time of his death. Clare Innes and her two sons were not living there, and Miss Hope later learned from Ms Innes that they were living in rented accommodation. The property at Oxgangs Road was unoccupied. There were mortgages on both properties. It appeared that Scott Cockburn had no mortgage protection insurance or life insurance in respect of the mortgage loans, nor any other life insurance.

[141] She made contact with Alan Scott of Bellandain Ltd who had acted as property development consultant to Scott Cockburn, and was told that major alterations had been carried out to Oxgangs Road, which was the larger of the two houses. Much of the work that had been carried out on that property was not in compliance with planning or building requirements. It appeared that Scott Cockburn had been carrying out the work himself, with friends, on a cash basis with few or no invoices, receipts or guarantees for any of the works among the paperwork which Miss Hope received when she took office. She reported to the Accountant of Court in her initial report that in order to be in a position where Oxgangs Road could be sold, amendments to the building warrants would be required. She had come to this view having taken advice from Mr Scott. She understood that in some cases the problems of work having been carried out not strictly in compliance with the existing building work could be solved by retrospective amendment to the building warrants. She understood also that remedial work would be required to the house before completion certificates could be obtained. At that stage she was hoping that funds would be available in the estate (perhaps from the sale of Buckstone Loan East) to carry out some of the remedial

work required and improve the potential sale value of Oxgangs Road. She stated that the fencing and gates at the property were the subject of a planning enforcement notice appeal.

[142] In relation to Buckstone Loan East, Miss Hope reported there was a secured loan over the property of £109,948.35 with arrears of mortgage interest in the region of £3,000 or so as at November 2015. It was clear from her initial investigations that lack of available cash in the estate was going to be a problem in the administration and that further cash would become available only as and when one of the heritable properties could be sold. The most obvious property to sell was Buckstone Loan East and she discussed its sale with the co-owner Clare Innes and sought approval from the Accountant of Court to sell the property.

[143] Miss Hope's understanding, which came from ELP Arbuthnott McClanachan, who were acting for Megan Cockburn in the sheriff court action, was that Ms Cockburn had real concerns over Steven Cockburn having appointed himself sole director of the companies and what he was then doing, and also that he had removed personal effects from the estate. On 26 November 2015 Barbara Watson emailed her saying that the priority of her client was to get Steven out of the business, and that the business was her main concern and that of other family members. She also mentioned that she was concerned that Steven had keys to the heritable properties and also the business, along with a telephone that allowed access to the company bank accounts.

[144] While Miss Hope had limited powers during her interim appointment by virtue of the court's interlocutor, she was given powers to act in relation to the shares in the companies. She had no powers to sell the houses until her appointment was made permanent. She required to find caution, which the court fixed at £50,000. She obtained a bond of caution on interim appointment from Royal & Sun Alliance Insurance Limited.

Amongst the first things she did was to take steps to remove Steven Cockburn as director of the companies. This followed her scrutiny of the bank accounts of the companies and her meeting with him and subsequent correspondence.

[145] On 30 November 2015, Ms Watson emailed her again, informing her of concerns that Ms Moriarty had about Brian Tully as regards the business and the fact that he might have allied himself to Steven Cockburn. Brian Tully was a roofer who had worked with Roofing since Scott Cockburn had started the business. He was a long-time employee and friend of Scott, and did much of the estimating of the company's work. By email dated 22 January 2016, Ms Moriarty had raised a concern that he might have carried out a cash job for £1,250 in July 2015 and not put it through the business.

[146] Ms Moriarty had been Scott's partner, and though Miss Hope understood that they had not been living together at the date of his death, they had been on good terms as far as she was aware. She was the office manager and bookkeeper of Roofing and Scaffolding. Prior to Miss Hope's appointment, Steven Cockburn had dismissed Ms Moriarty from Roofing when he became sole director and she had raised an unfair dismissal claim against the company, saying she had been constructively dismissed. Ms Moriarty was upset that Steven had appointed himself as director and was demanding money from the company, and was alleging that he had also bought an Audi through the company. The concern, which Miss Hope shared when she took office, was that he seemed to behave in his own interests rather than in the interests of the company. He had not been involved in the companies prior to Scott's death but had appointed himself sole director.

[147] Ms Moriarty was pursuing the unfair dismissal claim against Roofing when Miss Hope took office and was representing herself. The company had consulted an employment solicitor, Dawn Robertson of Young & Co. It had litigation employment

insurance with Peninsula, and the insurers then took over the defence to the claim. As the unfair dismissal claim was being dealt with by the company through the insurance cover it had, Miss Hope was not directly dealing with that matter. It was an ongoing issue when she took office and continued while she was taking steps to have Steven Cockburn removed as director and Megan Cockburn and Brian Tully appointed as directors of the companies.

[148] Miss Hope wrote to Steven Cockburn on 10 December 2015 informing him of her appointment as judicial factor on an interim basis and asking to have sight of full statements in respect of the company bank accounts from the date of Scott Cockburn's death, and details of all motor vehicles registered to the company. She also asked for details of Scott Cockburn's personal estate and asked Steven Cockburn whether he had keys to the properties at Buckstone Loan East or Oxgangs Road. She wrote in similar terms to Alistair Simpson, the accountant who acted for the companies, to ask for similar information and documents.

[149] She met Steven at the company offices on 15 December 2015 and obtained the keys to both houses. On 22 December 2015 she wrote to Steven and Alistair Simpson asking for explanations for a number of payments made from company accounts. She wrote again on 18 January 2016 to both of them seeking further information regarding payments from the company accounts and for information about any vehicles purchased or leased by the company. She asked for evidence from Steven with regard to the sale by him of the Range Rover.

[150] Miss Hope concluded that it was not appropriate for Steven to continue as director of the companies or as apparent executor and she reported that view to the Accountant of Court. She called a formal meeting of shareholders to be held on 16 February 2016 with a view to removing Steven as director of the companies. She informed the Accountant of

Court of that, and that Steven's solicitor had contacted her to ask that she delay consideration of his position as director until after the court had heard a motion to have the application for her permanent appointment as judicial factor dismissed. On 8 February 2016, Mr Allan of the Accountant of Court's office responded to her, saying that it might be reasonable to delay the shareholder meeting, but that he was not aware of all the implications of delaying or proceeding with the removal. He set out that the principal remit of the *ad interim* appointment was to maintain the status quo or preserve the estate and that if Miss Hope felt that Steven's continued directorship was posing a risk to the estate or business then she might not want to postpone the meeting. She proceeded with the meeting on 16 February 2016 and a resolution was passed to remove Steven as a director of the companies that day. Megan Cockburn and Brian Tully were appointed as the new directors of Roofing and Scaffolding.

[151] Mr Tully had worked with Scott Cockburn for a long time, since Scott had set up the companies. He was a roofer and carried out estimating works. Despite the difficulties with Steven Cockburn, he had kept the companies going and maintained relations with the workers. His continuity was helpful. He had good qualities and that was why he was appointed. Miss Hope was impressed with the way Megan Cockburn had dealt with the application for removal of the supposed executors and she seemed a mature and sensible young woman, so she felt it was reasonable to have her as a director as a family member. Miss Hope asked her if she would agree to being appointed as a director, and after considering it, she agreed. Other family members were keen that the business be maintained as it was their father's legacy. It made sense for Megan to become a director. One of the strengths of the business was that it was a relatively small family business, but this may also have made it harder to recruit directors externally.

[152] Ms Moriarty was critical of Mr Tully. He certainly was not happy to have her back in the company. He described her having spoken to the company employees about things that were wrong with the company in her view and having said that she thought he and Steven Cockburn were too close and that she suspected collusion between them. It seemed to Miss Hope that Mr Tully had kept his head down and that he wanted to keep the business going. She felt that some of the criticism of him by Ms Moriarty may have been overstated as he had had little choice but to work with Steven while he was a director. Mr Tully had told Miss Hope that he was unhappy about Steven's presence but he wanted to keep working and keep the business going. At that stage, she had no concerns about Mr Tully and it appeared to her that neither did Megan. She called him Uncle Brian. It was only later on that Megan too seemed to voice criticism of him.

[153] On 20 February 2016, shortly after removing Steven Cockburn and putting in the new directors, Miss Hope sent her second report to the Accountant of Court. A copy was also sent to Edinburgh Sheriff Court in relation to the action to remove Steven and Tracey and have her permanently appointed as judicial factor, which was then ongoing. She felt her report would be useful for the sheriff considering matters at the hearing in relation to her appointment becoming permanent. The report was accompanied by turnover figures for Roofing for periods in 2015 and with details of PAYE and a CIS payment to Steven Cockburn. Mr Allan of the accountant’s office acknowledged her second report by email on 23 February 2016, confirming that he was content with it, and stating that it was clear that she was taking steps to safeguard the estate and that she was taking control of matters to ascertain the true position.

[154] Following a debate on 25 February 2016, Miss Hope was permanently appointed by the sheriff as judicial factor on 23 March 2016. The sheriff had sight of both of her reports to

the Accountant of Court and made reference to them in his judgment. Once permanently appointed, Miss Hope could start the process of selling the Buckstone Loan East property to ingather funds into the estate. When she took office, she inspected the property and found it to be in reasonable condition. Prior to her appointment, the solicitors acting for Steven and Tracey had obtained valuations of the two properties from Graham & Sibbald, surveyors. They valued Buckstone Loan East at £280,000 in their valuation report dated 23 July 2015. There was a secured loan over the property of £109,948.35 with arrears of mortgage interest in the region of £3,000 or so as at November 2015. Interest was continuing to accrue. Its net value at the time of the appointment was therefore some £167,000, of which Scott Cockburn's one half would be £83,500 or so.

[155] As soon as Miss Hope's appointment as judicial factor was made permanent in March 2016, preparations began to make the property ready to go on the market. It was cleared and cleaned, some minor repairs carried out, and it went on the market around 12 May 2016. A closing date was set for offers of 1 June. Four offers were received, of which three were subject to the prospective purchasers selling their own properties and the fourth subject to survey. An offer of £314,600 was accepted, giving the purchasers a few weeks to progress the sale of their own property. Those purchasers failed to achieve the price they needed for that property and were unable to proceed with the purchase at the price offered.

[156] The property was put back on the market and, following a further closing date, another offer was accepted with an anticipated entry date at the end of August. This offer again fell through before missives could be concluded and the property was again remarketed. Miss Hope and her colleagues in Murray Beith Murray's property department were in contact with Clare Innes throughout that period, updating her about the sale of the property.

[157] On 28 October 2016, Miss Hope wrote to Mr Allan and explained the situation about selling the property and the fact that sales had fallen through. She explained that she had been in contact with Clare Innes throughout also as co-owner. Mr Allan confirmed on 4 November 2016 that he was happy that she should proceed to accept an offer of £300,000 which had been received and wanted to know whether the co-owner was happy to accept that price also. She confirmed to him that day that she had Ms Innes's instructions to accept the offer and that she had been consulted throughout. The property was sold on or around 4 November 2016 at that price. The Accountant of Court was kept updated throughout the sale and approved the actions being taken and the ultimate sale.

[158] Miss Hope wrote to Clare Innes on 4 November 2016 to inform her that the sale had settled that day and regarding next steps once the free proceeds of sale had been received and Ms Innes had been paid out her half share of the net free proceeds. After payment of fees and the mortgage, the estate received its half share of the net proceeds of sale, being £88,462.80. The sums required to redeem the mortgage, £115,847.16, included all arrears of mortgage interest, which were borne in equal shares by the estate and Ms Innes, as were the expenses of sale.

[159] On 4 November 2016, Miss Hope also wrote to Megan Cockburn and to Jackie Skinner (the then bookkeeper at Roofing) to report that Buckstone Loan East had been sold and that the estate now had funds to reimburse the company for payments which had been made to Jewsons from Roofing but which were due by the estate. The expenses deducted from the sale proceeds were principally council tax, utility bills, minor repairs and the dues owed to the local amenity association. Scott Cockburn had been living at Buckstone Loan East prior to his death. In March 2016 Miss Hope learned that the local authority had been charging Ms Innes, as joint owner, council tax since December 2015 at

the rate of £178.00 or so per month. That created a financial difficulty for her, given that she and her sons Conner and James were living in rented accommodation and she no longer had the financial support she had been receiving from her husband. On or around 18 March 2016 she refunded Ms Innes £525.23 for the council tax she had paid to date (one payment of £179.23 and two monthly payments of £178.00) and made arrangements to meet the council tax going forward. The expenses figure in question totalled £4,974.29. Miss Hope felt at the time that it was reasonable for the estate to meet these expenses as Scott Cockburn had been occupying the property until his death and Ms Innes would not have been in a position to realise her half share until either the executors had obtained confirmation to the estate, which they did not do, or until the appointment of a judicial factor was made permanent. If that view was incorrect, these expenses should have been brought back into account on the sale of the house and split between the estate and Ms Innes. Had that been done, Ms Innes would have received £2,487.14 less from her half share of the proceeds of the sale of the house than she did and the amount passing to the residuary beneficiaries would have been commensurately higher.

[160] Buckstone Loan East was the most straightforward asset to realise. During the process of its sale, Miss Hope and her staff were in contact with the mortgage providers of both properties, managing their expectations and negotiating to prevent them from calling up the loans, which would not have been in the interests of the estate. The extent of the remedial or corrective work required to Oxgangs Road was gradually becoming more apparent. Miss Hope and her colleague Drew Taylor, a solicitor in Murray Beith Murray's litigation team, were in contact with Jewsons and their solicitors attempting to negotiate a payment claim they were pursuing against Roofing in relation to materials purchased under

a contract with the company but which it appeared was in fact a kitchen and materials purchased before Scott Cockburn's death for use in the property at Oxgangs Road.

[161] Miss Hope was also in contact with Alan Scott, who had been Scott Cockburn's property development consultant, and Edinburgh City Council Building and Planning Department about unauthorised development carried out at Oxgangs Road which included, *inter alia*, the front wall, fence and gates and in respect of which an enforcement notice was issued in October 2015. She still hoped that some affordable repair work might be beneficial at Oxgangs Road, with a view to obtaining a better price on sale of that property. As Mr Scott reviewed the work which had been carried out at the property and the remedial work which was required, that became less likely. The proceeds of sale of Buckstone Loan East were the only source of funds available to the estate at the time and therefore the sale of that property was a priority.

[162] Over the same period, Miss Hope was also in contact with Ms Cockburn's solicitor, Ms Watson, considering whether there was any reasonable prospect of recovering from Scott and Tracey the costs of the sheriff court action for their removal and the appointment of a judicial factor. While it was Ms Cockburn who had instructed that action, there was an expectation that its expense would be met from the estate. The losses to the estate arose solely out of the actings of Steven Cockburn. Tracey Cockburn did not appear to have been involved in those actions. It was difficult to see on what basis Miss Hope would have been able to establish a debt by her to the estate at that time, for which an action could be raised on which an inhibition could be sought.

[163] Scott Cockburn owned the property at Oxgangs Road and was engaged before and at the time of his death in an ambitious programme of building work. The property was unoccupied at the time of his death. The amount of the loan secured over the property

was £266,358.87 at that time. The solicitors acting for Steven and Tracey had already obtained a valuation of Oxgangs Road as having a market value of £800,000. That was explicitly on the assumption that all works necessary to meet the requirements of all competent legislation and statutory instruments and local authority orders had been complied with and in particular that the relevant local authority consents, warrants and completion certificates had been obtained. That assumption did not reflect the actual position with the property; works had been carried out which were not conform to building or planning regulations and an enforcement notice had been served.

[164] On taking office as judicial factor, Miss Hope prepared a summary of the works requiring completion at Oxgangs Road. She took the information as to what work was needed from details provided by Alan Scott. He prepared the drawings for the warrants and specifications for the work which needed to be done. Although Mr Scott had been instructed by Scott Cockburn and was thus involved with the building at an earlier stage, it was her understanding that the problems were the results of departure from planning permissions, warrants and specifications and she felt that she could rely on his advice. He had a detailed knowledge of the building.

[165] She made contact with him by email on 22 December 2015, to inform him of her appointment on an interim basis as judicial factor and to speak to him for information in relation to the current state of the property and the position as regards building warrants, planning permission and completion certificates. She said to him that she needed to establish what work was needed to bring the property to a position where it might be marketed for sale and the likely cost of such work. She then met with him at the end of 2015 to discuss the situation. On 4 January 2016 he sent her documents and information in relation to the property and the status with planning permission and building warrants. He

told her that an appeal against the council's enforcement notice had been submitted and the date for determination of the appeal was 10 February 2016. She took advice from him as to what was required at the property to get it to the point where it could be sold to maximise its value. He had an encyclopaedic knowledge of the works required. She felt he was trustworthy and knowledgeable, so was a reliable person to consult about the works and the property.

[166] He informed her in March 2016 that the appeal against the enforcement notice had been rejected. She believed, as did he, that any further appeal was unlikely to succeed and would only incur further cost to the estate. She decided to work with Mr Scott to have works carried out at the property in order to comply with the notice and ultimately to have it discharged. That work involved replacing the gates and fence at the front of the property with railings that were more in keeping with the local area. Miss Hope was conscious that should an enforcement notice be in place it would make it difficult, if not impossible, to achieve a sale of the property. It was her understanding that mere removal of the fence, leaving the existing low stone wall, would not have complied with the enforcement notice. She took advice on this issue at the time from Mr Scott and also had contact with Brian Fleming, senior planning officer at Edinburgh Council, who had issued the enforcement notice, to whom the remedial proposal had to be submitted. That proposal was to remove what was there and substitute it with a railing to the front onto the road which would be acceptable. Mr Scott got a quote from Gordon Turner of Andrew Turner Blacksmiths for the work required to install a simple railing which could be inserted within the existing frames once the wooden panels were removed.

[167] Mr Scott reported further to Miss Hope on 24 March 2016 about the defects with the work that had been done in the property and the remedial works needed to bring it up to

marketable condition. Until there were sufficient estate funds from the sale of Buckstone Loan East, she was not in a position to accept the blacksmith's quote or proceed with the works needed to deal with the enforcement notice. Once Buckstone Loan East was sold and funds were available, she instructed the blacksmith to proceed with the work. The works were done in or around January or February 2017.

[168] Mr Scott informed Miss Hope by email of 28 January 2017 that the council had formally closed the enforcement notice. In her letter to the Accountant of Court enclosing her first account as judicial factor dated 6 January 2017, she reported that steps had been taken to have the works done to comply with the enforcement notice and that she had also been able, since the sale of Buckstone Loan East, to have the installation of the kitchen at Oxgangs Road completed and had been able to settle the court action raised by Jewsons against Roofing in relation to the kitchen and materials for Oxgangs Road. Those matters could only be dealt with after the sale of Buckstone Loan East. The letter to the Accountant of Court contained a summary of some of the other issues dealt with in 2016 and those with which Miss Hope expected to deal in 2017.

[169] In relation to the claim against the company by Jewsons, that dispute had arisen before Scott Cockburn's death and required to be resolved. Alan Scott assisted with getting agreement with Jewsons that they would complete the installation of the kitchen in the property. Jewsons had raised a court action to recover the debt. It had become clear that although the materials from Jewsons had been purchased for the property at Oxgangs Road, Scott Cockburn had placed the order through Roofing, hence the action by Jewsons against that company that had to be resolved.

[170] Miss Hope's litigation colleague, Drew Taylor, was dealing with this and was in touch with Jewsons and their solicitors to try to resolve the claim. In the end it had to be

paid. At one point Miss Hope was unsure if it might have been partly a Roofing debt also as it appeared that that company had received some materials from Jewsons, but these were minimal and easily identified. The company did pay £5,000 to Jewsons in July 2016 to account of the debt. On 7 November 2016 that sum was reimbursed to the company once funds from the sale of Buckstone Loan East were available. Ms Cockburn emailed Miss Hope confirming receipt of that payment for the company. The sum due to Jewsons was, however, due from the estate. Miss Hope explained these developments in full to Mr Allan when she sent the Accountant of Court her first account as judicial factor for the period 26 November 2015 to 30 November 2016.

[171] In her report to the Accountant of Court at that stage, she said that one of the next steps was to sell Oxgangs Road. On 10 January 2017, Aberdein Considine, acting for the mortgage holders, RBS, served a calling-up notice in respect of the property as there were mortgage arrears. The indebtedness as at 5 January 2017 was £284,298.26 including arrears of interest. On 7 February 2017 Miss Hope confirmed to Aberdein Considine that she was making arrangements to put Oxgangs Road on the market for sale. She proposed paying the lenders £15,000 towards the arrears at that stage with a view to them agreeing not to take further steps in relation to the calling-up notice and to allow the property to be marketed and sold. She updated the Accountant of Court on this development by email dated 8 February 2017, provided a copy of the calling-up notice, and sought authority to make a payment to account to the mortgage lenders. Mr Allan confirmed on 9 February 2017 that he took no exception to payment to the lenders to prevent the calling-up notice from proceeding.

[172] On 8 February 2017, Miss Hope wrote to Philip Bald at Roofing saying that she was minded to instruct that company to carry out certain works to the roof at Oxgangs Road as

there was a concern it might not be wind- and watertight. She also indicated that she was arranging to have a structural engineer look at the property as there were many problems from the works carried out by Scott Cockburn before his death. Mr Bald had been appointed as a director of the companies on 30 September 2016.

[173] Miss Hope was aware that Ms Cockburn had by this stage written to Murray Beith Murray, in a letter said to be sent on behalf of her and Clare Innes, maintaining that the estate had not been handled in the best interests of the beneficiaries and complaining about certain aspects of the administration. She had sent a lengthy letter dated 8 February 2017 in which she mentioned she was drafting a letter of complaint to the Law Society. She later lodged a complaint with the SLCC. On 21 February 2017, Miss Hope sent a report to Ms Cockburn and to Clare Innes with details of the nature and extent of the estate, a note of the assets and liabilities, an estimate of legal rights and reference to the steps needed to complete the administration of the estate.

[174] On 15 February 2017 Roofing submitted a quote to carry out roof works at Oxgangs Road. Miss Hope did not obtain any other quotes. She accepted their quote, which required payment of a deposit in advance of carrying out the works, and Roofing carried out works to the property. The work was detailed in the estimate and included work to exposed blockwork around one of the new balconies in the extension to the rear of the property, attention to the doorway, and work to the chimney stacks and ridges. It was to stop ingress of water to the kitchen which was on the ground floor of the extension. The work was done but did not appear to solve the problems of water ingress. Roofing attended again in January 2018 to deal with further water ingress in the kitchen and gym.

[175] Mr Scott was engaged with builders at this time in an effort to establish the extent of the works required at Oxgangs Road to have the property conform to building standards

and how much it would cost to have the necessary works carried out. On 28 June 2017 he reported, in the first of two emails that day, that a detailed survey of the property had been carried out and ground and first floor plans prepared taking account of costs and rates proposed by Access Building Services, a contractor, and that he estimated that the cost to have the necessary remedial works done was £80,440. He recommended that a contingency of 10% should be allowed and that a budget of £88,000 would be needed. In his second email of the same day, he said that upon review of the structural issues identified by structural design consultants and also the taking into account the need for external finishes treatments, he estimated the cost of these measures to be in the region of £42,350 to which should be added a 10% contingency margin, giving a total for remedial works of £130,350. This figure did not actually include the 10% contingency margin on the £42,350. If it had, the total estimate would be £134,585. These figures were estimates only and were not exact figures for the cost of works required to the property to have it conform to all necessary building and planning requirements and to obtain a completion certificate. It was not clear, for example, if VAT was included.

[176] The figures were a guide as to how much the works might cost. No other estimates or quotes were obtained at the time because Miss Hope did not feel she could ask tradesmen to spend time and resources producing quotes which she knew she would not be in a position to accept. It was clear to her that there were not sufficient funds in the estate to commission the works that would be required. Given the information from Mr Scott, based on information he had ingathered from other professionals and tradesmen with regard to the cost to get the property to comply with building standards, she came to the view that she would have to sell Oxgangs Road without the benefit of having those works done.

[177] On 18 July 2017 she wrote to Ms Cockburn and Clare Innes and informed them that Oxgangs Road was being advertised for sale through ESPC at offers over £795,000. Her colleague Andrew Stephen, the partner leading Murray Beith Murray's residential property department, instructed the necessary home report from Graham & Sibbald. Miss Hope informed Ms Cockburn and Ms Innes that the home report value was £825,000 but that a prospective purchaser would have to incur significant costs to complete the works to the property. She wrote to them again on 28 July 2017, in response to an email from Ms Cockburn, and enclosed a "Draft Summary of the Work Requiring Completion" to Oxgangs Road to comply with building standards. She explained that it was still with Mr Scott to check and update it and that it did not include any cosmetic or decorative work. She noted that an application would have to be lodged for a revised building warrant which would need to match the actual layout and structure of the house, which differed in a number of places from the original.

[178] Through Mr Scott, an application for a retrospective building warrant was made for the property. On 2 August 2017 Miss Hope reported in similar terms with regard to the situation at Oxgangs Road to Mr Allan, sending him the correspondence exchanged with Ms Cockburn and a copy of the draft summary. On 2 August 2017 Mr Allan replied, saying that the Accountant of Court had received a "complaint of sorts", as he put it, the previous month from Ms Cockburn.

[179] On 4 October 2017 an offer of £200,000 was received for Oxgangs Road, which was considered too low. In October 2017 a further home report from Dixon Heaney Kean Kennedy was received, which valued the property in its then condition at £500,000 and on the assumption that all works were complete to a satisfactory standard and that all documentation was in order, at £750,000. On or about 22 November 2017 an offer

of £555,000 was received. A third valuer, DM Hall, was asked to comment on that offer. It issued a report dated 23 November 2017 in which it recommended that the offer be seriously considered, particularly as it was the best offer received during the four month marketing period. It did not express a view of the likely value if work was fully completed and all documentation was in correct order.

[180] Miss Hope considered that it would be appropriate to accept the offer of £555,000 for Oxgangs Road. Her property colleague, Andrew Stephen, wrote to Ms Cockburn and Ms Innes on 8 December 2017 updating them on the different valuation figures from the three independent surveyor firms and on the offer of £555,000 received, and indicating that Miss Hope was minded to accept it. Ms Cockburn responded on 11 December 2017 with comments and urged Miss Hope not to conclude missives without her having seen the estimates with regard to the cost of the works required to the property. She queried the fact that it appeared that the valuers had given different figures for the cost of carrying out the remedial works, with DM Hall suggesting costs of £175,000 for the works but Graham & Sibbald suggesting costs of £250,000.

[181] Ms Cockburn raised for the first time whether it would be feasible for her to raise the money herself to do the required works to obtain a building warrant and then put the property back on the open market. She mentioned potentially having an investor willing to put up the money to carry out the works. Miss Hope wrote to the Accountant of Court on 15 December 2017 enclosing that email and asking for guidance on the action she was proposing to take. She highlighted that Ms Cockburn had suggested that she could borrow money to have the works done but questioned, if there was someone prepared to lend money to the estate with no security, why that had not been mentioned before that point. Miss Hope had told Ms Cockburn many times that there simply was not sufficient money in

the estate to do the work needed. She told Mr Allan that she was conscious that it was not the job of a judicial factor to embark on speculative development and that she had been coming under regular pressure from the bank, who continued to threaten to repossess the property.

[182] Mr Allan responded on 18 December 2017. He stated that in his opinion it would be safer to pursue a course of action which would lead to a more certain outcome as opposed to taking additional risks which might increase the length of the factory. He stated that borrowing additional funds to embark on speculative development was not prudent management of the estate and that this was an executry where the judicial factor's role was principally about winding up and distributing the estate. He mentioned that a belts and braces approach, even though Miss Hope already had power to sell heritage, would be to obtain special powers from the court to dispose of the property at a certain price.

[183] In deciding whether or not to accept the offer of £555,000 which had been received, Miss Hope took into account the three valuations received, the schedule of works required and the fact that there had been no other acceptable offer. She also considered the advice from Mr Allan and the fact that the lenders continued to threaten to call up the loan. After discussing matters with Andrew Stephen, she proceeded to accept the offer for Oxgangs Road at £555,000. The sale was to settle on 1 February 2018.

[184] In January 2018 she became aware that the purchasers had received no interest in the property they required to sell and she had to consider putting the property back on the market. On 23 January 2018 she sent a detailed update to Mr Allan. She explained the status of the sale and sought his approval to putting the property back on the market. He responded that day saying that he agreed with her putting the property back on the market, and to a suggested asking price of offers over £595,000.

[185] On 25 and 26 January 2018 Andrew Stephen wrote in detail to Ms Cockburn about the house and the differing valuations and reports and outlining the particular difficulties relating to the house, its value and the extent of the work required to obtain a completion certificate. She had said in previous emails that she knew someone who was interested in the property and he urged her to ask that person to contact the property department to arrange a viewing.

[186] Renewed interest was received on re-marketing the property for sale and a closing date was fixed for 7 February 2018. Mr Stephen wrote to Ms Cockburn on 6 February 2018 updating her about the sale of Oxgangs Road. In his email he explained that Miss Hope would not be providing estimates in respect of the works needed to the property, because they were unknown figures as it was not clear what works would be required to complete the property conform to building standards. He explained that the prospective buyers of the property had had their own builders look round to provide them with figures to complete the works and that Miss Hope did not wish the estate to be held to figures which might not be accurate.

[187] Ms Cockburn responded on 7 February 2018 and continued to complain with regard to a lack of information being given to her and the family with regard to the cost to carry out the works to the property. She said that she did not wish the property to go to closing or to be sold at that stage. In the background there was continued pressure from the lenders, with threats to call up the loan.

[188] At the closing date, three offers were received, the highest of which was for £710,101, but subject to survey. That offer was accepted. Miss Hope reported to Mr Allan on 7 February 2018 on the offers received and that she was intending to accept the highest offer. William Green on behalf of the Accountant of Court confirmed on 9 February 2018 that no

exception was taken to accepting the highest offer. Very soon after that, on 8 February 2018, the prospective purchasers withdrew their offer after having made their own inquiries and received their own advice on the likely cost to carry out the necessary building works to the property.

[189] Miss Hope wrote to the Accountant of Court on 9 February 2018 with an update and saying that she wished to proceed to accept the second highest offer of £607,000. She explained that the purchaser was a cash buyer and understood the extent of the works that needed to be done to the property, that she thought that Ms Cockburn would be disappointed with that offer, but that Ms Innes, as the mother of James and Conner, had confirmed that an earlier offer of £555,000, though disappointing, should be accepted and so she would likely be relatively content with the new offer. She asked for the Accountant of Court's comments. On 9 February 2018, Mr Green on behalf of the Accountant of Court confirmed that he was content she accept the offer.

[190] On 21 March 2018 Miss Hope wrote to Ms Cockburn and advised her that a new offer for Oxgangs Road was being accepted, that the details would be shown in the executry accounts, but that if she and Ms Innes wanted to have a note of the sale price earlier than that, Miss Hope would tell them the price but only once the sale had settled. On 27 March 2018 Ms Cockburn asked for confirmation of the sale price. Miss Hope reiterated in later emails that she would inform her of that after the sale had concluded. Her concern about informing Ms Cockburn of the price prior to conclusion of missives and settlement of the sale was that she was aware that a lot of information had seemed to leak out inappropriately about the previous offer, even to some of the people viewing the house. Miss Hope did not want anything to happen which might jeopardise the new offer, particularly before missives were concluded.

[191] The sale settled on 4 April 2018 at a price of £607,455. On 5 April 2018 Miss Hope wrote to Mr Allan and reported on the sale of the property and the price achieved. She confirmed that she would proceed to report to HMRC with a view to adjusting and finalising the inheritance tax due and that she had submitted an income tax return to the date of Scott Cockburn's death.

[192] In separate emails on 6 April 2018, she wrote to Ms Cockburn and Ms Innes and reported on the sale of the house and the price achieved. She explained that the sum of £285,803.48 had been paid to the lenders to redeem the outstanding mortgage and that she required to report the sale to HMRC with a view to adjusting the inheritance tax due. Other outlays amounted to £6,752.87. Any fees for work by Murray Beith Murray would be included in the commission fixed by the Accountant of Court and would be subject to VAT.

[193] Mr Scott had submitted a quote dated 19 December 2013 to Scott Cockburn for the provision of his services in the amount of £15,000. Before Mr Cockburn's death, Mr Scott had been paid £9,500. Miss Hope arranged to pay him the remaining £5,500 from the estate, which was paid on 4 October 2018. This was shown as a payment to Bellandain Ltd, Mr Scott's company, in the section listing payments of liabilities outstanding at date of death.

[194] The total costs incurred in connection with the property at Oxgangs Road from the date of Miss Hope's appointment to the sale on 4 April 2018 amounted to a figure of £65,813.07, including interest on the mortgage of £34,444.61. Once the mortgage interest was deducted, a figure of £31,368.46 remained. This included house insurance premiums at £2,700, payments for clearing and cleaning of the property for sale, storage and regular inspection at £6,500, gardening at £2,560, council tax at £6,850, the cost of installation of railings and gate of £5,971, the fees for the building warrant and related costs at £3,400, and

outlays in connection with the sale at £1,950. Miss Hope understood that the housing market improved over the course of 2017 and it was arguable that she was able to obtain a better sale price in late 2017 and early 2018 than might have been achieved in 2016.

[195] On 30 March 2016, Miss Hope wrote to Urquharts, who were acting for Steven Cockburn in his defence of the action by Ms Cockburn to remove him and Tracey as apparent executors, demanding proposals for the delivery of furniture and personal effects and for payment of a total sum due amounting to £70,722.51, relating to salary paid to Steven Cockburn from Roofing of £22,136.52, further payments to him under the CIS scheme of £7,618.75, CIS payments to his cousin Alan Meyer of £17,275.00, potential sale at under-value of the car and speed boat totalling £17,000, cash withdrawn from the Roofing account purportedly for funeral clothes of £500.00 and costs incurred by Roofing relating to his lease, on contract through the company, of a new Audi car of £6,192.24.

[196] Ultimately she did not pursue recovery from Steven, having weighed up the cost of raising an action against him and the likelihood of recovering funds from him. She discussed this with Ms Watson in the context of whether ELP Arbuthnott McClanachan would be pursuing the award of expenses of the successful action against Steven and Tracey. On 13 April 2017 Ms Watson wrote to her enclosing investigation reports which had been carried out on Steven and Tracey. Neither was particularly economically active. Steven owned no property, was living in rented property and appeared to be employed part-time as a male model. Prospects of recovery appeared to be slim. Ms Watson put forward the view that it was not worth incurring the additional expense of having the fees for the action formally taxed.

[197] During the months in 2016 when Brian Tully and Megan Cockburn were the only company directors, they began to complain about each other. Miss Hope also learned that

Ms Cockburn paid herself a salary equivalent to that which Steven had been paying himself whilst working for the company, which seemed high. There were complaints by Mr Tully, backed up by Jackie Skinner, that Megan was from time to time not turning up, taking days off, and not doing the training which it had been suggested would be useful for the company. Jackie Skinner was working in the office at Roofing. She had been employed following Ms Moriarty's departure.

[198] In May 2016, Ms Moriarty contacted Miss Hope to say that she had important information about the companies and wanted to come and see her. A meeting was arranged for 26 May 2016. When she arrived for the meeting, Ms Moriarty was accompanied by Megan Cockburn and Megan's mother. They advised that they suspected that Mr Tully was engaged on jobs which were not being put through the companies' books. Miss Hope said that discipline of employees and directors was really the role of the directors but that she would confront Mr Tully if there was some evidence of wrongdoing. Steps could be taken to remove him if necessary. No specific job was mentioned at the meeting. Miss Hope was not aware of any suggestion that Mr Tully had invited Ms Cockburn to join him in a fraud. Her recollection of the meeting and her time recording entry did not support the pursuers' position on what was discussed. The ladies were relatively excitable, at times talking over each other.

[199] On 3 August 2016, Ms Watson emailed Miss Hope to say that Ms Cockburn had called her to say that the first instalment of a cash job had just been paid and that Mr Tully had given Ms Cockburn half of the cash. Miss Hope was surprised that Ms Cockburn had been given money by Mr Tully and that he appeared to be involving her in a dishonest scheme. On 5 August 2016, Ms Cockburn came to Miss Hope's office with an envelope

containing £650 in cash for safekeeping. She said that Mr Tully had received a cash deposit from a customer and had given her almost half of it.

[200] Miss Hope spoke to Ms Watson and then arranged to meet Ms Cockburn and Ms Moriarty at the company offices on 9 August 2016, while Mr Tully was on holiday. Ms Moriarty was able to produce, from the company computer, various quotes about the work being done for the customer in question. It seemed that approximately £10,000 worth of work (per initial estimates) was being carried out but with a quote for work for £2,000 plus VAT being accepted. Miss Hope was due to meet the directors and the accountants on 16 August 2016. She was uncomfortable in the position in which she seemed to have been placed. She learned that the "cash job" was unlikely to be completed before she was due to go on holiday at the beginning of September.

[201] Mr Tully then asked to see her on 24 August 2016. She had a meeting with him on that date at which her colleague Drew Taylor was also present. Mr Tully appeared to have learned (presumably from watching CCTV footage) that Ms Cockburn had met with Ms Moriarty in the office while he was on holiday and he was concerned about it. Faced with this, Miss Hope felt that she had no choice but to confront him with the evidence of the cash and the contradictory invoices for the job for Mr Peng. Mr Tully replied that he had involved Ms Cockburn to test her and see what she would do with the money as his intention was that the whole money paid on the job would be paid into the company. Miss Hope did not believe him. She pointed out that while Ms Cockburn had done the correct thing by bringing the cash to her, the fact that he still had his share of the money and had not paid it into the bank was evidence that he was in breach of his duty as a director. Mr Tully then tendered his resignation as a director of the companies to her.

[202] She telephoned Ms Cockburn to report what had happened and subsequently was telephoned by Ms Moriarty, who was very unhappy that she had confronted Mr Tully with evidence of his dishonesty at that stage. Miss Hope emailed Ms Watson to report what had happened and she agreed that Miss Hope could not be expected to lie to anyone. With input from Ms Watson, Miss Hope approached Philip Bald CA, an independent accountant who agreed to be appointed as a new director, along with Ms Cockburn who would remain as director.

[203] Miss Hope arranged to meet Mr Bald, with Ms Cockburn, at the company offices on 29 August 2016. Following that meeting, and as Miss Hope was leaving on holiday on 31 August 2016, her colleague Drew Taylor sent Mr Bald his detailed note of their meeting with Mr Tully. Miss Hope indicated that Mr Tully had agreed to resign as director and commented that it might be in the best interests of the company to terminate his employment completely. She understood that it had been agreed that Mr Bald would liaise with Drew Taylor on the termination of Mr Tully's directorship, which would include a compromise agreement. She commented that it was crucial to minimise any threat which Mr Tully might pose to Roofing in the future, including ensuring that a company which he set up, Buckstone Roofing Ltd, could not be used to damage Roofing.

[204] On 31 August 2016 she wrote to Mr Allan at the Accountant of Court’s office and updated him about the proposal to appoint Philip Bald as a director. Mr Allan replied that day, noting that she was instructing a new financial director to help assist with regulating the companies’ accounting procedures as well as assisting Ms Cockburn to put in place proper mechanisms to bring a more formal and transparent approach to how work was carried out at Roofing. Mr Bald was appointed a director of the companies on 30 September 2016. Miss Hope felt it would be good to have a neutral, independent third person involved.

She hoped that he would deal with finance aspects and that he would do that more reliably than had previously been the case.

[205] On 12 October 2016 Mr Bald emailed her to the effect that he and Ms Cockburn wished to appoint ELP Arbuthnott McClanachan to act in relation to advising Roofing how best to help it move forward with regard to Mr Tully and removing him as a director. Miss Hope was not actively involved in that, and Murray Beith Murray were not providing employment advice to the directors. Miss Hope emailed Mr Bald on 13 October 2016 and confirmed that she was happy for ELP to be instructed and that she assumed, as it was a matter relating to Roofing, that any fees incurred would be met by it.

[206] Miss Hope learned in February 2017 that Mr Tully had not formally been removed as a director once Mr Bald took office. She had sent a draft letter of resignation to Mr Tully on 1 September 2016, which he had not in the event signed and returned. She understood that the directors were dealing with the formalities of having Mr Tully removed. She later learned that he was still working for the company and had not been removed as a director. Her view was that the evidence of his dishonesty would have been sufficient for him to be removed as director and also dismissed as an employee if that was what the directors had resolved to do.

[207] Mr Bald had emailed her on 6 October 2016 to say that the company had agreed a settlement with Ms Moriarty in respect of her unfair dismissal claim and that she was to be paid £15,495.25 in settlement. He stated that this was a significant reduction from what she was looking for. Miss Hope had no involvement in the discussions with Ms Moriarty regarding her claim and settlement of it. These were matters being dealt with by the directors of Roofing on advice from solicitors. She later learned that the directors had agreed to re-engage Ms Moriarty in or around October 2016 and that she remained involved

with the running of the companies from then until the liquidation of Roofing. She supported Ms Cockburn in her role as director and Miss Hope understood that Ms Cockburn relied on her to a considerable degree, given her experience with the companies. Mr Bald eventually emailed her on 4 September 2017 to say that Mr Tully had resigned from the companies that day.

[208] From time to time during 2017 and 2018 Mr Bald reported to Miss Hope that he did not always receive as much information as he wished from Ms Cockburn about the companies. He did have sight of the company bank accounts and could monitor turnover that way. Ms Cockburn seemed reluctant to involve him, preferring to rely on Ms Moriarty and Alistair Simpson, the companies' external bookkeeper. Ms Cockburn later cited cost as a factor, but funds could have been made available if she had, for instance, reduced the salary she herself was drawing. Miss Hope learned that for the year to 5 April 2017 Ms Cockburn received a salary of £28,949,46; for the year to 5 April 2018 a salary of £31,448.06; and for the year to 5 April 2019 a salary of £34,900.50. The point was also made by her and by Mr Bald that it would be more tax efficient for Ms Cockburn to receive a lower salary and receive part of her remuneration in the form of dividends, which could also have been paid to Conner and James.

[209] In August 2016, Miss Hope had instructed Mr Bald to provide valuations of the companies. This was for two reasons, one was so that she could get a value for the judicial factory, but also for inheritance tax and legal rights purposes. Previous company accounts prepared by Alistair Simpson appeared not to reflect the fact that sums of money had been removed from the companies by Scott Cockburn.

[210] Alistair Simpson prepared amended accounts which reflected these sums. He wrote to the directors of Scaffolding on 30 August 2016 enclosing a set of profit and loss accounts

and balance sheet for the company for the year ended 30 November 2015. He said that the accounts had been prepared following a redrafting of the accounts from 2012. He highlighted there was now an overdrawn director's loan brought forward to the trading period up to the date of Scott Cockburn's death of £39,961.

[211] On 30 September 2016, Alistair Simpson emailed Mr Bald, copying in Ms Moriarty and Miss Hope, saying that he had prepared accounts for Roofing for the year ended 9 December 2015, following restatement of the 2013 and 2014 accounts, for submission to HMRC and Companies House to meet the deadline that day, and he sent copies of those documents. He attached restated accounts for 2013 and 2014 following the discovery of bank statements relating to an RBS Bonus Saver Account he said he had previously not seen. He confirmed he would proceed to prepare accounts for Roofing for the period 1 January 2015 to 6 June 2015.

[212] In the initial valuation by Mr Bald of the shares in Scaffolding at 6 June 2015 (the date of Scott Cockburn's death), the director's loan was stated to be £89,961. This was amended to £39,961 to match the figure for the director's loan which was shown as £39,961 in the accounts for the years ended 30 November 2015 prepared by Mr Simpson. It was the duty of the directors of the companies to produce accurate annual accounts and lodge the same timeously. The directors had responsibility for running the companies. Miss Hope appointed the directors, Mr Tully and Ms Cockburn, and removed Steven Cockburn. They were responsible for the day-to-day running of the companies and advising their owner, which was Miss Hope once she took office as judicial factor, on trading performance and financials. Ms Cockburn was not always good at reporting to Miss Hope and this was another reason to put Mr Bald in place as a director so that he could have some oversight of the company and report to her.

[213] On 28 November 2016 Miss Hope emailed Mr Bald and told him that she still needed a value for Scott Cockburn's share in Roofing, Scaffolding and Colinton Roofing and that she needed a figure for his loans from Roofing and Scaffolding. She had previously asked him for this information and was awaiting a response. In December 2016, Mr Bald told her that he was having some difficulty in establishing the amount of the loans due by Scott Cockburn to the companies. He emailed her on 6 December 2016 with his valuations of the shares in the companies. He confirmed that the loans were debts in the estate and sums due to the companies.

[214] Miss Hope was looking again at the company accounts at this time and saw that the figure for the director's loan in Scaffolding in the accounts to 30 November 2016 was shown at £39,961 whereas Mr Bald in the valuation was showing it as £89,961. She wondered if it was simply a typing mistake. The director's loan figure in the Scaffolding accounts for the years ended 30 November 2015 was shown as £39,961. In relation to the valuation of Scaffolding given by Mr Bald in his email, it was stated to be £107,000. Miss Hope relied on that figure and used it also in the accounts for the years ended 30 November 2016 and 30 November 2017. As the director's loan was in fact £39,691 and not £89,691, the valuation figure should have been £57,000 and not £107,000. Miss Hope noticed this and it was corrected in the account lodged with the Accountant of Court for the year to 30 November 2018. This was simply the correction of a typographical error.

[215] The director's loan was an asset of the company. It increased the value of the company, as an asset of the estate, by £39,961, but it was also a debt in the estate, i.e. it reduced the estate by £39,961. The director's loan was therefore essentially neutral. The same was the case in respect of the loan due to Roofing. There was a meeting on 1 June 2018 in Mr Bald's office attended by Miss Hope, Mr Bald and Drew Taylor. There was discussion

at the meeting of an incorrect dividend figure relating to Scaffolding being £70,000 and not £102,000 as stated in the company accounts prepared. At the meeting, Mr Bald explicitly stated that the sums being referred to made no difference to the figure for the director's loans.

[216] Scott Cockburn had in 2013 opened a joint account with Ms Moriarty. The initial payments into that joint account had been £290,000 from his personal account on 18 June 2013 and a further payment of £10,000 from Roofing's savings account. A total of £300,000 was therefore paid into that joint account. Miss Hope wanted to check that no reportable payments (e.g. gifts) had been made from that joint account which would fall to be aggregated with the estate for IHT purposes. Ms Moriarty provided a complete set of bank statements for the joint account and Miss Hope was satisfied that the whole £300,000 had been paid into Roofing's current account, mostly in monthly tranches of £20,000 and sometimes £10,000. This took place over the period from November 2013 to December 2014. There were thus no reportable aggregated sums for inheritance tax purposes. There were a few instances of amounts of money (sometimes cheques) being paid into the joint account followed by an immediate transfer to Roofing of an identical amount. There was a payment of £50,000 from Scaffolding in January 2015 followed by four payments to Roofing's current account totalling £50,000 throughout January 2015.

[217] Legal rights in an estate were seen as a debt against it and were paid before legacies or any entitlement to residue. The entitlement of a legal rights claimant was to an amount equal to a proportion of the net moveable estate. In calculating legal rights, only the debts due at the date of death and up to the stage of being able to obtain confirmation and ascertain the legal rights were deductible in calculating the value of the net moveable estate. The legal rights calculation listed Scott Cockburn's moveable assets, namely, bank accounts

and cash, the furniture and personal effects as valued, the sale proceeds of the car and boat and the company shares as valued. Had any of the items of moveable estate been sold following his death, there would have been an argument for adjusting the value of the item in the light of the sale.

[218] The total gross value of the moveable estate was £388,755.23. The allowable debts and expenses were then deducted. These were the funeral expenses, the outstanding tax liability incurred by Mr Cockburn during his life, debts due by him (including the debts due to the companies), and a provision for legal fees which included the fees incurred in Ms Cockburn's sheriff court action to remove Steven and Tracey and appoint a judicial factor and a provision for a proportion of administration fees up to the point at which the legal rights could be ascertained. In normal circumstances it would be usual to deduct an amount equivalent to the executry fees up to the point of applying for confirmation to the estate. Once confirmation was granted, an executor was in a position to intromit with the assets of the estate. In this case, however, there never was an application for confirmation by anyone. Once Miss Hope's appointment was made final, she was in a position to intromit with all assets, a similar position to an executor on grant of confirmation. The only outstanding assets to be valued were the company shares, which involved instructing an accountant. For these reasons, Miss Hope included a relatively modest figure of £4,000 as a provision for the proportion of her firm's fees. The total deductions amounted to £226,640.69.

[219] She disagreed with the suggestion that the first two or three years of fees awarded by the Accountant of Court should be included as deductions and, indeed, would consider even the first year's fee as excessive. She did, however, take the view that the expenses of the action to remove the executors and appoint a judicial factor (totalling £16,033.63) were

deductible. If this view was incorrect, the amount of legal rights would have been higher and the payment of those expenses would fall to be treated as an advance to Ms Cockburn of £16,033.63.

[220] At the time of settling the legal rights it was Miss Hope's understanding that the companies remained solvent and that she would be able to distribute the estate among the residuary beneficiaries by transfer of shares in the companies and dividing the remaining cash among them, adjusted to take into account the fact that Conner and James had received their father's watches to account of their entitlement. As surviving spouse, Ms Innes was entitled to one third of the net moveable estate. The children were entitled to a share of one third of the net moveable estate. As Scott Cockburn was survived by six children, the share each child could have received was one sixth of one third, i.e. one eighteenth of the net moveable estate. Gabrielle, Chloe and Chanel Cockburn received £9,006.36 each (1/18 share) and Ms Innes £54,038.18 (1/3 share).

[221] Miss Hope was in a position to complete the administration of the estate in April 2019. She was keen to do so. The residue of the estate available for division among the three relevant beneficiaries consisted of the shares in Roofing and Scaffolding and a sum of cash. She proposed to transfer the shares in the companies to the beneficiaries (subject to the provisions of the Children (Scotland) Act 1995 in respect of the share passing to James Cockburn, for which she sought direction from the Accountant of Court in a letter dated 12 June 2019 to Mr Allan).

[222] On 17 June 2019 Mr Allan sent her a draft direction covering the estate due to James Cockburn. She had also arrived at a way in which the director's loans could effectively be written off by being treated as dividends. She had consulted Mr Bald about the matter. He told her in an email of 8 April 2019 that he had been getting various pieces of

advice regarding the tax position on the loans, and the consensus was that if the companies issued dividends to the estate for the unpaid balance on the loans, writing off the loans would count as a distribution and would be taxed as such. Dividends would be taxed at 7.5% compared to the savings income of 20%, and there were sufficient reserves in both companies.

[223] On 30 April 2019 Miss Hope gave further information to Mr Bald and advised that she was applying to the Accountant of Court for the necessary direction regarding James Cockburn's share, but that the creation of additional shares and their transfers to Ms Cockburn and Conner could proceed. She asked that once the dividend had been dealt with as discussed, he should put in hand the share transfers to Megan and Conner Cockburn and prepare the draft transfers to Clare as guardian for James so that matters could proceed once directions were received from the Accountant of Court.

[224] Although Mr Bald was going to explain the proposed treatment of the loans to Ms Cockburn, Miss Hope nevertheless wrote to her and separately also to Ms Innes, on 28 May 2019, explaining the matter in detail. Ms Cockburn indicated she wanted the companies sold, rather than having the shares transferred. Miss Hope wrote to her on 19 June 2019 stating that that would need further discussion with Mr Bald and with Ms Innes and her sons, and would be less tax efficient. Ms Cockburn failed to co-operate to enable matters to be progressed.

[225] Miss Hope wrote to Mr Allan on 5 August 2019 copying him into an email from Ms Cockburn dated that day and saying to him that Ms Cockburn appeared now to be saying that she did not want the shares transferred to her but wished Miss Hope to undertake a sale, which she was not inclined to do. Mr Allan responded on 13 August 2019 and said that subject to the responses of Ms Innes and Mr Bald, he was satisfied that it

would be sensible to transfer the shares to each of the beneficiaries and that if they were so minded, they could thereafter make a decision to sell their shares.

[226] On 4 September 2019 Miss Hope wrote to each of the three beneficiaries, namely, Ms Cockburn, Conner Cockburn and Ms Innes as guardian for James Cockburn, with a draft scheme of division for the estate listing the assets that had been transferred to beneficiaries to date and the number of shares in the companies which were still to be transferred. The scheme of division showed that there was a cash balance at that stage of £44,242.17. After making provision for closing administrative expenses of £18,000 and for the tax due on the proposed dividend of one half of the director's loans, it brought out a figure for distribution of £22,660.17.

[227] She received responses from Conner Cockburn and Ms Innes, but nothing from Ms Cockburn. Miss Hope reported to Mr Allan on 25 September 2019 that Conner Cockburn and Ms Innes were agreeable to the company shares being divided equally and the dividend payments dealt with as proposed but that she had had no response from Ms Cockburn at all. She found this very frustrating as she was keen to transfer the shares and distribute the rest of the estate. It would have enabled the factory to be completed and put all remaining assets into the hands of the beneficiaries. In the face of the lack of co-operation from Ms Cockburn, she had little option but to apply to the court for directions and for her discharge.

[228] She was concerned by Ms Cockburn’s refusal to co-operate and her refusal to allow the estate to be wound up while at the same time continuing to run the companies. Her worry was that the health and value of the companies would deteriorate. She knew that, as a director, Ms Cockburn had a duty to act in the best interests of the companies and that, as a beneficiary, she had a real interest in the preservation of their value.

[229] On 26 September 2019, Mr Bald emailed Miss Hope to say that he had had no response from Ms Cockburn and that as he felt he could not fulfil his own duties as director, he was resigning. Miss Hope spoke to him and learned that company accounts had been lodged at Companies House with no reference to him as a director. In correspondence on 20 November 2019, Ms Cockburn indicated she was seeking legal advice about whether or not to accept the shares and wanted some time to consider her position, to which Miss Hope agreed. On 24 December 2019 Ms Cockburn emailed to say she had decided not to accept the shares.

[230] In January 2020, Miss Hope applied to Edinburgh Sheriff Court seeking adjudication by the court upon a scheme of division of the estate, an order for distribution of the estate following the adjudication, and thereafter her exoneration and discharge from the role as judicial factor on the estate. Ms Cockburn opposed that action, then raised the present action. All the while she was continuing to run the companies with the support and help of Ms Moriarty.

[231] On 4 October 2021, Mr Allan emailed Miss Hope and said the Accountant of Court had reviewed the updated scheme of division and was satisfied that it could be shared with the beneficiaries and lodged in court for adjudication. He confirmed that he agreed that the level of the bond of caution could be reduced to a sum that would cover the current funds in hand. On 7 October 2021, Mr Allan emailed Miss Hope with a copy of the Accountant of Cout's report supporting the scheme of division. Due to the opposition by Ms Cockburn to the application to Edinburgh Sheriff Court, it had not yet adjudicated on the scheme and no order for distribution of the estate following adjudication had yet been made. Miss Hope remained in office as judicial factor. Ms Cockburn's was the only opposition to the application.

[232] The pursuers invited comparison with a company called Buckstone Roofing (Edinburgh) Ltd, set up by Ms Moriarty, who incorporated it on 16 January 2017. Roofing (the company in the estate) went into liquidation on or around 5 March 2021, when a provisional liquidator from Johnston Carmichael was appointed. Miss Hope understood, having been told by Johnston Carmichael, that before it went into liquidation, equipment owned by Roofing was sold by Ms Cockburn as director. The assets, mainly the company's vans, were sold to Midlothian Skip Hire, which also arranged to clear the company site and scrap the remaining equipment, which was in poor condition. Midlothian Skip Hire was the company for which Ms Moriarty was then employed as manager. The two additional directors appointed by Ms Moriarty in February 2021 to her company were also directors of or connected with Midlothian Skip Hire.

[233] Buckstone Roofing (Edinburgh) Ltd had a website which was originally very similar to that of the former Roofing. It had the same email address. At an earlier stage the website had stated that "We are a family-run business that has been an established name in the roofing and building trade since 1989 and are one of Scotland's leading roofers". It still talked about having over 25 years' experience in the roofing and building trade. It appeared to be creating the impression that it was the same company. The decision was made by Ms Cockburn to opt for liquidation rather than administration. Throughout the years leading up to the liquidation of Roofing, including the difficult period of lockdown, the separate company was already in existence, owned by Ms Moriarty, ready to become active if required and begin trading from a position of little or no debt. By appearing to have taken over the business, Buckstone Roofing (Edinburgh) Ltd could be said to have obtained the goodwill and the company's client records, but it was understood that no payment was made for goodwill. The comparison of the trading pattern of Buckstone Roofing

(Edinburgh) Ltd since 2021 with the trading pattern of Roofing in the years leading up to its liquidation was an interesting one, given Ms Moriarty's role as financial consultant to Roofing from around September or October 2016.

[234] On or around 8 February 2017 Ms Cockburn first intimated a complaint to Miss Hope and her firm about the handling of the estate and intimated that she intended to complain to the Law Society. She sent a lengthy letter dated 8 February 2017 addressed to Miss Hope at Murray Beith Murray. At that stage she was complaining that Miss Hope had not got information from Steven Cockburn regarding the company accounts and that she had allowed him access to the company bank accounts. He was supposedly a director and executor at the time and therefore had a function in keeping the company running. Until Miss Hope removed him as a director, he was running the company with full access to the company accounts. After he was removed, he did not have access to the company bank accounts.

[235] With regard to the household contents and personal belongings Ms Cockburn complained were missing or not accounted for, Miss Hope explained that it appeared to be second-hand items and clothing and furniture that had been removed, which did not have a high sale value. The items were all removed before Miss Hope was appointed as judicial factor. Ms Cockburn was complaining that there was no inventory, but Miss Hope reported on her appointment to the Accountant of Court on the assets and content of the estate. On her initial appointment, she was provided with a copy of the valuation for inheritance tax purposes of the property of Scott Cockburn which the executors had obtained from Thomson Roddick Scottish Auctions. In their report dated 22 July 2015 they listed the household contents and placed a value of £370 in total on those items. Scott Cockburn also had a Rolex watch valued by Thomson Roddick at £5,000 at the date of death together with a

Tag Heuer watch valued by them at £150 at the date of death, and at the time of Miss Hope's appointment these were in the possession of Steven and Tracey. Having established that Ms Cockburn did not want to receive the watches, they were handed over to Ms Innes to be given to her sons. Ms Cockburn also complained that the police had not been involved with regard to the taking of belongings. Again, this was before Miss Hope was appointed as judicial factor.

[236] A further complaint was that Miss Hope had not closed down Mr Tully's new company, Buckstone Roofing Limited. Miss Hope understood that he had formed that company after Scott Cockburn's death, and that Ms Moriarty had also formed her own company at that stage. Mr Bald asked both Mr Tully and Ms Moriarty to shut down their respective companies. Mr Tully ultimately did close down his company, but Ms Moriarty did not.

[237] Ms Cockburn made a complaint to the Accountant of Court in or around July 2017 and, on or about 10 August 2017, Miss Hope was notified that she had intimated a complaint to the SLCC. The Accountant of Court indicated that she should not wind up the estate and seek discharge while the SLCC complaint was ongoing. On 30 October 2018, the SLCC issued its eligibility determination report. Of the 41 separate heads of complaint, 14 were held to be time-barred and the remaining 27 totally without merit.

[238] It was initially thought that the estate was of such a value that it would be subject to inheritance tax. Miss Hope arranged to have the necessary return and supplementary documents completed. There was a requirement to lodge an inheritance tax return within one year of a death. If tax was payable, interest would be charged from six months after the death. Miss Hope's appointment ad interim was not made until some six months after the death and her permanent appointment only in March 2016. Another difficulty was that

there was no money in the estate to meet an initial payment of inheritance tax unless and until one of the properties, namely Buckstone Loan East, was sold. Miss Hope's initial calculation was that inheritance tax of some £19,442 would be due, but that this figure would be subject to adjustment once the house at Oxgangs Road was sold. There would also be some adjustment because of the interaction of Business Property Relief and the surviving spouse exemption.

[239] The inheritance tax return was submitted on 21 July 2017 and a payment to account of £15,000 made. Once Oxgangs Road was sold, a loss on sale claim was made. As the taxable estate then fell below the inheritance tax threshold, no tax was payable. In a letter from HMRC dated 24 September 2018, it confirmed that there was no inheritance tax liability for the estate. The whole sum of £15,000 was repaid to Murray Beith Murray by HMRC on 17 September 2018 and interest of £84.25 received. The payment and interest were shown in the account of charge and discharge for the year to 30 November 2018. No penalty or interest was incurred to HMRC.

[240] It was proposed to deal with the outstanding director's loans by way of declaring dividends. When Scott Cockburn removed the sums in question from the companies, they were not treated correctly for tax purposes. What should have happened was that when the sums were still outstanding after nine months, a payment of tax at 7.5% should have been made by the company. A subsequent dividend in the amount of the loan would come with the benefit of that tax having been paid. The matter could be resolved by the estate settling the tax due, then issuing dividends to the beneficiaries.

[241] The total loans outstanding to the companies amounted to £95,352. In order to avoid Ms Cockburn being pushed into a higher rate tax bracket, it was proposed to stagger the dividends over two tax years. The lack of co-operation from Ms Cockburn meant that the

first stage was not carried out in the year to 5 April 2020 and the estate tax return for that year was completed showing only the small amount of bank interest received and the tax paid accordingly.

[242] In August 2020, the solicitors who were acting for Miss Hope in respect of the SLCC complaint reported that Ms Cockburn had made a comment in correspondence to them that she was intending to resign as director and would cease to run the companies. Miss Hope sought information about the financial position of the companies. She was having increasing difficulty in obtaining information from Ms Cockburn or her then solicitors about the companies. The situation was not helped by the COVID pandemic. She also approached the company accountant Mr Simpson and spoke to him on 7 October 2020. His response was initially reassuring. On 29 October 2020, however, she received information on Roofing from Ms Cockburn disclosing an outstanding VAT liability of £30,000. She referred, in an attachment, to a bounce back loan of £50,000 of which Mr Simpson had been unaware.

[243] During October and November Miss Hope did not receive any further information from Ms Cockburn or from Ms Moriarty. She took advice from insolvency practitioners. After further discussion with Ms Cockburn's solicitors, the view was reached that the best way forward was for Ms Cockburn to approach Johnston Carmichael, whom she had already consulted about the companies. Miss Hope’s understanding was that Ms Cockburn, as director, would initiate the liquidation of both companies. She ensured that Johnston Carmichael had full information about the director’s loans and supplied the valuations prepared by Mr Bald and full information on the cash remaining in the estate. She continued to report regularly to the Accountant of Court. A winding up order in relation to Roofing was made on 29 March 2021. No such order was made for Scaffolding. Miss Hope revisited the question of the director's loans. The liquidation of Roofing removed any

possibility of a dividend. She took advice from Laura Brown, the then head of Murray Beith Murray's tax department, and decided to go ahead with the payment of tax at 7.5% in respect of the Scaffolding loan of £39,961 and the preparation of the paperwork to reflect a dividend in respect of that loan.

[244] If Ms Cockburn and those advising her, or indeed any beneficiary, had any difficulty in understanding that proposal, Miss Hope would have been happy to go over it and give further explanation. The failure of the companies to treat the director's loan appropriately for tax purposes was a wrong which it was appropriate to address. Likewise, if the beneficiaries had required any assistance on their tax position on receipt of the R185 certificates, she would have been happy to arrange for that assistance.

[245] The judicial factor's commission was independently set by the Accountant of Court and was in the form of fees paid to Murray Beith Murray on which VAT was payable. Miss Hope as judicial factor did not personally receive any funds from the estate.

[246] The pursuers alleged that it was improper for Miss Hope to rely on the valuation carried out by Thomson Roddick of household contents and personal effects because it had been carried out for Steven and Tracey. Thomson Roddick was an independent and established firm of valuers and auctioneers.

[247] The pursuers further claimed that Mr Bald's company valuations were forced to rely on outdated or incomplete data and that Miss Hope expressly instructed him not to contact Ms Moriarty for assistance in that regard. She had no recollection of having done so. While Ms Moriarty was pursuing her claim for unfair dismissal, she did have a conflict of interest. Mr Bald was, however, in contact with her in order to resolve that matter. Thereafter, he and Ms Cockburn re-employed Ms Moriarty as financial consultant to the companies. That was inconsistent with any suggestion that he and Ms Cockburn, as directors, felt that they could

not contact her or ask for information. If Ms Moriarty had vital financial information which was not available to the directors or the companies' accountants, she could and should have provided it.

[248] In December 2015, shortly after her appointment, Miss Hope removed from Steven Cockburn what she understood to be all keys to the properties that formed part of the estate. At some point in January 2016, a van and car were seen parked in the driveway at Oxgangs Road, causing her to question whether there were other sets of keys to the gates. She arranged to have the locks changed. There was no sign of anything having been removed from the property at that time.

[249] The pursuers included in what they claimed to be the known liabilities of the estate the loan due to Roofing of £78,398 and that to Scaffolding, which they listed at £89,961, whereas it was, in fact, £39,961, reducing the total brought out by the pursuers to £238,206.94. While the amounts of the loans were debts due by the estate to the companies, the same amounts were assets within the companies, increasing the value of the estate by the same amount. There was a certain circularity. Without the director's loans, the cash debts amounted to some £119,847.94.

[250] The pursuers also appeared to suggest that an exemption from inheritance tax on a sum due from the estate to the surviving spouse should not apply because Scott Cockburn and Clare Innes were not cohabiting at the time of death, and because the surviving spouse was not mentioned in the will. This was based on an incorrect understanding of the law. The parties were separated but had not entered into a separation agreement whereby they discharged their potential claims to legal rights in the other's estate. Thus, Ms Innes was entitled to claim legal rights in the estate of an amount equivalent to one third of the value of the net moveable estate. The sum passing to her was exempt from inheritance tax. The

estate also included private company shares which attracted Business Property Relief from inheritance tax at 100%. There would have been an adjustment because of the interaction of Business Property Relief and the surviving spouse exemption, but ultimately no inheritance tax was payable on the estate.

[251] The directors of the companies were very keen for a payment to be made to reduce the loans and introduce cash to Roofing, to assist with cash flow. After discussion with Mr Bald, Miss Hope agreed to release £20,000 from estate funds to Roofing. This was not an additional investment in the company but a part repayment of its director's loan. Ms Cockburn had claimed that she was not aware that the sum would be met from estate funds otherwise earmarked for her eventual inheritance. Given that the only funds available were the proceeds of the estate, she did not understand what other source of funds Ms Cockburn thought were available. She had been advised in correspondence that the major part of the residue of the estate was the shares in Roofing and Scaffolding.

[252] On 19 November 2018 Miss Hope held a meeting with Ms Innes as mother and guardian of two of the three residuary beneficiaries and the solicitor advising her, Mr Stewart Gibson of Brodies. Ms Cockburn was on holiday at the time, but Miss Hope was conscious that there had been considerable correspondence with her over the course of the judicial factory and thought it appropriate to devote this meeting to Ms Innes. Mr Bald was invited to join for part of the meeting to give information about the companies and answer any questions which might arise. After that meeting, the plan was that Ms Innes and Ms Cockburn would meet with Mr Bald for further discussion of the companies.

[253] In further oral examination, Miss Hope stated that she had decided to keep the companies trading because she was informed that that was what Ms Cockburn wanted.

Steven's initial involvement had, further, caused instability which might have prevented a sale for full value at that stage.

[254] She had made enquiries of Steven and his solicitors. It was difficult to prove that Scott Cockburn's car had not been sold at a fair value. Steven appeared to have no assets, and Ms Watson had made enquiries which confirmed that.

[255] Whether or not to re-instate Ms Moriarty was a difficult decision. She had been a key employee, but there was antagonism between her and Mr Tully. He had helped keep the company going, and there was another bookkeeper already in post who had replaced her. Stability was what was required. Steven Cockburn had instructed Young & Co in connection with Ms Moriarty's employment tribunal claim. Miss Hope was not aware that the company had insurance covering representation in the claim until Ms Moriarty told her. Young & Co were then replaced and their work made available to the company's new representatives.

[256] It was apparent that money had been taken out of the companies and advice was sought from Mr Bald as to how to deal with the resulting situation. In April 2019 he had advised that dividends could be issued equal in amount to the loan, attracting tax at 7.5%. He suggested spreading the dividend over two years to avoid the possibility of a tax-paying beneficiary being charged tax at a higher rate. It was an accounting exercise; no money was actually to change hands. A dividend was ultimately declared by Scaffolding. After the liquidation of Roofing, Miss Hope had informed the liquidator that the estate could not repay the outstanding loan to that company. There was a degree of circularity arising out of the facts that the estate owned the companies and also owed them money. That was why, when it was discovered that the director's loan from Scaffolding was actually £50,000 less than initially recorded, it made no difference to the overall position of the estate. Legal

rights entitlements had been calculated on the basis of the net moveable estate, using date of death values. Miss Hope had no recollection of having discussed legal rights with Ms Cockburn. She had not told Mr Bald not to engage with Ms Moriarty.

[257] By the time of Miss Hope's appointment, the contents of Buckstone Loan East had been moved to Oxgangs Road. Clothing and personal effects did not have much second-hand value, and were not worth the time and expense of recovering. Mr Bald had valued the companies. Miss Hope's commission had been assessed by the Accountant of Court, on a scale basis. She had refunded council tax for Buckstone Loan East to Ms Innes as Scott Cockburn had been living there and she had not, and she was in some financial difficulty. Perhaps an equal split would have been more appropriate.

[258] In cross-examination, Miss Hope stated that she had removed Steven Cockburn from the companies as soon as she could, but there was a process involving giving notice of a meeting to him that had to be gone through. She was aware of what had been said about him in the application to the court by Ms Cockburn. Ms Watson had told Miss Hope that getting rid of Steven was the priority, and had provided troubling information about him. She had done the same in relation to Mr Tully. It was not clear who had appointed Steven as a director. He was not working as a roofer. It was clear on Miss Hope's interim appointment that urgent and important decisions needed to be made about the companies, but she first had to find caution and investigate matters. She was concerned about the situation. She had removed Steven's keys to the heritable properties in the estate. She was trying to ascertain what was in the estate and how to safeguard it. She had commenced the process to remove Steven from the companies in January 2016, and he had been removed in the following month. She went through the company bank statements and formulated questions for him. No large cash amounts appeared to have been withdrawn, but there

were modest withdrawals by Steven in December 2015 and January 2016, weekly salary payments and payments under the Construction Industry Scheme. Steven's salary was excessive and she had told him not to take so much, but he ignored her. He had no written contract of employment, and he was not doing any work. Payments amounting to £17,250 appeared to have been made by Roofing to a family member, Alan Meyer, for work done to the house at Oxgangs Road. She had not been able to trace him.

[259] With hindsight, she could have removed Steven's access to the bank accounts more quickly. He had leased an Audi with no benefit to the company. She wanted to get an accountant to analyse the financial information, and the company's external bookkeeper, Mr Simpson, had had one look at the accounts and identified discrepancies, but no further analysis was undertaken at that stage. She had thought about speaking to Ms Moriarty about the financial matters which arose, but was concerned that she might have been involved in the apparent irregularities, most of which had occurred before Scott Cockburn's death. No audit of the company accounts was ever carried out. Miss Hope had thought about getting a forensic accountant involved, but the cost of that exercise would have been considerable. She had written to Steven and Tracey Cockburn asking them to repay around £70,000 to the company, but they had no apparent means and were not worth pursuing for any payment. She had made a first report to the Accountant of Court on 18 January 2016.

[260] At the end of January 2016, Ms Watson had suggested that Mr Bald might be a suitable accountant to involve in the company affairs, and Miss Hope had approached him in August and appointed him as a director in September. She had meantime appointed Mr Tully, Scott Cockburn's former right-hand man, as a director along with Ms Cockburn, who was Scott's daughter, a residuary beneficiary, and very capable. Miss Hope was

confident that those appointments would bring stability. Mr Tully was managing the company.

[261] As to the possible re-instatement of Ms Moriarty, whom Steven had purported to sack in July 2015, she was good at her job and was trying to help, but Miss Hope felt that the animosity between her and Mr Tully would destabilise the company. He was doing the estimating and had been with the company for many years. He had previously been removed as a director of one of the companies by Scott Cockburn, but Miss Hope did not know why. Ms Moriarty had told her in December 2015 that Scott had had concerns about his integrity. Mr Tully had registered a new company with a name similar to that of Roofing nine days after Scott's death. She did not recall being told by Ms Moriarty in December 2015 that Roofing had insurance for representation in the employment tribunal claim; that had not occurred, as she recalled, until the following month. Young & Co had been paid £2,840 out of the estate notwithstanding that they were providing their services to Roofing.

[262] Ms Cockburn had been 22 when she was appointed a director. She had experience of working in a bank but in agreement with Mr Tully gave that job up, contrary to Miss Hope's anticipation, when she was appointed. She was not already equipped to run a roofing company, and no formal assessment of her experience was undertaken, but Miss Hope considered her to be competent, intelligent and passionate about the business. Ms Moriarty had asked to be appointed a director and had raised issues about how the business of the companies was being conducted, but Miss Hope felt it better on balance to appoint Ms Cockburn and Mr Tully. She understood that Ms Cockburn was to obtain a scaffolding qualification and that she and Mr Tully would deal with the issues raised by Ms Moriarty.

[263] No references or CV had been obtained from Mr Tully. Miss Hope did not recall speaking to him about any allegations made about him before his appointment, but might

have done so. With the benefit of knowledge as to what subsequently happened, it might have been that those allegations were accurate. He had been estimating and managing the office with Jackie Skinner since Steven's departure. It would have been difficult to find a replacement for him. Ms Cockburn had raised no objection to his appointment. In January 2016 Ms Moriarty had reported to Miss Hope that she suspected Mr Tully of being involved in a cash job and asked Miss Hope to telephone the client pretending to be an employee of the company, but Miss Hope did not consider that appropriate and took no action. One roofer resigned after Mr Tully's appointment.

[264] On 26 May 2016 a meeting lasting about an hour had taken place amongst Miss Hope, Ms Moriarty, Ms Cockburn and her mother Mary Morham about an allegation of Mr Tully having agreed to do a large cash job. It had been a confused meeting, with people excitedly talking over each other. Miss Hope was not left with the impression that Ms Cockburn had been asked to take part in the job, and did not recall the client's name being mentioned. She asked for evidence. On 15 June Ms Cockburn had sent Miss Hope an email setting out her plan to catch Mr Tully out, but Miss Hope was unaware until August that Ms Cockburn was pretending to go along with Mr Tully's scheme. Miss Hope did not agree to take part in any plan. On 3 August she received a call from Ms Watson saying that Ms Cockburn had received from Mr Tully her initial share of the money from the cash job, and Ms Cockburn had subsequently handed in £650 in cash to Miss Hope's offices. Miss Hope agreed to meet Ms Cockburn and Ms Moriarty at the company offices. Ms Moriarty said that she wanted to wait until the cash job was finished before Mr Tully was confronted. Miss Hope was shown various financial records and there was a discussion about Ms Moriarty coming back into the business in a consultancy role, as Mr Tully was probably going to be removed.

[265] Shortly after Miss Hope had attended at the company offices for this meeting, Mr Tully asked to meet her. He might have seen CCTV footage of her and Ms Moriarty at the premises. The meeting was arranged quickly for 24 August. He did not deny the allegations against him and said he would resign as a director. He was asked to remove his own "Buckstone Roofing" company from the register. Miss Hope was coming to the view that another, independent, director was needed. It did not occur to her to reinstate Ms Moriarty. Her former job was being done by Ms Skinner. Miss Hope intended to appoint another director and let him decide whether to retain Mr Tully as an employee. She did not call the police, but did inform Ms Cockburn of what had happened. Mr Bald and Miss Hope's colleague Drew Taylor were left to agree the terms of a compromise agreement with Mr Tully. In Miss Hope's absence on holiday, matters were not taken forward and time passed. In September 2016 Mr Tully indicated that he wished to remain with the company. Mr Bald was appointed a director on 30 September. He and ELP Arbuthnott McClanachan were then dealing with Mr Tully, but Mr Tully did not resign from the company until August 2017, when further information about him had been gathered. Both he and Ms Moriarty had in the meantime formed separate roofing companies. With hindsight, appointing him as a director had not been a good idea, but it seemed reasonable at the time.

[266] It was for the company directors to make decisions about Ms Moriarty's employment tribunal case. It was settled for a sum of around £15,000.

[267] The inventory of the estate had been delivered late to the Accountant of Court, although reports had been made in January and February 2016. It had been due within six months, but had not been asked for until December 2016, and was delivered one day before the deadline then set. Miss Hope could not recall when she had received copies of the inventories prepared on behalf of Steven and Tracey Cockburn. There were two versions

of a valuation by Thomson Roddick, one including Scott Cockburn's watches, the other not. They were supposed to reflect the estate as at the date of Scott's death, and were consistent with what was in the house at Oxgangs Road when Miss Hope visited after her appointment. Ms Watson had criticised them as obviously false, but Miss Hope was satisfied with them.

[268] The car and speedboat had already been disposed of. Their purchaser, Mr McColl, was contacted. They had been sold for £40,000, and the money paid to the company, but there was £20,000 borrowing on the car. The actual sums received were used in the ultimate scheme of division. Ms Moriarty provided a list of items that were supposedly missing, and provided some receipts. It appeared that some items had been removed from the properties, but the valuation was generally consistent with what was present when Miss Hope was appointed. She did not pursue the matter with Tracey and Steven. Second-hand clothing and furniture was not valuable enough to warrant chasing. Televisions had been removed and put into storage. Xbox units may have belonged to the children. A total value of £370 was ascribed to the house contents for inheritance tax purposes. Ultimately £1,050 had been deducted from Ms Cockburn's share of the residue of the estate in respect of gym equipment and a power washer she had been trying to sell on behalf of the estate. Miss Hope had asked the family about lifetime gifts to them, but they denied that there had been any.

[269] As to business assets, Ms Watson had said that there was valuable roofing equipment, but there was no detailed inventory and the value of the companies' equipment was reflected in their accounts. Some equipment had been removed from the company premises by Mr Tully, for safe keeping. Ms Cockburn had subsequently suggested, in August 2016, that some scaffolding had been loaded onto a pick-up and taken away with his connivance, but that was a matter for the company directors to chase up if they saw fit, and

Ms Cockburn was well able to do so. The directors could have asked for Miss Hope's help if it was required. No company valuations were ever provided to Ms Cockburn. Not all withdrawals from the company bank account while Steven was in charge could be reconciled by Miss Hope with proper business purposes. She obtained some relevant material from Ms Simpson, but the accounts were not independently audited. Miss Hope had thought about selling the companies, but Ms Cockburn was not keen on that.

[270] When Mr Bald looked at the company accounts, he had difficulty understanding what had been done by Scott Ccokburn. It was clear by December 2016 that the estate's debts were potentially a significant issue. The company valuations done by Mr Bald made that clear. At a meeting on 20 February 2018 the companies' trading difficulties in 2016 and 2017 were discussed, but confidence was expressed for 2018. It was noted that a major element in the company valuations was the money owed by the estate, and that if it could not pay, the values of the companies would be reduced.

[271] At a further meeting on 1 June 2018, Mr Bald had reported to Miss Hope that business was not good and a loss was anticipated. She had noted that, after the sale of Oxgangs Road, it appeared that there might not be enough to pay off the director's loans. Questions were raised about whether the companies had been properly valued. The source of an apparent £50,000 overstatement of the director's loan due to Scaffolding was unclear, as was the nature of a discrepancy in the amounts of an intercompany loan respectively stated in the two sets of accounts.

[272] Miss Hope had engaged with the solicitor for Ms Innes about her legal rights entitlement, and about the factory accounts drawn up on that subject. She did not engage with Ms Cockburn on that subject. By early 2019 it had become apparent that Ms Cockburn was expecting to receive much more cash from the estate than was realistic.

[273] The plan had been to do as little as possible to the property at Oxgangs Road before selling it. It was eventually sold in April 2018. There had been a planning enforcement notice served by the council in October 2015 requiring the removal of fencing, and an appeal against it was unsuccessful in February 2016. Alternative proposals for the configuration of the fence had to be drawn up and implemented after being approved by the council. Miss Hope had asked Alan Scott to look into what was required at the property generally in December 2015. He had experience of the property and appeared suitably knowledgeable and skilled.

[274] A figure of around £130,000 to £150,000 was ultimately suggested by Mr Scott in June 2017 as being required for the necessary works to Oxgangs Road. That was his opinion, not based on quotes which had been received. Miss Hope did not want to commission quotes which she was never going to be able to accept. There would be no substantial money available until Buckstone Loan East was sold. It was expected to produce a net return of £100,000 or so. That was never going to suffice to complete the necessary work at Oxgangs Road. There were mortgage arrears on both properties. Buckstone Loan East was sold in November 2016 for £300,000 after two earlier sale agreements had fallen through. Miss Hope and Ms Innes had accepted the highest offer made in each sales round.

[275] Miss Hope did not want to sell Oxgangs Road without some indication of the likely cost of repairs, to enable a proper assessment of the offers received. When a tree was blown down in the garden and did some damage, no insurance claim was made as Miss Hope thought the claim would be less than the excess. Roofing was eventually asked to carry out some repairs and address water ingress at the property. The property was deteriorating, but Miss Hope did not have the money to address the issues. When it was put up for sale, the

home report valuation was £825,000, with a hope of achieving more. However, the unfinished state of the property put off potential buyers. It was eventually sold for £607,000.

[276] Jewsons sued Roofing in August 2016 after earlier correspondence, for the price of work and materials supplied to its order in relation to Oxgangs Road. It was not clear if the claim was valid in its entirety, but Miss Hope did not ask Ms Moriarty to assist in clarifying the facts.

[277] There had been some suggestion in November 2018 that Ms Cockburn was finding being a director of the companies stressful, but she herself maintained that she was doing perfectly well. The issue of the future of the companies had to be decided. Another accountant, David Rutherford, had suggested in November 2020 that the company accounts had been completely wrong and misleading since 2016. However, no restatement of the accounts was instructed. Ms Cockburn commenced liquidation proceedings. Legal rights had been paid out about two years earlier. Miss Hope did not contact Ms Cockburn to offer support during the liquidation process. HMRC was told in the estate tax return that the estate had been wound up on 5 April 2021, which was not the case. Miss Hope reported events to the Accountant of Court. Scaffolding was not in the event put into liquidation, only Roofing. Miss Hope suggested a factual change to that effect in the draft report by the Accountant of Court to the sheriff court in connection with her application for exoneration and discharge.

[278] In re-examination, Miss Hope acknowledged that Tracey Cockburn had never applied for confirmation as executrix of Scott Cockburn's estate, and that she was aware of that when she took office as judicial factor. She was aware that there was an issue about the validity of Steven Cockburn's appointment as director of the companies. She did not recall thinking about these matters at the time. She considered that Steven had authority to direct

the companies. In April 2016 she had demanded that he and Tracey repay £70,000 to the estate, that being an estimate of the sums not properly accounted for while they were *de facto* controlling the estate. Steven had answered some of the questions she posed, but had made no payment. She had spoken to Aver Accountants about the process needed to remove a company director.

[279] As to the possible re-instatement of Ms Moriarty, Miss Hope was concerned that she might at least have been complicit, as the bookkeeper, in the removal of cash from the companies during Scott's lifetime. Some contemporaneous emails supported that supposition.

[280] In order to obtain a valuation of the companies, she had considered instructing Aver, but then Mr Bald was suggested to her as having the necessary experience. She instructed him to carry out the valuations on 30 August 2016. Those had been provided to her in December. She could not recall discussing the effect that Scott Cockburn's death, or the departure of Ms Moriarty and Mr Tully, would have had on the value of the companies. She had checked that the amounts shown in the valuations as representing cash in the bank accounts were accurate, but had otherwise trusted Mr Bald's judgment. The initial valuation of Scaffolding proceeded on the basis that it was owed £89,961 by the estate, but that was then considered to be a typographical error, with the true amount owed to it being £39,960. Miss Hope felt that the valuations were appropriate date of death valuations. She had later - certainly by 2020 - had cause to doubt their continuing validity, but did not seek a re-valuation at any point. The matter of the adequacy of the company valuations had been discussed with Mr Bald at the meeting with him on 1 June 2018. Miss Hope took the view that the value of the companies had declined since the valuations.

[281] Initially, the residuary beneficiaries were supportive of the idea that the shares in the companies should be transferred to them. Otherwise, Miss Hope would have sought the direction of the court. The scheme of division ultimately lodged with her application to the court for exoneration and discharge did not deal with the shares at all.

[282] The idea to declare notional dividends as a mechanism to repay the director's loans was Miss Hope's, but she discussed it with Mr Bald. The £20,000 paid to Roofing by the estate was treated as the partial repayment of the director's loan by it.

Raish Allan

[283] Raish Allan provided a witness statement in which he recorded that he had held the position of judicial factory manager at the Office of the Accountant of Court for over ten years until he moved to the Office of the Public Guardian in early 2024. He had no formal qualifications specifically required for the post, but had gained extensive practical experience through more than 23 years working in both departments. He was currently employed as a systems manager at the OPG.

[284] At the Accountant of Court's office, he was involved in supervising judicial factors and enforcement administrators under the proceeds of crime legislation. As judicial factory manager, he developed experience in supervising judicial factories, overseeing diverse case types ranging from straightforward administrations to highly contentious matters. He had probably overseen around a hundred judicial factory cases in his time with the Accountant of Court. At any one time as a judicial factory manager, he dealt with perhaps forty judicial factor cases and had around sixty or seventy enforcement administrator cases at the same time.

[285] He was the case officer with main responsibility for supervising the actions and duties of the defender as judicial factor on the estate of Scott Cockburn. At the time he was dealing with that case, he was also dealing with a large caseload of other matters. The Accountant of Court's office operated under statutory authority, primarily the Judicial Factors (Scotland) Act 1849 and the Judicial Factors (Scotland) Act 1889. The principal duty was to supervise judicial factors appointed by the courts to ensure they fulfilled their statutory duties in administering estates. The supervisory role was conducted through comprehensive review of documentation and correspondence, with occasional meetings with judicial factors or interested parties to discuss matters where necessary. The supervision centred on auditing the factor's accounts of charge and discharge, which provided a comprehensive record of all financial transactions relating to the estate. These accounts had to be lodged annually under the current statutory framework.

[286] Beyond reviewing accounts, the supervisory role included ensuring judicial factors obtained appropriate bonds of caution; reviewing inventory submissions; giving advice at important stages in administration; approving certain transactions where required by law; ensuring compliance with statutory duties; and reporting any concerns to the court if necessary.

[287] It was not within the Accountant of Court's remit to instruct factors on how to conduct their investigations, or to overturn their decisions. Mr Allan could seek clarification on matters raised and confirm that a factor had taken professional advice and considered all relevant matters in reaching decisions. He did not provide beneficiaries with detailed progress reports or act as an intermediary between beneficiaries and factors.

[288] The role started from the moment the factor was appointed. The Accountant of Court would receive a copy of the initial petition submitted to the court to have a factor

appointed. That would be reviewed along with any relevant paperwork to understand what type of judicial factory it was and what approach might be needed. When a factor was appointed on an interim basis, Mr Allan would consider the scope of what he or she was doing, or being asked to do, in the interim period.

[289] The defender was initially appointed as interim judicial factor on 26 November 2015, with a permanent appointment granted on 23 March 2016. Throughout her appointment, she regularly consulted with the Accountant of Court at important junctures in the administration of the estate. When she was initially appointed, Mr Allan was aware that Tracey Cockburn had been nominated as executor in Scott Cockburn's will, and that she had purported to bring in Steven Cockburn as a fellow executor. Subsequently Megan Cockburn raised an action at Edinburgh Sheriff Court to have them removed, and that action was what led to the defender being appointed by the court.

[290] The Accountant of Court's office did not really have an active role in such proceedings, but kept a note of what was before the court. As the supervisory body, it usually got sight of the initial paperwork in relation to an application for the appointment of a judicial factor, and notice of any appointment. Mr Allan recalled seeing a copy of the summary application at the time in Ms Cockburn's action and it detailed that she was unhappy with the way the supposed executors were dealing with the estate and that Steven Cockburn had appointed himself as a director of Roofing and Scaffolding, had started giving himself what she thought were inflated wages, and that he was dealing with the estate to his own benefit. She sought removal of the supposed executors.

[291] Mr Allan, as the case manager assigned to this case, was the primary case officer dealing with the case. He was involved in overseeing the factor's duties up until his departure from the Accountant of Court's office in 2024. Shortly after the defender was

appointed on an interim basis, he issued a letter to her dated 4 December 2015 confirming registration of the interim bond of caution and the case. The Accountant of Court had the role of setting the amount of caution. The court normally instructed that caution should be found by the factor and it was for the Accountant of Court to make a judgment initially on the amount of caution to be found. That usually hinged on the terms of the summary application and the details given as regards the estate. Invariably, the summary application did not detail accurately the size of the estate. In this case, caution of £50,000 was fixed initially and that would have been based on the information available at the time.

[292] On 15 December 2015, one of his colleagues, Will Green, wrote to Miss Hope regarding the bond of caution and drawing attention to the special direction by the court that she was to report at monthly intervals to the Accountant of Court. The letter also asked that she note that her powers as factor were restricted as the appointment at that stage was interim only. The Accountant of Court confirmed the purpose of an interim appointment in that correspondence, which was primarily to preserve the estate. The letter stated that she should actively take steps to have the appointment made permanent. The court introduced a standard reporting requirement to the Accountant of Court so that as long as a factor was appointed on an interim basis he or she would have to keep the accountant aware of what was happening from one month to the next. The direction to the defender at that stage was to report on a monthly basis on what was happening whilst the court case to remove the executors was still ongoing. The monthly reports referred to could be in any form, whether a letter, email or a more formal report. There was no specific form.

[293] The role of an interim factor was to preserve the estate and to keep things as they were pending the court making a more final decision on the summary application to remove the supposed executors. The court could ultimately still decide to dismiss the application to

remove them, or go ahead and appoint the factor on a permanent basis. In the interim role, the factor usually started to investigate the estate, making enquiries to find out what had happened to assets and to safeguard them. However, an interim factor's powers were significantly restricted; he or she could not dispose of assets such as selling property or shares, could not make distributions to beneficiaries, and could not make major decisions that would alter the estate's composition. The role was essentially custodial, focused on preventing further deterioration or loss while the court determined the permanent arrangements for the estate's administration. On a factor being permanently appointed, those restrictions were removed. A permanent factor was granted comprehensive powers actively to manage the assets for the benefit of those entitled to the estate, exercising powers similar to, though not entirely the same as, a trustee's powers under the Trusts (Scotland) Act 1921.

[294] As judicial factor, in accordance with statutory requirements, the defender had provided for review: two interim reports to the court which were instrumental in having the original supposed executors removed from office; an inventory of the estate; annual accounts of charge and discharge; and updates on significant developments in the administration.

[295] The formal inventory of estate was lodged by her on 8 December 2016, beyond the six-month statutory timeframe. This delay was partly attributable to an administrative error in the Accountant of Court's case management system. In this particular case, the inventory was expected within six months of the defender's full appointment interlocutor dated 23 March 2016, namely by 23 September 2016. The case management system was incorrectly configured, which may have contributed to the delay. Mr Allan identified the error on 27 November 2016 and a letter was issued on the same date advising the defender to lodge

the inventory by 9 December 2016. She submitted the inventory one day before this revised deadline. She had already provided substantial information about the estate's assets and liabilities through her reports to the court and ongoing correspondence. The Accountant of Court did not have specific formal protocols or guidance on when to make a referral to court. Case officers would typically consider referring a matter to court if a factor was refusing or unwilling to lodge required documents like an inventory without good reason. They relied on the integrity of what the factor lodged, supported by appropriate vouching.

[296] The defender sent a detailed report on the estate on 18 January 2016. She was still an interim factor at that stage and the court action raised by Ms Cockburn to have the supposed executors removed was ongoing. This report was also sent to the court to assist it in dealing with the summary application. It set out comprehensively the assets in the estate and the issues arising. There was no detail at that stage as regards the monetary value of the assets, but some values were mentioned. Mr Allan did not consider it necessary to increase the amount of caution. It appeared to be quite an involved case as there were numerous assets with different problems ongoing with them. The only thing that made the case stand out from other contentious cases was that it seemed to become quite hostile quite quickly with Ms Cockburn.

[297] The defender sent a further update by email on 5 February 2016 with regard to one of the property assets at Buckstone Loan East, Edinburgh, and also sent a copy of the valuations of the property. She was looking for authority to pay the valuer's invoices. She also provided an update with regard to the steps she was taking to have Steven Cockburn removed as a director of Roofing, Scaffolding and Colinton Roofing Limited. Reports and updates from an interim factor were purely so that the Accountant of Court could see that material progress was being made with the estate and that the factor was taking appropriate

action to protect the estate whilst the matter of permanent appointment was still pending with the court.

[298] In relation to removing Steven Cockburn as director, Mr Allan felt that there were clear grounds to remove him on the basis of the reports. He wrote to the defender on 8 February 2016 and, in relation to removing Steven Cockburn as director, reiterated that the principal remit of the interim appointment was to keep maintaining the status quo and preserving the estate and that if she felt that his continued directorship even in the short term was posing a risk to the estate or business then she might not want to postpone the meeting set for 16 February 2016 with a view to removing him.

[299] She provided a further report as interim factor on 18 February 2016. This was her second detailed report, in addition to regular email updates. Her second report was again comprehensive. She confirmed that if her appointment was made final she intended to take steps with the co-owner, Clare Innes, to sell Buckstone Loan East. She provided further details with regard to the issues with the property at Oxgangs Road, Edinburgh which had been fully owned by Scott Cockburn. Mr Allan was aware from her earlier report and this one about the state of the Oxgangs Road property that works had been carried out by Scott Cockburn to the property that were of very poor quality and not in accordance with building warrants. The defender informed him that in order to be in a position where the property might be sold, amendments to the building warrants would be required and that remedial works would be required to the property to obtain a completion certificate. She mentioned that the current fencing and gates were the subject of a planning enforcement notice appeal, and that they would require to be altered or replaced.

[300] She also reported on the moveable property in the estate, in particular the speed boat and car sales. Steven Cockburn had sold these items prior to her taking office. The report of

18 February 2016 explained the background to that and the steps she was taking in that regard in detail. The Accountant of Court would expect that a factor make due enquiries in such circumstances to try to establish what happened with assets disposed of and whether there was any possibility of recovering the assets or their value for the benefit of the estate. Mr Allan was satisfied that the defender had investigated the possibility of making a recovery from Steven and Tracey Cockburn. Ultimately, she did not pursue recovery action against them.

[301] She consulted with the beneficiaries' solicitor, Barbara Watson, and took account of investigative reports that had been commissioned from Pegasus Investigation regarding the prospects of recovery. After considering these reports, which indicated slim prospects of success against Steven Cockburn and poor prospects against Tracey, the defender assessed that pursuing recovery actions would not be proportionate or in the estate's best interests. She informed Mr Allan of the reports done by Ms Watson in relation to the executors in an email of 26 June 2018, which disclosed that they had little assets and no heritable estate. He acknowledged receipt of the second report by email dated 23 February 2016, stating that he was content with the reports and that it was clear she was taking steps to safeguard the estate. He asked whether her second report had been sent to the sheriff dealing with the action to remove the executors. He thought it was important to let the sheriff see the second report as it set out in detail the position of the estate and the actions of the executors.

[302] On 23 March 2016, the court appointed the defender as permanent judicial factor with the usual powers and with specific reference to powers to exercise the rights attached to the shares in the three companies. Shortly after her full appointment, on 20 May 2016, she wrote to Mr Allan saying she was intending to sell Buckstone Loan East, in conjunction with the joint owner, Clare Innes, and that her firm, Murry Beith Murray, were to act in the sale.

She asked him to approve the firm's terms of business to act, which he did. It was quite routine in judicial factories for the factor to use another department in their firm to handle matters like sales of property. Sometimes factors instructed other legal firms also. As long as there was no conflict of interest, the Accountant of Court did not generally take issue with that.

[303] In June 2016, Murray Beith Murray emailed Mr Allan with an update relating to the sale of Buckstone Loan East, stating that it had gone to a closing date and the highest offer received was £314,600. They were looking to accept that offer, which was conditional on the purchasers selling their own property, and they sought the Accountant of Court's approval. Mr Allan gave approval by email of 3 June 2016 to proceed to accept that offer. The Accountant of Court generally approved the sale of a property asset, unless the court was involved giving a direction to sell. Mr Allan felt that it was reasonable and sensible for the factor and the co-owner to sell Buckstone Loan East at that stage.

[304] On 31 August 2016, the defender wrote to Mr Allan relating to her concern that Brian Tully, as director of the companies, was engaging in the practice of doing cash jobs for customers. She informed him that she was looking to bring an independent accountant, Philip Bald, into the companies to assist. She also updated him at this stage that Buckstone Loan East was on the market again as the previous sale had fallen through. She provided an update on Oxgangs Road also, and said she was arranging for some works to be carried out at the property with a view to getting it into a state to market it for sale. He responded on the same day noting the update and, regarding Mr Tully, querying if he would return to the companies as an estimator. He was content that the defender had appointed a new financial director to assist with regulating the accounting procedures and to assist Ms Cockburn in

running the company. It was for the defender to make the decisions she was making in relation to the companies in the estate.

[305] In August 2016, Mr Allan was aware of the discussions that were taking place with regard to Mr Tully being removed as a director, with Mr Bald to be assumed as such alongside Ms Cockburn. The reason for appointing Mr Bald was to provide financial oversight, as Ms Cockburn needed assistance in that regard. It made perfect sense to him to appoint Mr Bald in terms of how the companies were to move forward. The defender was not someone experienced in running a company, nor did she have industry experience in roofing, but she had the authority to put in place relevant people to run the companies.

[306] Mr Allan thought that the defender's initial suggestion to appoint Ms Cockburn as a director, a role which she was willing to perform, was a good idea. These were family companies and it meant the family were represented with Ms Cockburn as a director. He had no concerns at the time with her appointment as a director. She was Scott Cockburn's daughter and would have known and picked up certain aspects of his commitment to the companies.

[307] On 28 October 2016, the defender reported to him that another offer for Buckstone Loan East had been received following the re-marketing of the property, for £300,000. The earlier sale had fallen through because the purchasers' own sale had in turn fallen through. She reported that following consultation with the co-owner, Ms Innes, it was agreed that the offer should be accepted and that they had taken into account in reaching that decision that during the continued passage of time, further interest costs were being incurred on the outstanding mortgage and that the lenders had already instigated a calling-up process. She reported her view was that it was not likely that a better offer would be achieved in the foreseeable future.

[308] The Accountant of Court was looking to ensure that the factor had got the best possible sale price in the circumstances. The defender explained that the half share of the net proceeds of sale due to the estate was much needed to make an interest payment in respect of the loan secured over Oxgangs Road and that it would enable her to make an initial payment of inheritance tax, repay funds due to Roofing and meet the cost of works needed to Oxgangs Road so that it could be marketed for sale. Mr Allan confirmed to her on 4 November 2016 that he was content for her to proceed with the sale if Ms Innes was also happy to accept the price, which she confirmed later that day she was. The offer on the table for Buckstone Loan East was acceptable given the circumstances and would bring in much-needed funds. It was clear there was not a lot of cash in the estate and that the defender was doing her best to get best value within what she could do. There were more problems with the other property at Oxgangs Road in terms of the works needing done and so it made sense to first look to sell Buckstone Loan East to realise that asset.

[309] On 8 December 2016 the inventory of estate was received from the defender. At this stage she had estimated the inheritance tax liability based on the figures then available and confirmed that the legal rights in the estate had not yet been discharged. The value of the estate taking account of debts due was estimated to be just over £666,500. This figure was significantly higher than the Accountant of Court had anticipated. Mr Allan asked for further vouching in relation to certain items in the inventory, and the defender responded to that request on 29 December 2016. She submitted her first account of charge and discharge of the intromissions as judicial factor on the estate for the period 26 November 2015 to 30 November 2016, giving a detailed update on transactions over the last year and also outstanding matters she was expecting to deal with over the coming year. Mr Allan was

satisfied on behalf of the Accountant of Court with the steps she had taken to this point and the progress that had been made with this estate.

[310] On 9 January 2017 he sent the Accountant of Court's audit report for the period ending 30 November 2016 to the defender. It detailed that her commission had been fixed at £37,850 for that period. That authorised her to take that sum as fees. The Accountant of Court had discretion over the setting of commission that a factor could take after reviewing accounts lodged. The amount of commission fixed was very typical in a factory case. In the notes with the audit report dated 9 January 2017, certain queries were raised and it was noted that the defender should increase cautionary cover to £1,250,000. The defender responded to the note on 16 January 2017. She explained what Steven Cockburn had done in relation to the speed boat and car when he was an executor, before her appointment, and that she had asked him to produce evidence of the contract of sale but nothing had been provided to her. She said she was making enquiries. Mr Allan was satisfied with that explanation at the time.

[311] On or around 8 February 2017 Mr Allan became aware that Ms Cockburn was complaining about the defender’s conduct as judicial factor. On that day, the defender emailed him and copied a letter she had received from Ms Cockburn, said to be on behalf of her and Ms Innes, setting out their concerns. It was very lengthy and covered numerous issues. He responded to the defender on 9 February 2017, acknowledging the letter and asking that she let him see a copy of the response issued. It was not unusual for a judicial factor to receive a complaint from a beneficiary. Complaints were a common feature in judicial factory cases generally. The Accountant of Court took no particular view on any complaint, but wanted to see the response and assess whether it adequately addressed the complaint.

[312] Also on 8 February 2017, the defender wrote separately to intimate that the lenders holding the security over Oxgangs Road had issued a calling-up notice. The lenders had agreed to suspend further action if a payment to account of interest was made and she had proposed a payment of £15,000 to the lenders. She asked for authority to make that payment. She explained that at that stage her firm was holding estate funds of £56,000, without recovering her commission, and so she could make that payment, a payment to account of inheritance tax and also pay some expenses incurred in connection with Oxgangs Road. Mr Allan confirmed in an email to her on 9 February 2017 that he took no exception to her making a payment to the creditors to prevent the calling-up notice from proceeding.

[313] On 21 February 2017, the defender sent him copies of the letters she had issued to Ms Cockburn and Ms Innes in response to their complaint letter, together with the report she had sent to them, a copy of the statement of assets incorporating a draft inheritance tax calculation and a draft legal rights calculation and a copy of a letter dated 19 January 2017 to Ms Watson, which included a copy of the account which she had lodged for the period to 30 November 2016. Mr Allan was told that Murray Beith Murray's client relations partner would also be responding to the complaint letter. Mr Allan felt that the defender had provided Ms Cockburn and Ms Innes with all relevant documents and information in her letter. In the client relations partner's response to them, he sent a separate report by the defender, extending to six pages, which covered her actions as judicial factor to that date and matters still to be dealt with. The Accountant of Court was satisfied that the defender had appropriately dealt with and responded to the beneficiaries' complaints. Ultimately Ms Cockburn or Ms Innes could come to the Accountant of Court if they remained dissatisfied.

[314] On 29 March 2017 the defender copied to Mr Allan a further letter dated 28 March 2017 which Ms Cockburn and Ms Innes had sent to Murray Beith Murray's client relations partner, responding to his letter. It contained serious allegations against the defender as judicial factor in terms of how the estate was being dealt with. When he received these further complaints, Mr Allan took the opportunity to review the case comprehensively. After careful consideration, he found that none of the complaints raised against the judicial factor had any substance to them. The defender had commented to him in her email of 29 March 2017 that in normal circumstances with a private client, she would have ceased acting due to the hostile nature of the relationship, but as a court-appointed judicial factor, her duty was to the estate and she had to continue. Mr Allan could understand the challenging position this put her in, having to persist with the administration despite the ongoing criticism and lack of cooperation. If the Accountant of Court had had any concerns with the actions of the factor at this stage, they would have been addressed at that point. Had Mr Allan considered that Miss Hope had not adequately addressed the issues raised by the beneficiaries, he could have sought clarification on the matters raised and required her to confirm that she had taken professional advice and considered all relevant matters in reaching her decisions. If he had had concerns about her conduct or administration, he had the statutory power to report any such failings to the court that appointed her.

[315] On 19 July 2017, the defender emailed Mr Allan with an update on the Oxgangs Road property and on other aspects of the administration of the estate. She was at the stage of looking to sell Oxgangs Road and she reported on valuation and that Graham & Sibbald had given the property a home report value of £825,000 in its then condition. She pointed out that that valuation, and their previous date of death valuation of £800,000, were on the basis that the property complied with all building regulations and had the appropriate local

authority certificates. The defender said that she had advised them that this was not the case and asked them to give an estimate of the extent to which the value might be reduced because of that, but they were unwilling to state a figure. She reported that she had received the structural engineer's schedule showing work requiring to be done at Oxgangs Road and had been advised of the likely cost of the works and that those figures had been taken into account.

[316] On 2 August 2017, the defender emailed Mr Allan a copy of a draft summary of works requiring completion at Oxgangs Road. This showed the extent of the works needed, which was extensive. It was clear that works were needed to nearly every room in the house. She had also sent the summary of works to Ms Cockburn on 28 July 2017.

Ms Cockburn was not happy about Oxgangs Road being sold. The defender wanted to proceed to sell the property. She was reporting that there had been some interest in it and also that she was looking to lodge the retrospective building warrant application at this stage. Beneficiaries were entitled to express a view on the sale of a property asset but, ultimately, the asset was in the hands of the factor and the decision to sell was for the factor. The defender sought the Accountant of Court's approval to accept the sale price.

[317] On 9 May 2017 the Accountant of Court received a formal complaint from Ms Cockburn regarding the defender's administration of the estate. Mr Allan responded to her complaint on 15 September 2017 with a detailed letter. Given the substantial nature of the complaint and the detailed response required, along with his remaining ongoing caseload and the business in the summer months, it took some time to give the complaint the proper consideration it warranted. It raised multiple issues that required careful review against the case file to ensure a comprehensive response was provided.

[318] In his response, Mr Allan acknowledged that Ms Cockburn was keenly interested in ensuring the factory administration went well and that she clearly cared about missing household items, progress with the properties, and the financial health of Roofing. He explained that a judicial factor's role was as an officer of the court who had to act impartially and remain independent in judgment. He noted that the defender had gone to considerable lengths to explain and clarify numerous points, and that an inordinate amount of time had already been spent responding to detailed queries. He explained that, while it was crucial for the defender to keep beneficiaries informed, it was not necessary for her repeatedly to justify decisions already adequately explained. He confirmed that from a supervisory perspective, he was satisfied that the defender had spent sufficient time collecting information and evidence. He explained that his role was not to instruct a factor on how to carry out investigations or necessarily overturn decisions, but to provide guidance and ensure statutory duties were fulfilled. He stated that he had not seen anything that the defender had done or not done that was critical enough for him to be unduly concerned about her management of the estate. He advised Ms Cockburn that if she remained dissatisfied, one recourse open to her was to seek legal advice regarding the possibility of having the defender's appointment recalled. He also wrote to the defender, confirming that overall he was satisfied that she had acted appropriately. He explained that he had carried out a review of the case and had some follow-up questions he wished her to respond to, which were aimed at clarifying certain factual matters at that stage.

[319] On 8 November 2017 the defender sent him a comprehensive update about the sale progress of Oxgangs Road. Her email provided extensive detail about the marketing efforts to that point. She informed him that the property had been on the market since 18 July 2017, advertised at offers over £795,000. Graham & Sibbald had told her that they believed the

property could be worth between £950,000 to £1,000,000 if all the necessary remedial works were carried out to make it habitable. Despite significant interest, with 70 home report downloads and more than 24 property viewings, she had only received one formal note of interest, which led to an offer of £255,000. This offer was turned down as it was substantially below even the site value alone and would not have covered the outstanding mortgage on the property. The defender also summarised the feedback received from people who had viewed the property, and it was clear that virtually every viewer had commented on the extensive amount of work that would be needed. This detailed update was extremely useful as it gave a complete picture of the challenges in trying to achieve a sale of the property.

[320] The defender emailed him again on 9 November 2017 regarding an offer received that day for £530,000, setting out the options as she saw it, and seeking his views. She emailed him again on 10 November 2017 after having discussed matters with Andrew Stephen, Murray Beith Murray's head of property, setting out his advice to set a closing date and giving details of the offers received from the two interested parties. She sought his agreement to setting a closing date. On 29 November 2017, Miss Hope copied him into further correspondence from Ms Cockburn stating that she thought the offer was too low and questioning the difference in valuation figures obtained. For this reason, the defender wanted comfort from the Accountant of Court that she could proceed to sell at that level. Mr Allan was also copied into the email exchanges Murray Beith Murray had had with Graham & Sibbald regarding the offer received; they thought the offer received seemed reasonable.

[321] Separately, on 8 December 2017, the defender responded to the Accountant of Court's letter of 23 October 2017 addressing the questions Mr Allan had raised at the time of

his reply to Ms Cockburn's complaint. She explained what had happened with regard to Mr Tully being removed as a director of the companies and explaining the timing of that. The second query covered was the fact there were two companies in existence with similar names to Scott Cockburn's companies, one set up by Mr Tully in June 2017, Buckstone Roofing Limited, company number SC508349, and the other, Buckstone Roofing (Edinburgh) Limited, company number SC554674, which had been set up by Ms Moriarty in January 2017. The defender explained that she too was concerned about that and had been speaking to Mr Bald about it. She understood the Roofing directors had sought legal advice from another firm of solicitors regarding that, but she thought it was important that the other companies were removed from the register. Her email also covered Roofing's increase to its roofers' pay, which Mr Allan had queried, and the issue raised around missing household items. In that regard the defender said that she had looked back at the question of household contents. She sent a copy of the original valuation of Scott Cockburn's personal effects and the house contents at Buckstone Loan East obtained from Thomson Roddick by the supposed executors before her appointment. She explained that the two watches which were of most value were in her firm's safe and that the remaining contents were of relatively little monetary value, which she said was a source of disappointment to Ms Cockburn and other family members. She noted that a long list of items with purchase prices had been produced but that much of it was clothing and other items with no remaining commercial value. She explained that the family had some complaints that items had been removed, but most of the items of any value were still at the Oxgangs Road property and that while Ms Innes had retrieved some clothing, toys and household items, Ms Cockburn had said that she did not want any items. The defender stated that some household items had been removed before her involvement and that she did not doubt that some of these might have found their way to the home of Linda Cockburn, the mother of Scott and Steven, as Ms Cockburn alleged, but that as the items appeared to be of low or negligible value, she did not pursue this further. Regarding the pay increases, her response showed that while Mr Tully had acted on his own in that regard without consultation, she had subsequently taken steps to review and reduce wage costs where appropriate. Mr Allan did not feel it necessary to follow up further on these specific points.

[322] On 15 December 2017, the defender sent Mr Allan further correspondence she had received from Ms Cockburn regarding Oxgangs Road. Ms Cockburn had said she would like to see whether it would be feasible for the family to raise the money to do the works needed to the property to obtain a building warrant to put the property back on the market. She said they potentially had an investor willing to put up the money to carry out the works but needed to see the details of the works required along with copies of estimates obtained. The defender questioned why, if there was someone prepared to lend money to the estate with no security, that person had not been mentioned before. She asked for Mr Allan's view on how best to proceed as she was conscious that it was not the job of a judicial factor to embark on speculative development. He responded on 18 December 2017, stating that in his opinion she would be on safer ground to pursue an action which would lead to a more certain outcome, as opposed to taking additional risks which might increase the length of the factory. He stated that borrowing additional funds was not prudent management of the estate and that the factor's role was principally about winding up and distributing the estate, not generating more work. He mentioned that a belts and braces approach would have been to obtain special powers from the court to dispose of the property at a certain price, thus putting it beyond doubt.

[323] At the end of December 2017, the Accountant of Court received the account of charge and discharge for the period from 1 December 2016 to 30 November 2017. In January 2018 the commission for that period was fixed at £34,144.46 and the defender was authorised to take credit for that sum in the next account.

[324] On 23 January 2018, the defender reported further with regard to progress with the sale of Oxgangs Road. She reported that while an offer at £555,000 had been accepted, it seemed the prospective purchasers might not be able to sell their own property and she was considering putting Oxgangs Road back on the market at offers over £595,000, and she asked if Mr Allan was agreeable to that. He confirmed that day that he was.

[325] In January 2018 caution was reduced from £1,250,000 to £1,000,000. Mr Allan had reviewed the case at that stage and was content with the reduction. The rationale for reducing the amount of caution was that the Buckstone Loan East property had been sold, and there was significant uncertainty over the real value of the Oxgangs Road property due to the extensive remedial works required. It was appropriate to be realistic with the caution amount rather than maintaining it based on optimistic valuations that might not be achievable. The reduction also helped reduce the annual premium costs to the estate while maintaining adequate protection.

[326] On 29 January 2018 the defender sent Mr Allan a further detailed update including copying further correspondence exchanged between her, Murray Beith Murray and Ms Cockburn regarding the sale of Oxgangs Road. At this stage, it was becoming apparent that there was a pattern developing where Ms Cockburn had very high expectations for the estate, particularly regarding property values, and was questioning many of the defender's decisions in considerable detail. While beneficiaries were entitled to seek information and express views, the volume and frequency of correspondence was requiring significant time

and resources to address, often covering the same ground repeatedly. From his supervisory perspective, Mr Allan was concerned that this level of detailed scrutiny and the need continuously to justify decisions that had already been explained was adding unnecessary costs to the estate without materially changing the outcomes. He responded to the defender on 30 January 2018, saying that he had already told Ms Cockburn about the need to be careful in overly interfering in the defender's role.

[327] On 7 February 2018 the defender informed Mr Allan that Oxgangs Road had gone to a closing date and she sought approval to accept the highest offer received. She reported that the top offer was £710,000, which was well ahead of the next one of £607,000. In her email, she reported on all the offers they had received. She proposed a response to the top offerors by asking for removal of their conditions of a survey and structural survey by 15 February and asked if the Accountant of Court was agreeable to that. On 8 February 2018 one of Mr Allan's colleagues responded in his absence from the office confirming there was no objection to the factor accepting the top offer of £710,000.

[328] The defender reported further on 9 February 2018 that the prospective purchasers had assessed more fully the deficiencies of the building work and lack of consents, and the potential cost of completing it, and had withdrawn their offer. She explained that she wished to accept the second highest offer of £607,000 from a cash buyer and wanted approval, which was given that day. On 5 April 2018 she reported that the sale of Oxgangs Road had settled on 4 April 2018 at a sale price of £607,500. She also stated that she had established that Scott Cockburn had received some payments in the form of dividends from his companies during the last 18 months of his life and that she was referring the details with further bank statements to Mr Bald to ensure that he was confident that his earlier evaluation, provided principally for the purpose of calculating legal rights, reflected a true

valuation of the companies. She reported that once she was satisfied on this, she should be able to finalise the sums of legal rights due. She also mentioned that in anticipation of finalising the estate, she intended to try to meet with Ms Innes to ascertain her views and preferences for the management of the continuing trust for her children. The only assets that remained unrealised at this stage were the shareholdings in Roofing and Scaffolding and she wanted to consider the treatment of the shares and the future of the companies before reporting further.

[329] In April 2018, emails were exchanged with the defender regarding the minor age beneficiaries and how the factor could deal with distribution to them. On 12 April 2018, she sent Mr Allan a copy of Scott Cockburn's will which directed that the estate was to be held for such of three of his children, Megan, Conner and James as attained the age of 25. Ms Cockburn attained that age on 5 April 2018 but Conner Cockburn was fifteen and James was twelve. The defender was asking whether, if suitable trustees could be identified, the Accountant of Court would approve the transfer of the entitlements of Conner and James Cockburn to the trustees to be held until they turned 25. Mr Allan responded saying that the Accountant of Court would encourage the appointment of trustees as this would be in keeping with Scott Cockburn's intentions in his will. However, the appointment of new trustees was a matter for the court, which could involve additional costs to the estate in making the necessary court application. Whilst discussions took place about the various options available, nothing definitive was agreed at this stage.

[330] On 26 June 2018 the defender provided a further update in relation to the dividend and loan position of the companies. She reported that she and Mr Bald had clarified that position and that she was arranging to settle the income tax to date of death in the sum of £25,827. She confirmed that she had reported details of the sale of Oxgangs Road to

HMRC and lodged a claim for loss on sale, requesting an inheritance tax repayment. She reported the net estate would now fall within the nil rate band, given that Business Property Relief should apply to the holdings in Roofing and Scaffolding. She required to agree the legal rights position with Ms Innes and the three daughters who were not beneficiaries under the will. She confirmed that the only assets remaining in the estate were the unrealised shareholdings in the companies and that she needed to consider the treatment of these shares and the future of the companies. She explained that Mr Bald had previously valued the shares in Roofing at £282,000 and in Scaffolding at £107,000 but that a significant element in the assets of each company were director's loans to Scott Cockburn of £78,398 by Roofing and £89,961 by Scaffolding. A review of the accounts and company books had highlighted the fact that the director's loan to Scaffolding was only £39,961, which she explained had been a typographical error. As a result of this, the value of the Scaffolding shares was reduced by £50,000 to £57,000 from the earlier valuation. This also increased the personal estate. She was seeking guidance as to whether, given that the value of the company decreased following, and as a result of, the death of Scott Cockburn, it was realistic to ignore his death in the valuation of the company for legal rights. She also sought guidance on how to treat the claims intimated on the estate for payment of professional fees incurred in Ms Cockburn's petition for the appointment of a judicial factor, and other claims intimated in respect of works done to Oxgangs Road for which there was no paperwork. She asked whether she should advertise for claims to be intimated to the estate or whether, given the passage of time since the death, she could be reasonably confident that any claims would already have materialised. She sent copy correspondence from Ms Watson in relation to whether there was any prospect of recovering the costs of the application from the former supposed executors. Ms Watson had obtained a report into their possible assets, which disclosed very little available for recovery. The defender asked for guidance on whether she should ask for Ms Watson's accounts to be taxed before she could consider paying them from the estate.

[331] Mr Allan responded on 12 July 2018, asking her to forward a copy of the account in respect of the expenses of the application to remove the supposed executors for consideration of whether it required to be taxed. Regarding the companies, he thought basing the legal rights on the realised value of the estate was reasonable and he confirmed he had no objection if she chose that approach. He was not legally qualified to give specific direction on how such legal rights should be handled; it was purely an unqualified opinion that her approach seemed reasonable on the face of it. He stated to the defender that she could advertise in the Edinburgh Gazette for claims on the estate and thereafter adjudicate on the claims and it would be for her as judicial factor to make a decision on what to admit or reject based on whether the claimants had supplied sufficient vouching. He noted the loan typographical error and how this in effect increased the personal estate but equally reduced the value of the Scaffolding shares. These adjustments represented a circular movement of funds within the same estate. While the correction reduced the company's value, it correspondingly increased the personal estate by the same amount. This was simply a reallocation within the deceased's overall estate rather than a loss of value to the beneficiaries, as they would ultimately benefit from both the personal estate and the company shares. The defender did advertise in the Edinburgh Gazette for claims on the estate.

[332] Matters were further discussed in around August 2018 and Mr Allan advised the defender that she should not make a final distribution of the estate until an SLCC complaint made by Ms Cockburn had been disposed of. He considered that it would seem premature

and inappropriate for a judicial factor to seek discharge from the court while there remained an ongoing complaint about her conduct pending before a public body. It would not be fitting for the court to grant a discharge to a judicial factor when there were unresolved allegations of professional misconduct being investigated elsewhere. The proper course was to allow the SLCC process to conclude first, so that any findings could be taken into account before seeking discharge. However, Mr Allan was content for the defender to continue with the administration of the estate, settling debts, paying legal rights, and preparing a final scheme of division, with the discharge application simply being held until the complaint was resolved. This approach ensured the estate administration could progress while maintaining the integrity of the discharge process.

[333] By around 1 November 2018, the defender notified Mr Allan that the SLCC had concluded its involvement and had decided all complaints were without merit, or had become time-barred. On 1 November 2018, he wrote to her responding to some of her earlier queries seeking guidance. In relation to the query about the costs that Ms Cockburn had caused the estate and whether she could apportion this or take recognition of it in the eventual distribution of the estate, he advised that she should generally shy away from doing that if possible. However, he suggested it might be worth providing Ms Cockburn with a costing analysis and advising her that if her future contact was not productive, consideration could be given to having such costs apportioned against her share. While generally equal treatment of beneficiaries was preferred, there were specific circumstances in the case that warranted consideration of a different approach. The SLCC's finding that Ms Cockburn's complaints were without merit validated that her ongoing challenges were unsubstantiated. More importantly, her repeated correspondence and complaints were generating significant additional costs for the estate that were being borne by all

beneficiaries, including her minor brothers. Given the SLCC findings, there was a stronger argument that if one beneficiary's conduct was causing additional expense, that beneficiary should bear those costs rather than having them shared amongst all beneficiaries.

[334] The defender submitted her annual account of charge and discharge for the year from 1 December 2017 to 30 November 2018 in December 2018 and asked for notification of the commission due. Commission was then fixed for the year to 30 November 2018 at £33,875.67 plus VAT. On 31 January 2019 the Accountant of Court issued the audit report for the year ended 30 November 2018, including certain queries requesting further information and vouching in respect of certain matters. The defender responded to the audit notes by email dated 7 February 2019. She reported that she was close to completing the administration of the estate and that once commission and VAT were deducted, cash of only £64,848.62 remained. She said again that the other assets in the estate were the company shares.

[335] She explained that the shares in Roofing were valued at date of death at £282,000 but this had included £78,398 which was money withdrawn by Scott Cockburn from the company and included in the company accounts as a director's loan. She explained again that similarly the shares in Scaffolding were valued at £57,000 with a director's loan outstanding of £39,961 and that the total amounts withdrawn by Mr Cockburn from the companies and included in the accounts as director's loans totalled £118,359 and exceeded the cash available in the estate. She stated that a decision would have to be made as to how much should be repaid to the companies by the estate and how much could be distributed to the beneficiaries. She set out the options as she saw them for dealing with this. One option was to try to sell the companies, then wind up the estate and make over the remaining funds to the beneficiaries. Another option was to complete the executry administration, transfer

the shares in the companies to the beneficiaries and pay whatever money remained to the companies. She reported that the directors of the companies had proposed that £25,000 be repaid to the companies and that she did not think that was unreasonable, provided the companies were still viable, but if they were not, they might have to be wound up. She was looking for guidance on this as she said she was mindful of the need to be careful about how it would be dealt with in the company accounts to minimise any tax liability which would arise if distributions were deemed to be made either to Scott Cockburn during his lifetime or to the beneficiaries at that point by cancelling debts. She wanted to discuss the options in advance of meeting Mr Bald to discuss further.

[336] Mr Allan responded to the defender on 11 February 2019 advising that he was available to discuss the company matters with her further. He said that she might need special powers from the court to transfer the minor beneficiaries' entitlement to a trustee. After reflecting on the matter and conducting some research on previous judicial factory cases, he had concerns about whether the judicial factor could unilaterally appoint new trustees. It could be argued that a judicial factor did not have the same powers of discretionary actings as those given to the original trustees under a will. When the sheriff appointed the defender as factor, the original interlocutor had sequestrated the estate and removed the supposed executors. One could argue that the judicial factor did not have the inherent power to assume new trustees and that the terms of the will with regards to the trust provisions might have been frustrated by the judicial factory process. Given this uncertainty, he considered that the safer approach would be to lodge a special powers application to the court to address this issue, though he was mindful this would incur additional costs for the estate. He suggested to the defender that it might be worth seeking counsel's opinion on this matter, acknowledging that as he was not legally qualified, there

might be legal precedents or authorities of which he was not aware that could resolve the question. The defender and he subsequently had a telephone call on 12 February 2019 and discussed the issues arising at the time. He did not recall this content of the discussion.

[337] There were further exchanges between Mr Allan and the defender with regard to making a final distribution of the estate and discussing the options. On 29 March 2019 he emailed her setting out options for her to consider. The Accountant of Court's view was that as regards the estate due to the minor beneficiaries, James and Conner Cockburn, the defender would only need to approach the court for approval if a decision was taken that the estate due to them, or either of them, should be held in trust. Otherwise, he advised that she could proceed to make a distribution to Ms Cockburn and Conner and seek a direction from the Accountant of Court as to how James's inheritance should be treated. Once she had sought and received a direction, that would bring her involvement to a close. On 1 May 2019 Miss Hope intimated that she had written to Ms Innes setting out the options available for distribution of the estate to her sons and that she had come back and agreed to proceed with the option whereby Conner's share would be made over to him and that she would apply for a direction from the Accountant of Court for Ms Innes to be appointed to administer the share for James under the supervision of the accountant until he reached the age of sixteen. The defender was looking for guidance from the accountant on making this application.

[338] She also reported that she was asking Mr Bald to take actions in connection with the companies. One was that steps be taken to enable the shares in Roofing and Scaffolding to be split one third to each of Ms Cockburn and Conner and one third to be held as directed by the Accountant of Court for James. The second action was to deal with the director's loans, which remained outstanding. She explained how she thought that should be dealt

with in all of the circumstances. She was looking at writing off the loans over two years, meaning that tax of only 7.5% would be due in each year and the beneficiaries would be treated as having paid basic rate tax on the amounts in question. She advised that there should be no additional tax for Conner, that James would be entitled to apply for a tax repayment, and that, depending on Ms Cockburn's other income, most if not all of the dividend would fall within the basic rate tax bracket. Mr Bald was to explain the position to Ms Cockburn for her instructions. She attached copies of her email exchanges with Mr Bald explaining the reasoning behind the proposed action in more detail.

[339] Mr Allan sent a detailed email in response on 3 May 2019, saying that he would draft up a direction for agreement on receipt of the application. Whilst he had issued many directions in the past, only some related to companies, rather than partnerships. This was somewhat unusual territory for him. In the vast majority of cases involving business interests, agreements were usually reached to buy out a child's share and instead give the child a cash distribution for practical purposes, as this avoided the complexities of a minor holding shares in an active business. However, given the specific circumstances of this estate and the fact that the companies represented a significant portion of the value, the proposed approach of transferring shares with appropriate supervision seemed reasonable. In relation to the proposal with regard to the director's loans and the companies, he confirmed that he was satisfied that the defender could proceed on the basis outlined. The two-stage dividend approach to deal with the director's loans seemed sensible from a tax efficiency perspective, particularly as it was designed to benefit Ms Cockburn by avoiding pushing her into a higher tax bracket. He asked the defender if Ms Cockburn had confirmed her position and whether she was in agreement with regard to distributing the residue of the estate.

[340] On 12 June 2019, the defender wrote to apply for a direction with regard to the part of the estate due to James as a minor under the Children (Scotland) Act 1995. Her application was to have his mother, Ms Innes, appointed to administer on his behalf all the property due to him, with her appointment to last until he reached the age of sixteen. Mr Allan issued the proposed direction covering the estate due to James to the defender on 17 June 2019. At this time, in and around June 2019, he was being copied into ongoing correspondence exchanged between Ms Cockburn and Murray Beith Murray in relation to her ongoing complaints against the defender.

[341] Mr Allan explained to the defender the process likely to be involved in getting the court's approval for the division of the estate and her discharge. There would be a petition asking the sheriff to consider the discharge application based on the proposed scheme of division and once the court agreed it and allowed for any adjustments, the defender could then distribute the estate as directed by the court. The Accountant of Court would then lodge in court a discharge report supporting her discharge. The defender explained at this time that in her view the discharge of the director's loans by dividends over two years was still possible but that it would require Ms Cockburn's cooperation as director and that despite the two-stage option having been proposed purely for her benefit from a tax point of view, the defender did not think that she would cooperate, and was maintaining her position that she did not wish shares in the companies to be distributed to her but seemed happy to remain a director. She seemed to think that taking shares might affect her credit rating, which Mr Allan found difficult to understand. If anything, her position as a director carried greater potential personal liability risks than being a shareholder. Her reasoning for refusing shares while remaining willing to continue as director seemed contradictory, as she

was retaining what he considered the position of greater risk while refusing the one offering more protection and financial benefit.

[342] The defender had prepared the application to the court in October 2019 and sent it to Mr Allan in draft for consideration. On 25 October 2019 he wrote to her regarding the draft application and the draft scheme of division with advice on those. He provided feedback on the structure of the petition, suggesting some reordering of the craves to follow a more logical sequence. He thought it was advisable to ask the court to direct that the director's loans be dealt with over a two-year period, making clear that the proposed scheme of division was based along these lines. However, he advised that if the court was reluctant to grant that specific direction, the defender could suggest dealing with the loans within the same tax year to regularise matters immediately. He also suggested itemising the "provisions to close" section to provide transparency about estimated closing costs and acknowledged that exact figures could be challenging when parties objected and prolonged proceedings.

[343] The defender raised whether the court could direct Ms Cockburn to cooperate with the two-year dividend plan, noting that if cooperation was not forthcoming, the alternative would be making the whole dividend payments in the current tax year, though this would require revising the scheme of division to account for different tax implications. This highlighted the practical considerations that arose when beneficiaries had differing views on the proposed administration approach. The defender submitted the application to the court to adjudicate on the scheme of division, distribute the estate accordingly and grant her discharge in February 2020.

[344] On 1 October 2020, Mr Allan issued an email to Ms Cockburn responding to her complaints about the handling of the estate by the defender. He felt the majority of her

complaints had been answered previously by this stage. By then she had also said that she wished to resign as a director of the companies. In his email to her he said that that would again cause the judicial factor to intervene and could attract further costs and delay. He said that he had not found within any of the assertions made by her that the defender had been remiss in her conduct nor neglectful in her duties. In October 2020 the defender copied to him further email exchanges between her and Ms Cockburn relating to the ongoing complaints. Around this time the defender was asking for information in relation to the financial position of the companies but was not getting the information. Mr Allan was aware that at or around this time Ms Cockburn had consulted with Dentons, solicitors, in relation to a possible negligence action against the defender.

[345] On 12 October 2020 the defender reported that she had had a discussion with Alistair Simpson, the company accountant, and had been able to obtain financial information in relation to the companies. She reported in her update that Ms Cockburn had been more helpful and had provided some information to her. The defender was reviewing and updating the scheme of division and she sent a draft to Mr Allan and asked for his comments on certain aspects in connection with payment of the dividends in the current tax year rather than over two years as previously proposed. This was because Ms Cockburn had not co-operated with that proposal. The defender sought guidance on going back to all three beneficiaries at this point for specific instructions about the future of the companies, given Ms Cockburn's wish to resign as a director. She also asked for Mr Allan's view on whether there would be any scope to reduce the amount of the bond of caution after 30 November 2020 given that most of the estate had been realised and the legal rights paid. She sought guidance on whether the scheme of division should provide for any other expenses.

[346] Mr Allan responded on 15 October 2020 with guidance. He was keen that the defender should try to seek some form of agreement or general way forward amongst the beneficiaries to assist the court to arrive at a decision. He agreed that in order to regulate all matters moving forward, the dividends should be paid in full in the current tax year to ensure that the matter was addressed with no loose ends. He also agreed that given the passage of time and the fact that Ms Cockburn had resigned as director and did not wish to take shares, that the defender should seek the views of the beneficiaries. He thought this would assist the court in relation to deciding on the scheme of division. He provided comments in relation to seeking to reduce the level of caution and on closing expenses of the estate and what should be considered and included.

[347] On 3 November 2020 the defender raised that she had noticed, in information she had been given by Ms Cockburn on behalf of Roofing, mention of a bounce back loan of £50,000. The defender said this had not been mentioned to her by the company accountant before. She said she thought that it was very serious and that she had no option but to engage an insolvency practitioner and indeed was trying to engage one. Mr Allan found it disappointing that this significant loan had not been disclosed earlier and had only been discovered in an Excel spreadsheet. The late disclosure of such a substantial liability raised concerns about what other information might not have been properly communicated to the defender. He suggested to her that the discovery of this loan could be brought to the attention of the court, along with a request to have the company wound up, as this would to some extent simplify matters and allow the scheme of division to otherwise be considered. He also provided her with names of insolvency practitioners who had experience with judicial factories and would understand her position in relation to the estate if the company required to be liquidated.

[348] Later in November 2020 the defender reported to him that she had received sufficient financial information to come to an assessment, confirmed by insolvency practitioners, that Roofing appeared to be insolvent and winding up proceedings would be initiated. She wanted to consider the best way to proceed with that and who would be responsible for the costs involved, as they were likely to exceed the estate funds available. She continued into 2021 trying to wind up the estate. In July 2021 she reported that she was approaching HMRC in order to resolve the tax aspects of finalising the judicial factory. There remained a difficulty if the estate could not repay the loans due to the companies and the companies were not able to make a dividend, and she wished to establish the tax consequence for the estate. Mr Allan agreed that it would be advantageous to ascertain HMRC's position and to get a clear steer on how the tax should be ranked should it make the estate insolvent.

[349] By September 2021, Dentons had withdrawn from acting for Ms Cockburn in her opposition to the defender's application for adjudication and discharge. On 30 September 2021, the defender sent a draft amended scheme of division. She stated that she had not included any figure for commission and also that the figure for anticipated legal costs was a token figure. Murray Beith Murray had indicated to their agents acting in the discharge action that they would cover the legal costs if the estate funds were insufficient and they were not able to recover expenses from Ms Cockburn. Mr Allan responded on 4 October 2021 confirming that the updated scheme of division could be shared with the beneficiaries and lodged in court for adjudication. He noted Murray Beith Murray's comments on waiving future commission as well as reserving a nominal sum to cover legal costs given the position the estate was in.

[350] On 7 October 2021, the Accountant of Court produced a report supporting the scheme of division, which was submitted to Edinburgh Sheriff Court. The report stated that:

> "The Accountant is of the view that the said Carole Hope has administered the estate appropriately and furthermore has acted fairly and consistently when compiling the Scheme of Division which is now presented before the Court. In the opinion of the Accountant of Court the said Carole Hope may now be granted authority to implement the proposed Scheme as craved."

That remained the accountant's position. Due to the opposition to the application, the court had not yet adjudicated on the scheme of division of the estate and no order for its distribution following adjudication had yet been made. That action was sisted pending the outcome of the present action and the defender remained in office as judicial factor today. The Accountant of Court had had to continue maintaining a watching brief over the appointment and continued to monitor the case administratively, but there had been limited scope for active supervision given that the substantive issues were now before the court.

[351] Throughout the defender's appointment, the Accountant of Court monitored the appropriateness of the bond of caution relative to the estate's value and circumstances. At appropriate junctures, she was directed to either increase or decrease the caution as the estate's position evolved.

[352] The Accountant of Court's report supporting the revised scheme of division followed standard procedure. As was routine practice, the Accountant provided the factor with a draft report for review to ensure factual accuracy regarding the estate's position and circumstances. Her response was limited to technical corrections, such as clarifying that only Roofing had been liquidated (not both companies as initially stated), and confirming the precise cash position. These discussions centred on ensuring the accuracy of details of the report rather than its substantive conclusions. A collaborative approach to finalising reports was standard practice and ensured that the Accountant's reports to the court were factually accurate. The Accountant would not give an instruction to a factor to proceed with a scheme of division if that approach could not be supported.

[353] In cross-examination, Mr Allan confirmed that he had seen the summary application to the court seeking the appointment of a judicial factor, and that it sought the powers apparently necessary to remove Steven Cockburn as a director. It was apparent from the application that no confirmation had ever been sought by Tracey or Steven. The defender had reported her concerns about what Steven was doing. The report was alarming. Mr Allan was not legally qualified and had no formal training in the performance of his functions. Miss Hope was a solicitor and could obtain suitable advice about legal issues.

Andrew Taylor

[354] Andrew Taylor provided a witness statement in which he stated that he qualified as a solicitor in June 1984 and joined Murray Beith Murray as a civil litigation solicitor in early 2016. He retired on 31 August 2022. At Murray Beith Murray, he dealt with a variety of civil litigation matters on behalf of the firm's clients and, at times, would assist other solicitors or departments on such matters if they arose. Throughout his time at Murray Beith Murray, he was the only litigation solicitor.

[355] He could not remember when he first discussed the judicial factory on the estate of Scott Cockburn with the defender. His recollection was vague as it was a long time ago. He did recall that his overall feeling as a litigator, from what he knew about the judicial factory, was that it seemed a difficult and complicated estate.

[356] One of the first things he was involved in was that the defender asked him to attend a meeting with her and Mr Tully. He recalled that the defender was keen to have him come along to the meeting, which took place on 24 August 2016, as a witness to discussions and to take a detailed file note. His recollection was that in advance of the meeting Ms Cockburn had informed the defender that Mr Tully had given a verbal quotation for work to a named

customer and had pocketed the cash (or some of it) rather than pay it into Roofing's bank account. Having received this information, the defender made arrangements to meet with Mr Tully at Murray Beith Murray's offices.

[357] He recalled that throughout the meeting Mr Tully did not seek to deny anything or prevaricate. He was straightforward. He did not deny lending his employer's scaffolding to a third party. He conveyed his strong belief that he and Scott Cockburn were, in his word, "partners" in building the roofing business. Mr Taylor wondered at the time whether he would take legal advice, and possibly formally intimate a claim that the business had been a partnership. That did not in the event happen. It was an important meeting at which Mr Tully had admitted significant matters. He agreed to resign as a director at that meeting.

[358] Mr Taylor sent a letter to Mr Tully on 1 September 2016, enclosing a draft letter of resignation for him to sign. He did not recall whether Mr Tully in fact signed the letter or, if not, why not. He recalled that Mr Tully was valued as an employee of the company. He could not remember if he discussed the issue of Mr Tully's resignation further with the defender or not. He could not now recall why Mr Tully's formal resignation as a director of Roofing did not take place until a later date.

[359] Mr Taylor was involved at times assisting the defender but was not involved in the details of the administration of the estate or the running of the companies that formed part of the estate. He did not have detailed knowledge of what was happening with the judicial factory. He attended the meeting with Mr Tully really just to take notes. He was not advising the defender in relation to her actions as judicial factor or with regard to the specifics of administering the estate. Apart from dealing with the procedural aspects of settling an action for payment of goods brought in the sheriff court by Jewsons, he was more

involved later, at the time she was applying for her discharge as judicial factor, but even then only to deal with the application to the court and the court procedure aspects.

[360] She did at times use him as a sounding board or run things by him, but he was not involved in the decisions she took as judicial factor. She would have told him that there were two companies forming part of the estate and he was aware also that there were two properties in the estate, at Buckstone Loan East, Edinburgh and Oxgangs Road, Edinburgh that were to be sold. He was aware of Ms Cockburn, one of the beneficiaries, and he was aware of Ms Moriarty and that she had brought an unfair dismissal claim against Roofing. He did not deal with or advise in relation to that claim. He did recall that at one stage Miss Hope brought in Philip Bald, an accountant, to become a director of the two companies. She was happy to get him involved in the companies and he agreed to act as director. Mr Taylor never met Mr Bald. He had no involvement with the companies and no involvement in relation to any valuation of the companies or any matters to do with company accounts or such like. There was no reason for the defender to have spoken to him regarding these things as they would not have been within his area of expertise. He dipped in and out of dealing with aspects in connection with the judicial factory when the defender required input from him as a civil litigation solicitor.

[361] He recalled, for example, that he dealt with a payment claim being pursued by Jewsons against Roofing in relation to materials purchased under a contract with the company but which it appeared was in fact a kitchen and materials purchased before Mr Cockburn's death for use in the property at Oxgangs Road. Jewsons raised a court action against Roofing to recover the debt, and he dealt with that matter. The debt due to Jewsons was settled from money from the estate, once it was in funds to do so. The court action was then disposed of and he dealt with those aspects. He was aware in general terms that

Oxgangs Road was in a bit of a mess and was incomplete. He became aware that Scott Cockburn had done work on that property but had made a botch of it and there were issues over planning permissions and building warrants not having been complied with. His impression was that it was a bit of a nightmare property to sell because of the state it was in when Mr Cockburn died. He did recall that there were discussions in the office at the time about how best to deal with this property and how it could be sold when it did not conform to building standards, but he was not involved in the decisions taken in respect of the property or its ultimate sale. He was aware that the defender was in discussions with Alan Scott regarding the property, and that he was assisting her with that, but Mr Taylor never met Mr Scott or became involved in that.

[362] He did become involved in 2020 to deal with the defender's application to Edinburgh Sheriff Court seeking adjudication by the court upon a scheme of division of the estate, an order for its distribution following adjudication, and thereafter her exoneration and discharge as judicial factor. He drafted the summary application and dealt with all aspects of the relative court procedure. The application was opposed by Ms Cockburn, who also then raised the present action against the defender. At the time in 2020 when the application was submitted, Ms Cockburn was represented by Tim Edward of Dentons. Mr Taylor dealt with Mr Edward at the time regarding the summary application. He did not prepare the scheme of division presented to the court, had no involvement in preparing it, and could not speak to the information in it. He had no involvement in the winding up of the estate or how that was to be done. He dealt with the court aspects of the application and the court procedure only. By this stage, he was aware that Ms Cockburn had made complaints to Murray Beith Murray about the defender's actions as judicial factor. He was aware at the time of the firm's responses rejecting her claims but he did not deal with the complaints

process. That was dealt with by the firm's client relations partner at the time, Hugh Younger.

[363] He told Mr Edward in an email of 8 September 2020 that the defender had a concern that the estate might be insolvent, which would affect her role as judicial factor. That would have reflected what the defender had said to him at the time. She was still trying to get information about the companies from Ms Cockburn and had been struggling for quite a long period to get access to information she needed in relation to them. The email was asking Dentons to ask its client to provide certain information the defender needed and had been asking for but had not been getting. He was not saying in the email that the estate was insolvent, just that there was a concern it might be, and that the defender needed the requested information to ascertain if it was insolvent. He had no knowledge of the solvency position of the estate. The defender asked him to write to Dentons at this stage to ask for the information through them and he did so.

[364] In an email of 16 October 2020 to the defender he had raised the question of whether there might be merit in speaking "without prejudice" to Mr Edward about the summary application. It was perfectly normal in litigations to hold without prejudice discussions with the solicitor on the other side to try to move things along by reaching agreement on certain matters in dispute or to discuss possible settlement of part or all of a claim. At this stage it was being considered whether to explore agreeing that Ms Cockburn would drop her opposition to the application and no award of judicial expenses would be sought against her. That was all a normal part of litigation to see if there was a way to resolve the dispute and get the discharge granted. He sent an email of 5 November 2020 to Mr Edward providing information that had been given to him by the defender in bullet points. He had no personal knowledge of the issues she listed or the solvency position of the estate. He and

the defender had a videocall on 12 November 2020 with Mr Edward to have a without prejudice discussion regarding the application for discharge. Miss Hope explained to Mr Edward that she had received little information from Ms Cockburn or anyone since 2016 in relation to the companies and their finances and that the last information she had was from Mr Bald when he had been a director of the companies, but he was no longer a director. She said that she was seriously worried that the companies were both insolvent.

[365] In around September 2021 Harper Macleod were instructed to act for the defender in relation to the summary application and Mr Taylor's involvement therefore ceased. He could not recall the exact reason why Harper Macleod was instructed. He had been seriously ill in late August 2021 and hospitalised. He was off work for some weeks. There was no question of Harper Macleod being instructed because of any concerns by him or the defender that they had done anything wrong.

[366] In cross-examination, Mr Taylor spoke to having taken a note of a meeting on 1 June 2018 between Miss Hope and Mr Bald. The note would be accurate, but he could not recall the meeting itself. He was aware that Ms Cockburn had made complaints about the defender, but none of her points had been deemed valid. He had been at the meeting when Mr Tully had offered to resign as a director. Whether he should continue as an employee was a matter for Roofing. He had admitted the allegations of dishonesty against him.

Philip Bald

[367] Mr Bald provided a statement in which he noted that he was a chartered certified accountant and had run his own firm, Philip Bald Accountancy Limited, since November 2013, with a staff of nine. He understood that Barbara Watson, the solicitor then acting for Ms Cockburn, had recommended him to the defender. The defender had

suggested that an independent professional be appointed as director of the roofing and scaffolding companies in the factory estate, to assist the other directors. Ms Watson had suggested he would be helpful because one of his biggest clients had a roofing business and he would thus have a good grasp of the trade and, from an accountancy perspective, knew how such businesses operated. He knew Ms Watson well because her firm was a client of his. He did not know Scott Cockburn or any of the family members.

[368] It was fairly common for an accountant to be appointed as a director of a company. It seemed sensible to appoint him as a director so he could assist with the running of the companies and in relation to company finances. Alistair Simpson was the accountant for the companies and had been for some time. He was not a director of the companies. He remained as accountant once Mr Bald was appointed a director. He prepared the annual accounts and corporation tax returns for the companies, and had prepared Scott Cockburn's individual tax returns. At the time of Mr Bald's initial involvement, in around August 2016, Ms Cockburn and Brian Tully were both directors of the companies. When Scott Cockburn had passed away, Steven Cockburn had supposedly been appointed an executor and then made himself a director of the companies. There had been concern as to what he had been up to when he was a director. He had disposed of Scott Cockburn's car and various sums of money had been removed from the companies' bank accounts. Steven Cockburn was therefore removed from his role as executor and director of the companies. Ms Cockburn had been appointed as director of the companies, alongside Mr Tully, in February 2016.

[369] When Mr Bald became involved, there were concerns about Mr Tully's conduct and allegations had been made about him. Ms Cockburn and Ms Moriarty, who was Scott Cockburn's former partner and had worked with him in the companies, both wanted Mr Tully removed as director. They felt they could not trust him and that he was taking

advantage of Ms Cockburn's inexperience. There were trackers on the company vans and he was not going directly to jobs. There were serious allegations of him taking cash on jobs, but Mr Bald never saw any proof of that. Ms Cockburn was relatively young and inexperienced and felt out of her depth at that time, so it made sense to bring Mr Bald on board to work alongside her to deal with these issues. Both the defender and Ms Cockburn were happy with him coming in as a director. Ms Cockburn and Ms Moriarty felt that the defender did not have experience in the roofing and building trade, and Mr Bald might bring a little bit more experience and understanding than she would. He could help advise and assist the defender as judicial factor in relation to the companies.

[370] On 30 August 2016, the defender copied him into an email she sent to Alistair Simpson. She advised Mr Simpson that she had asked Mr Bald to value the companies for inheritance tax and legal rights purposes. The defender was getting frustrated trying to get information out of Mr Simpson and she thought Mr Bald might be able to get a bit more information out of him. She asked him to provide Mr Bald with any information, documentation and correspondence he held in relation to the companies, to assist him. Also on 30 August 2016, the defender emailed Mr Bald direct, following up on a meeting they had had the previous evening with Ms Cockburn. She summarised what had been discussed at the meeting and the action points. She referred to him carrying out a valuation of the companies. She mentioned that the accounts of Roofing in recent years were not presenting a true picture of the company as money was shown as held in reserve which had actually been withdrawn by Scott Cockburn and spent on renovating his property at Oxgangs Road, Edinburgh. The defender was not sure whether the money removed was best treated as a loan to Scott Cockburn as director or as dividends. He had essentially been using money and resources from the companies to renovate his property at Oxgangs Road.

As part of the valuation of the companies that the defender wanted him to carry out, Alistair Simpson would have to account for all of the money or resources used and paid for by the companies as director's loans.

[371] The defender asked Mr Simpson to work on that to get a proper balance sheet as at 6 June 2015 (being the date of Scott Cockburn's death). She wanted him to update the company accounts, going through the transactions and identifying as much as he could of the money taken from the companies by Mr Cockburn and also to identify any materials that had been bought by the company for the property at Oxgangs Road.

[372] Jackie Skinner, the office manager of Roofing, had been dealing with the bookkeeping and Ms Moriarty had been trying to keep on top of the accounting records. Following Mr Cockburn's death, however, the accounting and bookkeeping had been left somewhat short of where it should have been. There was a discussion about implementing Sage Accounts, a computer-based accounting system, which would have been much better. The companies had Sage on their computer system but it was not well used. The accounting records were manual, based on the bank statements. Mr Bald was hoping to be able to standardise the accounting system.

[373] In the email of 30 August 2016, the defender also advised that Mr Bald was to act as finance director of the companies and to advise Ms Cockburn, as the remaining director, on the steps needed to recover them to good health. Once Mr Bald completed the valuations, he was to be formally appointed as director of the companies. There was discussion of Ms Moriarty perhaps being appointed as a consultant to help implement changes.
Miss Hope told him that Ms Moriarty had raised an unfair dismissal claim against Roofing, which came about because Steven Cockburn had purportedly sacked her when he was a supposed director of the companies. The relationship between Ms Cockburn and Mr Tully

was not good at this stage. He thought she was just a silly little girl. She did not believe he was being honest in his dealings for the companies. Due to that breakdown in relationship, it was necessary to try to move towards removing Mr Tully as a director and his leaving the companies.

[374] Mr Bald opened a discussion with Duncan McFadzean from ELP Arbuthnott McClanachan, for employment law advice. There were a number of things that he had highlighted that needed to be resolved before removing Mr Tully as a director. He was not removed immediately. There was a lot of coming and going. Mr Tully was essentially organising the men, dealing with the quotes, meeting with the customers, carrying out work, preparing estimates and the like. He was the man on the ground for the companies and there was nobody that was capable, at that time, of stepping up to replace him, certainly not Ms Cockburn. She worked very hard to try and understand the business, but she was very inexperienced and had no real knowledge of it. Taking Mr Tully out of the company immediately would be a concern because he managed the staff and organised the jobs. That would not have happened without him. Mr Bald highlighted to Ms Cockburn and Ms Moriarty at the time that removing him from the company would cause a significant problem. Money was coming in and the wages were being paid but if the work stopped and staff did not know what to do, it would not have been good for the business. They understood that.

[375] Mr Bald was formally appointed as a director of the companies on 30 September 2016. At that stage, the directors of the companies were him, Ms Cockburn and Mr Tully. On 30 September 2016, Alistair Simpson provided copies of the accounts for Roofing for the year ended 31 December 2015 to the directors. He also sent restated accounts for the years ending 2013 and 2014 following the discovery of certain bank statements he had not

previously seen. He advised that he was preparing accounts for Roofing for the period from 1 January 2015 to the date of Scott Cockburn's death. He also sent Mr Bald copies of the accounts for Scaffolding for the years ended 2013, 2014 and 2015 and also covering the first part of 2015 until Scott's death. The purpose of him sending Mr Bald these accounts was to assist with his preparation of the valuation of the companies as at 6 June 2015, the date of Scott's death.

[376] One of the principal assets of Scaffolding, as at 6 June 2015, was a director's loan, due by Scott Cockburn to the company, of £89,961. On Mr Bald's initial preparation of the valuation of the companies at that time, he included the asset figure of £89,961 because that is what the 6 June 2015 accounts showed. Alistair Simpson prepared accounts to 6 June 2015 for Scaffolding. The notes to the financial statements showed the director's loan balance as £89,961. Mr Bald subsequently found out, when the 30 November 2015 accounts were produced, that the director's loan shown therein was £39,961 and not £89,961. He was not entirely sure why that figure had been reduced. The reason given was that it was a typographical error but the defender found out later from speaking to Alistair Simpson that it might be to do with the dividends that had been declared on Scott Cockburn's tax returns. Mr Bald was not sure who had declared that dividend. Up to the date of Scott Cockburn's death, money had been taken out of Roofing and Scaffolding. Some of this was shown as director's loans and some as dividends. The error may have been in the allocation of these and the sum of £50,000 presented as a dividend on Scott's tax return rather than as a director's loan. The revised accounts to November 2015 therefore showed a director's loan amount of £39,961 not £89,961. Mr Bald needed to prepare company valuations as at the date of Scott's death. A dividend had to have been declared prior to the date of death, so the

figure originally provided by Alistair Simpson of £89,961 was incorrect. Mr Bald therefore needed to revise the valuation and to reduce the company's net assets by £50,000.

[377] This was possibly confusing for Ms Cockburn and Ms Moriarty because the company accounting periods were to 30 November and 31 December each year but the personal tax return period was to 5 April each year. Ms Moriarty kept referring to earlier tax return periods but Alistair Simpson had already taken account of that and earlier dividends through the accounts which dealt with earlier tax returns. Ms Moriarty tried to reconcile the dividend that appeared in the accounts with what was going on in the tax returns but the point was that the £50,000 that was declared in the accounts to 30 November 2015 had not been accounted for in the earlier tax returns lodged for Scott Cockburn. It needed to be accounted for and Alistair Simpson rectified that, which was evidenced by the fact that the original accounts he produced to 6 June 2015 had a director's loan of £89,961 which was reduced by £50,000 when he did the final accounts to 30 November 2015. Mr Bald's decision to reduce the director's loan from £89,961 down to £39,961 was correct. The point was that the £89,961 was incorrect and the correct figure was £39,961 as shown on the 30 November 2015 accounts.

[378] On 6 December 2016, Mr Bald emailed the defender to let her know he had valued the shares in the companies. He valued the shares in Roofing at £282,000 and the shares in Scaffolding at £107,000. The shares in the third company, Colinton Roofing Limited, had been valued at zero. It was a non-trading company. He explained to the defender that he was having difficulty establishing the loans due by Scott Cockburn to the companies due to their interlinked nature. He was of the opinion that the director's loan for Roofing was £78,398 and for Scaffolding was £89,961. The defender asked him to clarify whether the sums of £78,398 and £89,961 were due from the estate of Scott Cockburn as director's loans.

She noted that without those assets in the companies, the debts of the estate outweighed its cash. Mr Bald confirmed that the two companies were due to be paid from Scott Cockburn's estate.

[379] It appeared that Scott had a personal bank account into which funds were being paid and it was being emptied to then pay for works at the property at Oxgangs Road. It had been Scott Cockburn's intention to obtain a mortgage over the property to then pay the companies back the money. If he had not passed away, he might have done that. Around this time, Mr Bald prepared a net asset statement for Scaffolding which showed the current assets included a director's loan of £89,961 less the dividend shown on Mr Cockburn's tax return of £50,000, leaving a total due to the company of £39,961. This updated net asset valuation was carried out by him on 1 June 2018.

[380] Separately, over the course of 2016, Mr Bald was aware of an ongoing employment tribunal claim which Ms Moriarty had taken against Roofing. The claim had come about following Steven Cockburn sacking her when he was a supposed executor on Scott's estate and an apparent director of the companies. Mr Bald did not have a lot of knowledge of the background; Roofing had insurance cover for the claim and had appointed a company called Peninsula to deal with it. Mr Bald had to attend the employment tribunal for a hearing but, in the end, it did not go ahead because a settlement was reached with Ms Moriarty. There was not much of a defence to her claim because of the way Steven had dealt with it all. The company was advised by Peninsula to settle the claim and Mr Bald signed it off on behalf of the company. The claim was settled for £15,495.25. Ms Moriarty wanted to be involved in the companies as a director. She knew the businesses extremely well as she had been Scott's partner and had worked extensively in them. She might not have been involved in the operational side of things, but she had a good knowledge of their

management. Mr Bald did not disagree with having her involved as he thought it would have benefited the companies. It would have helped Ms Cockburn to understand the history of the companies. The defender, however, was not keen on that. She felt that with Mr Bald being a director, there was no need for Ms Moriarty to be appointed. He had been quite impressed with Ms Moriarty's knowledge and she was very helpful in providing information and background to him.

[381] He was also aware from the time he was appointed that there was a claim against Roofing by Jewsons for payment. On 4 November 2016, the defender emailed him about reimbursing Roofing for payments that had been made to Jewsons which were truly due by Scott's estate as they were for materials and services purchased in connection with his property at Oxgangs Road. Roofing had made two bank transfers of £2,500 to Jewsons and this sum was due to be reimbursed by the estate to the company. Jewsons had raised a court action against Roofing for payment of the remainder of the money due to it for the materials. There was some confusion over who owed it the money, Scott as an individual or Roofing. The invoice had been raised by Jewsons to Scott as an individual, but Roofing had paid for it and needed to be reimbursed for that. The materials had been delivered to the property at Oxgangs Road so it was clear it was for personal use at Scott's property. Mr Bald was responsible as director to ensure the money came back into Roofing. Cash flow was getting tight and it seemed an obvious way of getting money back in. The sum of £5,000 was paid back to the company by the defender from the estate on or around 7 November 2016.

[382] The companies were trading when Mr Bald became involved but they were not bringing in much work. Scaffolding was doing very little. Any work was mainly through Roofing. It still had a good name and the phone was busy enough. The issue was just trying to get people out to quote for the work. Jackie Skinner, the office manager, was handling all

the calls. Mr Bald did not have any concerns about wages or salaries. Ms Cockburn was paid a salary through PAYE. She was certainly putting in the hours. She was there early in the morning until late at night and worked very hard to understand the business and keep on top of everything. He had no concerns about the level of remuneration she was receiving. The defender did raise a few times that she was concerned at the level of salary Ms Cockburn was taking.

[383] On 8 February 2017, Mr Bald emailed the defender to advise that trading from the start of 2017 had not been as hoped, with few enquiries and not much work going forward. Redundancies had been made to cut costs and a cut in the hourly rates for employees was under consideration. The defender replied to say that she was disappointed and a little surprised by the news. She advised that work was needed at the property at Oxgangs Road to make it wind-and watertight so it could be sold. She had in mind to instruct Roofing, which would obviously generate some income. Mr Bald was aware that the property at Oxgangs Road had some issues. He knew there was ultimately a significant asset due to the companies from the estate, being the repayment of director's loans, and so it was in the companies' interests to have the property finished and sold. It was important for the director's loans to be repaid. Ultimately, a sum of only around £20,000, in terms of repayment of director's loans, was made to the companies.

[384] In February 2017, Mr Bald was aware that Ms Cockburn had complained to the defender and her firm about the judicial factory and its management. The defender emailed him on 21 February 2017 with a copy of a letter she was sending to Ms Cockburn following the complaint. His understanding of the situation was that Ms Cockburn and Ms Moriarty felt that the defender had missed a previous opportunity to remove Mr Tully as a director of the companies. They were not happy that she had not acted quicker. The defender emailed

Mr Bald and Ms Watson on 21 February 2017 expressing surprise that Mr Tully was still a director of the companies at that time. She was outlining the steps she could take to have him removed as a director. On 24 February 2017, she wrote to Mr Bald again suggesting a meeting or call to bring her up to date with developments in the companies and to consider steps which should be taken to remove Mr Tully as a director.

[385] She emailed him again on 21 March 2017 following up on her email of 24 February 2017. She was looking for an update because the Accountant of Court wanted to be kept informed about the removal of Mr Tully and the merits of considering closing down the companies that had been set up with similar sounding names to Roofing. This was in relation to Ms Moriarty and, separately, Mr Tully having set up companies with similar names. Mr Bald was aware that Ms Moriarty had set up a company called Buckstone Roofing (Edinburgh) Limited and Mr Tully had set up a company called Buckstone Roofing Limited. At that time he was not aware of the reasons behind these companies being set up. The defender was looking to meet with him in around April 2017 to discuss the current and future viability of the companies belonging to the estate. He emailed her on 13 June 2017 to advise that he had had a conversation with Ms Cockburn and had asked her to arrange a meeting amongst her, him, Ms Skinner and Ms Moriarty. That meeting happened on 22 June 2017. It had been difficult to arrange the meeting because Ms Cockburn would only attend if Ms Moriarty was present. She was having a crisis of confidence. Mr Bald had been trying to arrange the meeting but it just seemed to drag on and on. He was getting frustrated by the delays as it was necessary to discuss various matters in relation to the running of the companies.

[386] The main issues were working relations with Mr Tully, general trading of the company and whether Ms Cockburn had looked into training for herself. Ms Moriarty was

not an employee with, or a director of, the companies. Ms Cockburn, Mr Tully and Mr Bald were the three directors at this time. Mr Tully was still getting on with the job and Ms Cockburn was working in the office. Together they were running the companies. Mr Bald was in his own office, relying on them to do the day-to-day aspects. Income was being received, but things were still tight. The companies were just ticking over. Although Ms Moriarty was not formally a part of the companies, she was still helping out. She was not being remunerated for doing that. When Ms Skinner left, Ms Moriarty stepped in and supported Ms Cockburn. She helped her a lot.

[387] On 21 June 2017, the defender emailed him setting out some concerns she had regarding various aspects to do with the companies and "danger points", as she referred to them in her email. The concerns she set out in her email included: Jackie Skinner, who was feeling unsettled; the removal of Mr Tully as a director - he had failed to resign but had not yet been removed as a director, and was still an employee of the companies as well; Ms Moriarty potentially becoming a consultant; and Ms Cockburn and Mr Tully having a duty to work for the benefit of the companies - she referred to Mr Tully setting up another company and whether Ms Cockburn was justified in receiving the salary she was.

[388] Mr Bald felt that the defender was being harsh with her comments in that email in relation to Ms Cockburn. In relation to Ms Skinner, Ms Cockburn and Ms Moriarty felt that she was going behind their backs and speaking to the defender about the companies and certain issues. He reminded them that the defender as judicial factor was the shareholder in the companies and that Ms Skinner providing her with information was not going behind their backs at all. She was the 100% shareholder as she was in effectively in the shoes of Scott Cockburn. She was not a director. As the sole shareholder, she was not completely passive: she was asking questions and seeking information about the performance of the

companies, although she was not involved in their day-to-day management. That was for the directors of the companies. Mr Bald, Ms Cockburn and Mr Tully were happy to ensure that they were running the companies. Mr Bald saw himself more as a chairman, trying to bring direction to the business so there was a way forward for the companies. The day-to-day running was carried out by Ms Cockburn and Mr Tully. Mr Bald recalled that Ms Cockburn's family were not making life easy for her and at one stage she needed to take time out to address that. Generally, he was happy with the hours she was putting into the companies. The relationship between her and Mr Tully was not too bad at that time. Mr Bald felt they were working well together. He had encouraged Ms Cockburn to try to get a relevant qualification but she was putting that off. It would have helped her standing among the staff if she had done that and would have been a good step if Mr Tully was to leave. She did not pursue that. The defender's comments in relation to that in her email were valid.

[389] With regard to removing Mr Tully as a director, Ms Cockburn and Mr Bald, as directors also, could have removed him. It was not just the defender as judicial factor who could take that step. Ms Cockburn and Mr Bald did have various discussions about how to approach dealing with Mr Tully. There were times when it was working out but times when they had fallen out. He would often criticise Ms Cockburn, it would come back to her and she would become annoyed and angry with him. Mr Bald did not think there could be any criticism of the defender in not removing Mr Tully as a director. He was comfortable that he and Ms Cockburn as fellow directors had discussed that and were dealing with Mr Tully.

[390] Mr Bald believed that Ms Cockburn felt there had been a missed opportunity to remove Mr Tully in around August 2016 before he was appointed. It was around that time that evidence had apparently been produced of Mr Tully taking cash for a job and it was

apparently given to the defender at the time to deal with. That was before Mr Bald's involvement. He did not have first-hand knowledge of Mr Tully carrying out cash jobs during his employment when he was a director. Ms Cockburn and Ms Moriarty had told him of incidents but he did not recall the details. Ultimately it was necessary to go down the disciplinary route with Mr Tully on the basis that he was not up to the job and was making mistakes. ELP Arbuthnott McClanachan were consulted regarding Mr Tully and how to deal with him. They advised that the company was leaving itself open to a constructive dismissal claim from Mr Tully if he was dismissed without evidence or grounds.
Ms Cockburn was frustrated because she thought the opportunity to get rid of Mr Tully in the summer of 2016 had been missed. Removing Mr Tully from the companies was going to be very costly given his role and the work he did. It was decided to take a different route. The defender was not necessarily kept abreast of all of that, which is probably why she was surprised in February 2017 that Mr Tully was still a director.

[391] In relation to Ms Moriarty having set up a company called Buckstone Roofing (Edinburgh) Ltd, she said that she had set that company up to protect Roofing. She explained to Ms Cockburn and Mr Bald that she had no intention of trading that company. They accepted that explanation at the time. Mr Tully had also set up a company called Buckstone Roofing Ltd. That was the final straw for Ms Cockburn. He was confronted about it and he sent his letter of resignation after that meeting. Mr Bald did not believe that he ever traded through that company. Mr Tully ended up setting up a business with his son called Tully Roofing Ltd. He never traded as Buckstone Roofing Ltd. Ms Cockburn and Mr Bald kept an eye on it to ensure he did not. Mr Bald thought that Mr Tully thought Roofing would collapse and he would be able to pick up the customers. On 4 September

2017 Mr Bald notified the defender that Mr Tully had been removed as a director of the companies.

[392] On 27 September 2017, Alistair Simpson emailed Mr Bald with the accounts for 2017. He replied on the same day advising that Mr Tully had resigned as director, Mr Bald had been appointed on 30 September 2016 and that Ms Cockburn should be shown as a signatory to the accounts. A few months later, in November 2017, the defender emailed Mr Bald again, requesting an update on how things were going at Roofing and raising a number of queries regarding the companies. She was looking for the full accounts which had been lodged with Companies House and looking for an update on the companies which Mr Tully and Ms Moriarty had set up. The defender and Mr Bald ended up having a meeting on 1 December 2017 at her office. The defender explained that she had stepped back since appointing him as a director of the companies to allow him and Ms Cockburn to run the companies. She knew that Mr Bald had agreed to appoint Ms Moriarty as bookkeeper and that she had been providing him with information which had been helpful. She was concerned that she was not receiving information about the bank accounts and turnover of the business. Mr Bald was also encountering difficulty getting that sort of information from Ms Cockburn and Alistair Simpson. The defender was also concerned about the delay in Mr Tully having been removed but by this point he was no longer a director and a new estimator was being trained up.

[393] Mr Bald produced a summary showing the financial position of Roofing from 31 December 2016 to 30 November 2017, bringing out a net current asset figure of £23,963. He told the defender that while the company had not performed well, the rate of decline had slowed at that point. The defender mentioned again about Ms Cockburn's wages and being surprised at the level of those. Mr Bald maintained that £500 per week was a reasonable

wage. Ms Cockburn was putting in a considerable number of hours, and it did not seem fair to him to pay her less than that. She was trying very hard and Mr Bald did not want her to lose confidence by asking her to reduce her salary. As that was a directors' issue, he was content to leave her salary as it was. Miss Hope also raised at the meeting what she thought was a high level of payment for office administration. She thought that was one of the factors causing the business to be unprofitable and had to be addressed. Mr Bald did not agree with that. The company was doing reasonably well. He felt these were matters for the directors of the companies and not for the defender as shareholder, although she was entitled to her views on the matter.

[394] The defender also updated him at that meeting on the difficulties in selling the property at Oxgangs Road. He was not involved in that but was aware it was likely to have an impact on the sums which could be paid by the estate to the companies in respect of the director's loans. Miss Hope explained that the companies were the only assets left in the estate apart from the net free proceeds of the sale of the property at Oxgangs Road. She explained that the three daughters who were excluded from Scott's will had claimed legal rights, as had Scott's wife, Ms Innes, and that if the legal rights claims were settled in cash, there would not be enough money to repay the director's loans to the companies. She suggested that one option would be that Ms Cockburn's sisters could receive shares in Roofing instead and they would receive payment when the company was eventually sold. The two companies set up by Mr Tully and Ms Moriarty with similar names to Roofing were also discussed. Mr Bald's intention had been to write to them to insist the companies were transferred to the estate or struck off but he did not ultimately do that because they were not trading the companies and he did not consider them to be a problem for, or impacting on, Roofing or Scaffolding.

[395] He was concerned at that stage that the director's loans might never be repaid by the estate. If the amounts could have been paid to the companies, it would have been nice to create a good cash buffer as it was a worrying time with Mr Tully leaving the business. There was a concern at the time about bringing in new work and the cash flow was tight. However, he understood the defender's position dealing with the estate and the estate funds. She emailed him on 20 December 2017 with specific questions she had following the meeting. With regard to the companies' bank accounts, Mr Bald was supposed to get access to them but did not. That was a source of frustration to him. He did not have access nor could he log on to the online banking to have a look at them. He started to receive bank account information from Ms Moriarty in around March 2018. She and Ms Cockburn had access to the bank accounts. The defender repeated her concerns with regard to the salary Ms Cockburn was taking and the fact she was getting £500 net per week. She also referred again, as she had at the meeting, to Ms Cockburn acting in bad faith and said that she felt there would be reasonable grounds to remove her as a director, but that she knew doing that would be problematic. She also referred to the apparent disappearance of cash from the safe and Ms Cockburn's continued postponement of taking steps to obtain her scaffolding qualification. She noted that there had been another bank account, held in the joint names of Scott Cockburn and Ms Moriarty, and she thought it would be helpful to match up the payments coming out of the companies' accounts with those going in and out of the personal bank account.

[396] On 9 January 2018 the defender followed up with Mr Bald on that email and suggested they should arrange to meet, perhaps with Ms Cockburn also, to discuss the points she raised in it. On 19 January 2018, the defender and Mr Bald had a telephone conversation. He advised that he was receiving little information from Ms Cockburn and

she was refusing to meet him. He was getting some financial information from Ms Moriarty but not all that he should have had as a director. It was very frustrating. He emailed the defender on 6 February 2018 to let her know he had had a meeting with Ms Cockburn and Ms Moriarty and he now had access to the bank account. He suggested a meeting between the four of them would be beneficial and provided the defender with some dates.

[397] She emailed him on 14 February 2018 to advise that there was a sum due to the estate of £2,826.13. She explained this was in relation to the net free proceeds of the sale of Scott Cockburn’s car which had been sold by Steven Cockburn. She explained that Steven received £19,614.01 from Broxburn Motorzone for the car. There were two payments through the Roofing account towards Scott’s funeral but Steven got in touch to confirm the funeral had cost £5,842.17 and he would deduct that from the money received for the car. It transpired that he had also deducted the funeral catering costs of £820.04 and paid in the balance of £12,951.80. The defender had been able to ascertain, however, that only £3,016.04 of the funeral costs had been paid by Roofing, with the remainder of £2,826.13 having been paid from Scott's own bank account. That was the sum she was advising was due to be paid back to the estate. At that stage, however, Mr Bald did not have access to the company bank accounts to be able to initiate payments. She emailed him about this again on 7 March 2018 and he replied on 8 March 2018 confirming that he had instructed Ms Cockburn to send the payment. It turned out that payment had not been made by April 2018. Mr Bald advised that the sum of £2,026.50, which was due by the estate to Roofing for three invoices would be written off and he would send her the remaining balance of £799.63 to deal with the matter. The invoices related to alarm cover and repair work Roofing had done to Oxgangs Road.

[398] He had an exchange of emails with the defender over 14 and 16 February 2018 in relation to setting up a meeting with Ms Cockburn to discuss the companies and the estate. Ms Cockburn wanted Ms Moriarty also to attend. Ultimately there was a meeting on 20 February 2018 at the defender's offices. Those in attendance were the defender, Ms Cockburn, Mr Bald, Drew Taylor and Jaci Moriarty. Mr Bald's recollection of the meeting was that it was generally positive. Ms Cockburn explained all the work she had been doing with the companies, as well as the support she was receiving from Ms Moriarty. Ms Cockburn had by this stage made a complaint about the defender as judicial factor that was ongoing. Mr Bald had told Ms Moriarty and Ms Cockburn not to mention the complaint at the meeting because that was not its purpose. He did not want the meeting descending into accusations. At one point Ms Moriarty raised her voice. She felt items were being brought up that were not on the agenda. The purpose of the meeting was to discuss the viability of the companies but she felt that the defender kept taking it back to the dismissal of Mr Tully and why it had been a missed opportunity.

[399] The value of the companies, which impacted the legal rights claimants, was discussed. The defender explained that if the valuation was too high and legal rights claimants got too much, it would impact what was left for Ms Cockburn and her brothers. Mr Bald then explained that he had to value the companies as at the date of Scott Cockburn's death. The accounts at that date had a major asset, the director's loans, so he needed to ascertain what the amount of the director's loans was. He said that if the value of the director's loans was not correct then his valuation of the companies was not correct. He also said that if the estate was unable to pay that debt in full, then that was clearly going to have an impact on the company valuations. At the meeting, Ms Moriarty asked how the director's loan amount had been worked out. The defender explained that when she got the company

accounts and the details of what cash was in the bank, she pointed out to Alistair Simpson that the accounts in 2013/14 were overstating cash at the bank and he then said the accounts would need to be re-cast because they showed the companies having money which they clearly by then did not have. He showed the money which had been removed as a director's loan. Mr Bald said to Ms Moriarty and Ms Cockburn that from what he understood from his discussions with Alistair Simpson, essentially any expenditure that was unexplained, such as monies getting transferred out to Scott's personal account, had been put down as a director's loan. The defender mentioned that the best part of £300,000 went out of the companies and she presumed that was to get the equity in the house at Oxgangs Road. Ms Moriarty confirmed at the meeting that a lot of the money from Roofing was used to do up the property at Oxgangs Road with the intention of selling it eventually and repaying the money to the company. There was some discussion at the meeting about moving towards distributing the estate.

[400] On 12 April 2018, the defender emailed Mr Bald asking him to look at an invoice she had received from Roofing. She was questioning the appropriateness of the invoice. She was surprised that Ms Cockburn had taken steps to invoice the estate for the work done at Oxgangs Road. The defender emailed Mr Bald again on 26 May 2018. She was looking for updated figures for the companies and wanted to check he was receiving the information he ought to be receiving, as a director, from Ms Cockburn and Ms Moriarty. She went on to say that Ms Moriarty had provided joint account statements which showed a clear trail of payments from Roofing's savings account to Scott's own personal account in April 2013, and then £290,000 being transferred back in June 2013. She then said that a further £10,000 was transferred on 1 August 2013 to Roofing, which provided a total of £300,000, and was the figure referred to at the meeting with Ms Moriarty and Ms Cockburn on 20 February 2018.

The defender was satisfied with this paper trail as it showed all of the £300,000 eventually going back to the Roofing account and allowed her to confirm to HMRC that no reportable gifts had been made from the joint account. She was able to confirm that the whole £300,000 had been paid back to Roofing between 6 November 2013 and 31 December 2014.

[401] In her email, the defender went on to refer to Roofing's accounts showing dividends of £102,000 in the year to 31 December 2014 and dividends of £46,200 in the year to 31 December 2015. She asked Mr Bald to look again and confirm that he was confident that the company accounts as adjusted reflected the true position and whether the valuations provided did still reflect a true valuation of the companies, the main assets of which were director's loans due from the estate of the deceased. She said she wanted to be absolutely sure that no money accounted for as dividends had been included in the director's loan figures. She said she had always been concerned that full and correct figures were not always supplied or picked up on. She sought his views on the timescale for selling the companies and explained she was trying to finalise the sums due in relation to legal rights to Ms Innes and to Scott's three daughters who had been excluded from the will. She was not sure if she would be able to pay those legal rights without selling the companies.

[402] On 1 June 2018, Mr Bald met with the defender and her colleague Drew Taylor. Mr Bald explained that business was not doing very well and was surviving hand-to-mouth. It was just ticking over and not growing as had been hoped. He was aware at that time that other roofing businesses in Edinburgh were laying off workmen. He reported that he expected a £20,000 to £30,000 loss for the year-end accounts. He also explained that the dividend paid to Scott Cockburn had been £70,000 and not £102,000 as reported in the accounts. This made no difference to the director's loan figures. He went on to explain the companies had no profits.

[403] The defender thought the best way to deal with the companies was to sell them but the building trade was not doing well in 2018 and Mr Bald explained to her that, at that stage, she was not going to get good value for them. At one point he did think it would ultimately be best to sell the companies but anybody doing any due diligence on the figures at that stage would have seen the business was just ticking along, so it would not sell for as much as everyone hoped.

[404] Another option that was considered and discussed between Mr Bald and the defender was to transfer the shares in the companies to the beneficiaries. He could not recall how it was proposed they would be split but the defender was trying to finalise the estate. The companies were not trading well at all, so the option to continue trading and transfer the shares to Ms Cockburn and her two brothers would then give the companies time to build up and the siblings could then sell at a later stage if they wished to, perhaps when they could get better value for the companies. Ms Cockburn was not keen on company shares being transferred to her.

[405] On 31 October 2018, the defender emailed Mr Bald to let him know that she had received notification that the SLCC, to whom Ms Cockburn had made a complaint, had determined that no further action would be taken. She was telling him that as it had had an impact on winding up the estate. The Accountant of Court had told her not to finalise the estate until the complaint had been dealt with. In this email, she referred to speaking to Ms Innes about transferring shares to her sons rather than selling the companies.

[406] Mr Bald had a phone call with the defender on 2 November 2018. At the time he was struggling to get information from Ms Moriarty and Ms Cockburn. It had been some time since he had received anything, but he was able to go online and at least check the bank account and see the various transactions. At that time, the bank balance was around £11,000

when it usually was around £20,000. He reported that he had not seen many payments in from customers. He was hopeful that things would improve once the companies returned to the family. He intentionally did not comment on Ms Cockburn as he felt there was some hostility from the defender to her position. She was continuing to work very hard at that time. Mr Bald was content with what she was doing in running the companies to the best of her ability. Following the call, the defender emailed him. She was looking to get his advice on the future options for the companies and the best way of dealing with matters in the interests of the three beneficiaries.

[407] On 6 November 2018 the defender emailed him again in response to an email he sent to her to let her know he had received updated figures from Ms Cockburn and Ms Moriarty but still awaited a copy of the signed accounts from Alistair Simpson. She also advised that the company set up by Mr Tully had now been dissolved and the one set up by Ms Moriarty was dormant. She did not see any point in raising the topic with Ms Moriarty at that stage. On 9 November 2018, she let Mr Bald know that she had set up a meeting with Ms Innes and her solicitor for later in November. She enquired whether he would be able to join her for part of the meeting. She also wanted to meet him prior to that to review the accounts and other matters. She got in touch again on 13 November 2018 raising a concern that Ms Cockburn and Alistair Simpson had felt it permissible to sign and lodge company accounts with a statement they had been approved by the directors when Mr Bald had not seen and approved them. All directors were meant to see and approve accounts before lodging with Companies House. Mr Bald found out from looking on Companies House that the 2017 accounts for both companies had been filed without him seeing them. It was inappropriate that he had not seen them prior to them being lodged.

[408] On 19 November 2018, he attended a meeting with the defender and one of her colleagues, Ms Innes and her solicitor from Brodies. The meeting was to discuss various matters including the nature and extent of the estate, legal rights claims, the setting up of a trust for Ms Innes's two sons, James and Conner, and the future of the companies. One of the options for the companies was appointing Ms Innes as a director, which was not something she had considered. She did indicate that Conner had always said he wanted to work for the company and believed that was still his intention. On 31 December 2018, Mr Bald emailed the defender to advise that he had understood Ms Innes was happy to proceed with her holding two thirds of the company shares on behalf of her sons. There would need to be reorganisation of the shares as there were only two shares in issue which obviously could not be split amongst three people. He emailed her again on 31 December 2018 and referred to her needing to have a more reliable and robust supply of information from the companies. He suggested an online accounts system called "Freeagent". He suggested that his firm could act as the companies' accountants and that Ms Innes ought to be a director, but he had not yet raised that with Ms Cockburn.

[409] On 6 February 2019, the defender emailed him to advise she had understood that neither Ms Innes nor her brother had an appetite to become directors but were still happy that the shares would be distributed to the beneficiaries. She explained that she was conscious of Ms Cockburn's hard work to keep the companies going. She was of the view that an earlier sale of the companies might have been the best solution but that would have been against Ms Cockburn's wishes. An earlier sale had not been spoken about so far as Mr Bald was aware.

[410] On 12 February 2019, he and the defender met to work through the treatment of the loans due by the estate to the companies. On 8 April 2019 he emailed her following input on

the tax position concerning the director's loans, and dividends being issued for the unpaid balance on the loans. The dividends would be taxed at 7.5% compared to savings income at 20%. On 17 April 2019 the defender wrote to him again in relation to how to deal with the loans due to the companies, further to her considering it again with some of her colleagues. She suggested that a way to deal with the writing-off of the loans might be to spread the dividends over two years. She gave example figures of what she was considering and said she thought it might be the best way of dealing correctly with the write-off of the loans without causing any of the beneficiaries a major tax problem. She asked if he would be content to proceed in that way. They discussed that suggestion further and she reported that Ms Innes had agreed that there should be a distribution to Conner in his own right and, in relation to James, a request would be made to the Accountant of Court to issue a direction. If that happened, it was likely someone would be appointed to administer the share for James until he turned sixteen. She asked if progress could be made with the creation of the additional shares and the transfers of the shares in the companies to Ms Cockburn and Conner, once Mr Bald had dealt with the dividend. She asked him to put in hand the transfers and prepare the draft transfers to Ms Innes as guardian for James so that she could go ahead once directed by the Accountant of Court. Mr Bald had agreed to speak to Ms Cockburn to explain the steps to be taken to deal with the sums of money removed by her father from the companies and the plan to pay dividends spread over two years.

[411] He said to the defender in an email of 5 June 2019 that he had arranged to meet Ms Cockburn on 26 June 2019 to discuss the dividends and the steps to be taken. At that time, Ms Cockburn had said to him that she wished to sell the companies, and he told her that the best way to do that would be to proceed with the share transfer first. They were due

to meet on 26 June to discuss everything. Mr Bald thought the share transfer would be best because of the breakdown in the relationship with the defender and Ms Cockburn's wish for the proceeds of any sale to be paid to herself and her brothers.

[412] He was aware by this stage that Ms Cockburn was complaining to the defender about a number of issues. In an email to him of 19 June 2019, the defender copied to him exchanges of correspondence with Ms Cockburn in relation to a number of complaints she was making in relation to the companies and generally the handling of the estate. The complaint was nothing to do with why Mr Bald resigned. On 27 June 2019 he emailed the defender and let her know that Ms Cockburn had cancelled the meeting they had been due to have the day before to discuss all these matters, that he was not sure why she had cancelled, and that he had not been able to speak to her. He said to the defender that he was reconsidering his position as a director of the companies because of his frustration at not being able to obtain the financial information he felt he needed as a director and the lack of progress on his proposal to transfer the shares.

[413] On 26 September 2019, he emailed the defender to advise that he had had no response from Ms Cockburn to the proposal, was of the view that he could not carry out his duties as director, and was resigning as of that date. During the period from April to September 2019, he had been chasing a response from Ms Cockburn. He had not copied in the defender as there was nothing to report until he could get Ms Cockburn to agree to the way forward. He did not know why she would not agree to the transfer of shares to the beneficiaries as it seemed the most sensible way forward to get the companies back to the three of them as shareholders. It could be that she was annoyed that she had put in all the work she had but was only to get one third of the companies, but that was speculation. He did have some phone calls with Ms Cockburn during this period but she was saying that she

was not in the right frame of mind to consider the proposal. She was still actively running the companies at that stage as far as he knew, but he was getting no information. He felt like he was battering his head against a brick wall. He officially resigned on 26 September 2019 and submitted the relevant paperwork to Companies House. After that date, he heard nothing from Ms Cockburn or Ms Moriarty until the latter appeared at his office a few years later, without an appointment, to try to speak to him. It was not the best conversation; she was quite angry about things. She accused him of colluding with the defender to bring the value of the companies down.

[414] In cross-examination, Mr Bald stated that the company valuations he had carried out proceeded on historic accounting information and were intended to reflect the companies' values as at the date of Scott Cockburn's death, for inheritance tax and legal rights purposes. He had not checked the accuracy of the information used, such as the amount of cash held (which he had estimated), the amounts owed to the companies by the estate, or the nature and value of the fixed assets. He had valued the goodwill of Roofing by starting with a sustainable earnings multiplier applicable to publicly quoted companies, then discounting it by 85%. The company had never, post-valuation, earned the amount which he had used as the multiplicand in that exercise. The company had a high profile in Edinburgh. It sponsored various sports teams and Scott Cockburn was a well-known businessman. That impacted on the assessment of the value of goodwill.

[415] As to Mr Tully, Mr Bald stated that he had no authority to remove him as a director of the companies; only the defender could do that, and he thought she was attending to it. Mr Bald thought it appropriate that he should be removed. Mr Bald had never worked in the businesses after being appointed a director. He had seen himself as playing the role of a chairman. Once Mr Tully had said in October 2016 that he was not going to resign,

employment law advice had been sought about how to remove him. That was to the effect that Mr Tully would have a claim for constructive dismissal if steps were taken at that stage to remove him, and that evidence of his incompetence would have to be gathered over time. Mr Bald had attended Ms Moriarty's employment tribunal hearing, but was not sure exactly what had happened there. He was asked on the day to sign something as a director of Roofing, which he had done. He had tried to get Ms Moriarty to settle the claim beforehand, but she had said that Mr Tully would have to go before she would return. In 2017, Mr Tully had opened up another roofing company of his own, and had ultimately resigned his positions in the Buckstone companies. With hindsight, he should never have been appointed a director in the first place.

[416] It became increasingly apparent that the historic company accounts used in the valuations were inaccurate. The inter-company loan figures as between Roofing and Scaffolding diverged, when evidently they should have been the same. It was unclear whether some, and if so how much, of the money taken from the companies by Scott Cockburn had been treated as dividends rather than loans. Even after Mr Simpson had attempted to restate the accounts, these and other difficulties persisted. He did not have another try. There was never any list of company assets. The valuations (c. £282,000 for Roofing and £107,000 for Scaffolding) depended on the accuracy of the material presented to Mr Bald, and had been issued to the defender with a disclaimer to that effect. She had queried the director's loan figures, and whether they were owed by the estate, and Mr Bald had confirmed that they were.

[417] He was not asked to contact Ms Moriarty, the internal bookkeeper for the companies before Scott Cockburn's death, to seek clarification of any accounting matter, and could not specifically recall why he did not do so. He was aware that the relationship between the

defender and Ms Moriarty was not good, and that no love was lost between them. He did not want to upset the applecart. The defender also frequently complained to him, without good reason, about the amounts that Ms Cockburn was drawing as a salary from the companies. The relationship between the defender and Ms Cockburn also deteriorated. The loan owed to Scaffolding had originally been stated at around £89,000, but that had been reduced to £39,000, as the first figure had been thought to misrepresent a dividend that had supposedly been drawn, but the discrepancy was finally put down to a typographical error, for reasons he could not now recall. By February 2018 the defender was saying that the ability of the estate to repay the director's loans was unclear.

[418] He had not resigned as a director of the companies because he had not been given the opportunity to consider and sign off accounts. Mr Simpson had never asked him to sign any accounts. Mr Bald did not have any day-to-day involvement in the business of the companies. Rather, he had advised and liaised with the defender. He had started to become a sort of go-between. He had no expertise in matters concerning the estate, and did not, for example, even know what legal rights were.

[419] The defender had started to be of the view that the companies should be sold, but he was concerned that value would not be obtained for them, and was hoping that their fortunes would improve. Because of the breakdown in the relationships involved, he thought it would be a good idea to transfer the shares in the companies to Ms Cockburn and her brothers. Although she was running the companies, it would be tough for her. He had agreed to the transfer of £20,000 to Roofing in February 2019. He was unaware of the effect on the estate.

[420] The tax implications of the director's loans being discharged were discussed between him and the defender. He had advised that there were sufficient reserves in the companies

to allow dividends to be declared to achieve that, but now appreciated that that view was wrong. At first, in 2018, Ms Cockburn had been willing to take a share in the companies, but once she changed her mind around June 2019 and resolutely stated that she was not willing to take them, he could not see how the dividend idea would work. It was not his idea to deal with the director's loans by way of the declaration of a notional dividend so as supposedly to pay them back, but he was instructed by the defender to put in hand preparations for doing so. The alternative of writing the loans off would result in a tax liability for the estate, being treated as income of Scott Cockburn.

[421] In re-examination, Mr Bald stated that Mr Tully's role in Roofing had been to do all the customer quotes. The idea that the £50,000 discrepancy which emerged in the amount of the director's loan owed to Scaffolding might be accounted for by an unrecognised dividend was floated by the defender.

Alistair Simpson

[422] Alistair Simpson provided a witness statement in which he stated that he had been a bookkeeper since around 1997. His company, Book-Keeping Services (Scotland) Limited was started in November 2001 and now had three employees, including himself. He started working with Scott Cockburn in the early 2000s, first preparing his personal tax returns.

[423] Mr Cockburn then formed Roofing. He later formed Scaffolding, because Roofing had been hiring scaffolding equipment at quite large cost for all the roof jobs and he decided to buy the scaffolding and formed a separate company for that. He did not trade Scaffolding. It was really just to hold the scaffolding equipment. Roofing was billed for the hire of the scaffolding equipment from Scaffolding. Once the companies were formed, Mr Simpson became involved in working for them doing their annual accounts.

Mr Cockburn would drop off a bag of paperwork in connection with both companies and Mr Simpson would have to go through them and prepare the annual company accounts to be submitted to Companies House and HMRC.

[424] Mr Cockburn ran the companies himself until he passed away. He was their sole director. He was a man who liked to deal in cash. He paid for a lot of items in cash and he would often take cash out of Roofing to pay staff and contractors and other bills.

Mr Simpson could not always work out the full analysis of what he was paying for with the cash, leaving balances unreconciled. Mr Cockburn would often make payments from Roofing's company bank account to his own personal account. He would also often pay for personal items and bills with company money.

[425] In 2013, he took £345,419.59 from Roofing as payments to himself. This was on top of the salary he was taking out of the company. He was also paid dividends of £15,000 for 2013, £70,000 for 2014 and £46,200 for 2015 from Roofing, on top of the money he was taking from the company as salary. There was a pattern of him doing that. These were declared as dividends on his personal tax return over the 3 tax years relating to the dates of payment, being £15,000 for tax year ending 5 April 2014 and £96,200 declared for tax year ending 5 April 2015 with the balance of £20,000 declared for 2016. This again was on top of his salary. He took £1,800 net each month as salary from Roofing. He would take money from Roofing to pay for personal items like Sky TV, Now TV and personal shopping at supermarkets. Mr Simpson accounted for these payments as director's expenses and transferred them to his director's loan account. It was always quite messy to try to sort out and prepare the company's accounts.

[426] Mr Cockburn told Mr Simpson that he was putting the money he was taking out into a savings account for the benefit of the business. He would have to go through all the bank

statements and volume of receipts passed to him and prepare a set of accounts each year from that. There were often payments he could not trace and Mr Cockburn never really explained things properly to him. The unidentified items were included in the accounts as sundry expenses. He was aware that when Mr Cockburn was taking money out of Roofing over the course of 2013 and 2014 that he was renovating a house that he owned and the money was being used for that. Mr Simpson thought that his idea was that over the next two or three years, once the property was finished, Mr Cockburn would repay his director's loan by way of declared dividends to reduce the loan, thus repaying the money owed. This was not proper at all and Mr Simpson told him that, but he proceeded anyway. He tended to do what he wanted as the director of the companies regardless of any advice he got. He was a bit of a maverick.

[427] In June 2015 Mr Simpson received a call from Steven Cockburn, Scott's brother, to say that Scott had died. To his knowledge, Steven had never been involved in the Buckstone companies prior to Scott's death. Steven worked in the building industry but had never worked for Scott before his death. Steven became the director of Roofing and Scaffolding after Scott's death. He made himself a director, put himself on the payroll and took salary. Prior to Scott's death, Jaci Moriarty, who had been Scott's partner, worked in Roofing as the day-to-day bookkeeper. She looked after the books and made sure bills were paid and invoices were issued and the like. Mr Simpson prepared the VAT returns for the companies and the annual accounts. Ms Moriarty was good at doing the books and keeping things in order. Once Steven came into the companies, he dismissed Ms Moriarty from her role. There was a bit of a battle for control of the companies going on at that time. With Steven as director, Mr Simpson was still acting as bookkeeper doing the accounts.

[428] On 4 December 2015 Mr Simpson was contacted by the defender notifying him that she had been appointed as judicial factor on Scott Cockburn's estate. She was looking to ingather financial information about the companies. At a later stage she mentioned needing to get valuations of the companies carried out. She asked Mr Simpson if he could do that but he said that he could not as he was not a chartered accountant. He recommended Malcom Cowan of ML Cowan & Co as someone who could prepare the company valuations. He knew Malcolm and had worked with him over the years.

[429] On 22 December 2015 the defender sent him an email enquiring about a number of payments and cash withdrawals made from the company accounts. Mr Simpson did not know at the time who was making the withdrawals but it would have had to have been a person who was a signatory to the company bank accounts at that time, and he thought that they were Steven Cockburn and possibly Ms Moriarty. When Mr Simpson got the email of 22 December 2015 from the defender, he would have asked the company for the information that was being asked for. He did not have much contact with Steven Cockburn at this time. He would have asked the bookkeeper who had replaced Ms Moriarty for the information. He could not remember the exact response he got from her. Sometimes he could not get clear information from her in relation to the company finances. One of the issues at around this time was a lack of paperwork to pass to the defender because there had been a VAT inspection carried out by HMRC after Scott Cockburn's death and many of the records were with HMRC.

[430] Malcolm Cowan of ML Cowan & Co provided some advice to Mr Simpson regarding the companies and how to deal with certain matters to do with their finances as he had seen copies of their accounts for the last few years prior to Scott Cockburn's death. Mr Simpson sent the defender copies of the Roofing accounts for 2013 and 2014 and said they would

require to be amended following Malcom Cowan's review. The accounts were going to have to be amended because of a high number of withdrawals of money from the company accounts by Scott Cockburn without explanation. These had not been properly accounted for in the company accounts earlier prepared and lodged.

[431] In an email of 10 January 2016 to the defender, Mr Simpson said that he had redrafted the accounts for Roofing and Scaffolding for the years 2013 and 2014 as suggested by Malcom Cowan. In the earlier accounts prepared for these years, the money Scott Cockburn had taken out of the company had not been accounted for correctly as the amounts withdrawn were included as being held on deposit for the company. The redrafted accounts for Roofing to December 2013 showed a director's loan overdrawn amount of £375,647. In the redrafted accounts, the funds Scott Cockburn had taken out of the companies were accounted for as director's loans. A director could not just take money out of a company and not pay tax on it. Normally a payment out to a director would be paid out as a dividend but here, because Scott Cockburn had not declared any dividends, Malcom Cowan suggested they show in the company accounts, and were accounted for, as director's loans.

[432] If a director overdrew their account, the company paid withholding tax at 25%. Then once the loan was repaid, the withholding tax was paid back. If money was paid out as a dividend, it appeared in that director's personal tax return and tax was paid on it. As Scott Cockburn had not shown these payments to himself in his lifetime as payments of dividends, they were accounted for as director's loans.

[433] The defender emailed Mr Simpson on 4 February 2016 regarding payments to Alan Meyer and whether these were for work actually relating to Scott Cockburn's personal property at Oxgangs Road, which they were. Mr Simpson was not involved in the decision

to remove Steven Cockburn as director. He submitted the appropriate forms to Companies House as the defender asked in this regard, but that was all.

[434] On 30 August 2016 the defender informed him that Philip Bald was to value the companies. He was happy to co-operate and provide Mr Bald with any information he needed to do this. On 30 August 2016 Mr Simpson wrote to the directors of Scaffolding saying that he had prepared a profit and loss and balance sheet for the year ended 30 November 2015 following the redrafting of the accounts from 2012 to date. He highlighted that there was now an overdrawn director's loan account up to the date of Scott Cockburn's death totalling £39,960.50 (rounded to £39,961). This came from having sight of Scaffolding's bank statements, where he had discovered that a payment of £40,000 had been made from the company bank account on 5 October 2014. Scott Cockburn had personally met minor company expenses, reducing the balance due from him to £39,960.50. It was Mr Simpson's discovery of the payment of £40,000 that caused him to redraft the accounts for Scaffolding to account. The defender did not ask him to redraft the accounts at this time. Malcolm Cowan had said that the payments that had been made by the companies needed to be accounted for properly.

[435] With Scaffolding, Mr Simpson had no information on stock value and so no valuation of the actual scaffolding equipment. The scaffolding equipment was bought and paid for by Roofing but owned by Scaffolding. Mr Simpson had kept saying to Scott Cockburn that the companies' accounts had to show what was happening, which was that Scaffolding owed Roofing money for the stock but Roofing owed Scaffolding money for hiring it. This was shown in the accounts as intercompany loans until one company settled with the other. There was never an actual payment of money from Scaffolding.

[436] Acting as bookkeeper and preparing the accounts for the Buckstone companies was always very messy. It was always difficult to get clear information from Scott Cockburn and then from the subsequent directors as to what payments had been made and for what and how company money was being spent. A PAYE and a CIS contractors' scheme were in operation, and staff in those schemes were paid in cash. Mr Simpson would see a payment coming out of the bank accounts and would have to try to find out what it was for and who was paid. He knew that the defender was also struggling when she came into office as judicial factor to understand the financial position of the companies. It had always been like that for him over the years.

[437] After Scott Cockburn died his office mainly dealt with Steven Cockburn and the new office manager in trying to get financial information about the companies. It was always difficult to establish what was happening. Latterly it would have been Ms Cockburn to whom he looked to provide financial information about the companies. He thought she was struggling as a director of the companies. He did not think that she was trying to be obstructive in any way but did not think that she had a clear understanding of the business or how to run it.

[438] At the time of Scott Cockburn's death, the business was doing very well. In two years he had turned it from a £150,000 turnover business to over £500,000. After he died, the business carried on and did reasonably for a while, based on its reputation, but as time went by it dwindled. Mr Simpson felt that those running the company were running it down by taking large salaries out of the business, first Steven Cockburn and then Ms Cockburn. Scott Cockburn had always been big on advertising Roofing and spent a lot of money each year on advertising the business. He advertised on taxis and buses and had a banner at the football. He spent around £50,000 a year on advertising. Once he died that

stopped. In 2016, the advertising spend was half what it was in 2015. Mr Simpson's view of the business in the years after Scott Cockburn died was that it was still maintaining turnover but it was not growing and he thought the expenditure was becoming excessive. He had more knowledge prior to Scott Cockburn's death than after in terms of how the business was performing. Once he died Mr Simpson continued to do the books but had little involvement in what was happening in the business. He did feel that there were a lot of times that he needed and asked for financial information from those running the companies but did not get it. The defender would ask for information and he had to go to Ms Cockburn and the office manager to try to get it. It was often not forthcoming or not complete.

[439] On 30 September 2016 Mr Simpson emailed Mr Bald, copying in the defender, attaching copies of the accounts for both Roofing and Scaffolding for the year ended 31 December 2015, following restatement of the 2013 and 2014 accounts for submission to HMRC and Companies House. He was aware that Mr Bald would use these in valuing the companies. The defender had no involvement in the redrafting of the accounts for Roofing provided to her as attachments to the email of 30 September 2016. They were prepared by him purely a result of the discovery of additional information.

[440] In additional oral evidence, Mr Simpson stated that he had been asked by the defender to value the companies but had told her he was not qualified to do so, and had contacted Mr Cowan in that respect. When it had been apparent that Scott Cockburn had taken money out of the companies, Mr Simpson had presumed that those sums were loans unless and until it was decided they were in fact dividends. He could not recall why the amount of the director's loan owed to Scaffolding had been reduced by £50,000 as different iterations of that company's accounts appeared; he did not recall being asked about the matter by the defender or Mr Bald.

[441] In cross-examination, Mr Simpson stated that he was a bookkeeper, not an accountant of any description. Scaffolding had been set up to protect stock if Roofing failed. Its existence also brought certain VAT benefits, but that was a consequence of its incorporation, not the reason for it. It was started in 2012, had no staff, and "nothing ever went through it". He was not initially aware of it having a bank account in its own name, which was why the amount recorded as being held by it in cash in his accounts had been inaccurate.

[442] Scott Cockburn liked to deal in cash, for example using cash from customers to pay bills or some sub-contractors without using a bank account. That caused difficulty in preparing accounts, with guesses having to be made that some transactions had been in cash. Scott would tell him what to put in the accounts and would be the one signing them. If sums paid to Scott were to be treated as dividends, he would pay tax on those amounts. A great deal was spent on advertising during Scott's lifetime. He had been under the impression that Ms Moriarty had been working for the company before and after Scott's death, without interruption. He could not explain the discrepancies in the amounts shown in the accounts as intercompany loans as between Roofing and Scaffolding. If he had been asked about that issue by the defender, he would have had no reply to give. He would not have changed the figures without being instructed to do so. He was expecting to see someone else restate the balance sheet for the companies after the issues with his accounts emerged, but no one ever did. He had simply done what Scott Cockburn had told him to do during his lifetime. He never signed accounts himself. He never dealt with Mr Bald. He was not aware of any business asset list ever having existed. Scott Cockburn had never done a stocktake.

Alan Scott

[443] Alan Scott provided a witness statement in which he stated that he was involved in both new build development and refurbishment of older properties, assuming responsibility for the delivery of planning permission, building warrant and other consents required to facilitate development of green- and brownfield sites. He had been put in touch with Scott Cockburn by his neighbour in April 2013 with a view to advice being offered on how to promote and maximise the redevelopment of his new property at Oxgangs Road.

[444] In July 2013, Mr Cockburn contacted him. He had had redevelopment proposals prepared by an architect, but he was not satisfied with them and was still working on them. Mr Cockburn asked Mr Scott to prepare an initial application for planning permission to replace the existing single garage with a double garage. That was done in September 2013, and planning permission and associated warrants were granted in October 2013. An application for the reconfiguration and extension of the house itself was subsequently submitted in October 2013 and consent granted in December 2013. The front wall and boundary fence were erected without the benefit of planning permission or building warrant and the internal arrangements as constructed were not in accordance with the submitted applications.

[445] The relevant planning official requested that the matter be addressed by way of an application for an amendment to the consent. Mr Cockburn was reluctant to participate in any dialogue with officials and an enforcement notice was issued by the council in October 2015. By then, Mr Cockburn had died. Steven Cockburn contacted Mr Scott, who told him of the situation and the measures required to rectify it. The enforcement notice had been due to take effect on 16 November 2015, but an appeal was made which suspended its effect. Matters thereafter remained in abeyance until he was contacted by the defender.

[446] He met with her on 30 December 2015. He told her about the situation with the consents. It was clear that this issue might frustrate any expectation of a quick sale of the property. There were, further, no electrical, gas or structural engineer's certificates. Mr Scott conducted a thorough inspection of the property and thereafter prepared tabulated schedules itemising the works required to be carried out within each area of the property. These schedules were prepared with a view to providing them to a contractor to utilise as a checklist for costing purposes. They did not cover hidden structural issues. Upon review of the snagging list schedules with the defender, it became clear that whilst in some cases cosmetic, the sheer volume of defects would be difficult to manage and potentially expensive. A rough estimate of £135,000 for their rectification was obtained. He also agreed with Miss Hope that the advice of a structural engineer to look into the hidden structural issues should be secured. He then learned that it had been decided to abandon this approach in favour of introducing the property to the market for sale in its existing state.

[447] Eventually an agreement was reached with the council about the boundary features of the property. On 28 January 2017, Mr Scott sent the defender a copy of the council's closing report and informed her that the enforcement notice had been closed. He was paid £9,500 for his work, which was the amount he had invoiced.

[448] In cross-examination, Mr Scott stated that an appeal against the planning enforcement notice concerning the fence and gates at Oxgangs Road had been refused in February 2016. Although simple removal of the offending features would have been possible, time was taken in formulating an alternative proposal, which was ultimately accepted and implemented by January 2017. He was unaware of the extent of the estate's funds, but was aware that funding was always an issue. It had been thought important to get the property into a marketable state. The defender had asked him to review the quality

of the work done to the kitchen by Jewsons, although he had not previously been involved in that aspect of the property. Any damage to the roof of the property of which he was aware had been addressed by Roofing. Although he had met the defender in December 2015 or January 2016, as far as he was concerned he had not been asked to provide estimated costings for putting matters right at the property until May 2017, and had done so the following month.

Submissions for the pursuers

[449] On behalf of the pursuers, it was submitted that the defender had failed to act with the required prudence in lodging a timely, verified inventory baseline and taking timeous practical recovery steps (including securing business moveables and pursuing recovery routes), and had instead proceeded on unsafe baselines, delayed verification, and allowed realistic recovery opportunities to pass, causing avoidable loss and insoluble uncertainty as to its nature and quantum.

[450] She obtained her bond of caution on 1 December 2015. Under section 3 of the Judicial Factors Act 1849, she was required to lodge the inventory of the estate within six months after finding caution. She did not lodge the inventory with the Accountant of Court until 9 December 2016, about a year after finding caution, and without any court order dispensing with or excusing that delay. The formal date of death company valuations were only produced on 6 December 2016.

[451] The defender relied on a household contents valuation instructed for Tracey and Steven Cockburn, bringing out a total of £370 (with a separate version including watches), rather than commissioning any independent verification on her appointment. She was warned in writing at the outset that that valuation was unreliable and that the estate had

already suffered loss from mishandling of house contents, the car and speedboat. A detailed receipts-based list of contents was provided by Ms Watson in December 2015, and Ms Moriarty was available to verify what was present and what was missing. The defender did not carry out a reconciliation against that list and did not lodge any amended verified inventory when later discrepancies emerged. A Rolex watch was valued at £5,000, despite the defender's own contemporaneous note recording an estimate of £10,000. No updated independent valuation was obtained prior to distribution.

[452] At appointment the defender was warned that the companies held thousands of pounds of roofing equipment and that steps were required to identify and secure those assets. She was told that the majority of power tools had been removed to a lock-up for safekeeping and was provided with the names of individuals able to confirm what tools and generators were owned. No business asset schedule was ever created for vehicles, scaffolding, tools, plant or equipment.

[453] The defender quantified a recovery demand against Tracey and Steven Cockburn totalling £70,722.51 and threatened litigation if proposals were not received. A recovery route for the speedboat was identified; its new owner indicated that it could be returned, and the defender's report to the Accountant of Court recorded that she wished to investigate recovery and verify sale figures, but no effective recovery step was taken. Where exact quantification of losses was now difficult, that difficulty flowed from her failure to establish a verified baseline inventory when it was feasible to do so.

[454] On 13 April 2016, Ms Watson advised the defender that Tracey Cockburn's house was on the market and proposed raising an action against her and Steven Cockburn with warrant to inhibit on the dependence, to preserve the prospect of recovery from the sale

proceeds. No action was raised and no inhibition was sought at that time; enquiries as to the prospects of recovery were only instructed in 2017.

[455] The defender's own correspondence identified serious wrongdoing allegations, but no report to Police Scotland occurred in respect of suspected theft of estate-owned company moveables.

[456] The defender's own quantified repayment demand against Steven and Tracey Cockburn, made on 7 May 2016, amounted to £70,722.51. It included the Range Rover and speedboat undervalue of £17,000, their joint value being £57,000 and they having been sold for £40,000; the gross salary paid to Steven Cockburn, per his P45, of £22,136.52; CIS payments to Steven Cockburn of £7,618.75 and to Alan Meyer of £17,275.00; £500 in respect of a bank transfer to Steven for clothes for Scott's funeral; and Steven's Audi lease and associated costs of £6,192.24. There was also an undervaluation of the Rolex watch of £5,000, and wasted storage costs for TVs of £1,296.00, being £72 a month for 18 months.

[457] Losses which required a degree of assessment included the value of missing household moveables, such as boxed TVs, a cinema-sized TV, consoles, gym equipment, collections and the missing company-owned moveables such as tools, generators, scaffolding and equipment.

[458] The defender's bond of caution was set far too low at the outset, increased only after a year of exposure, reduced prematurely while liabilities remained unresolved, reduced again to a nominal figure during live disputes, and ultimately rendered meaningless. The handling of the bond represented a systemic failure of safeguarding, involving both the defender and the Accountant of Court, and materially contributed to the losses suffered.

[459] The legal rights payment made by the defender in December 2018 was a pivotal fiduciary decision point. By that date, she had notice that the estate lacked sufficient cash to

repay the companies' director's loan liabilities in full, and had expressly acknowledged that insufficiency. Notwithstanding that known shortfall, she paid legal rights in full. That depleted the estate and diminished the residue available to the residuary beneficiaries. Central to the breach was the defender's treatment of the companies' director's loan liabilities as effectively "circular" and as capable of being ignored because the estate held all the company shares. That was legally wrong. A debt due to the companies was a real creditor claim, not a debt that could be netted off informally.

[460] At a meeting with Mr Bald on 1 June 2018, the defender was informed that the business was surviving "hand to mouth" and she observed that, after repayment of the Oxgangs Road mortgage and payment of debts, administration costs and legal rights, there might not be enough to enable full repayment of the director's loans. The reduction of the loan due to Scaffolding by £50,000 on the basis of a supposed typographical error had resulted in the value of Scaffolding being reduced from £107,081 to £57,081.

[461] On 11 November 2020 the defender wrote to Mr Simpson stating that establishing whether each company remained solvent was "urgent", queried unresolved intercompany-loan figures that did not correspond across the two sets of accounts, and stated that Scaffolding's director's loan position seemed confused. No response was received. By email dated 15 November 2018, the defender expressly accepted that there was insufficient cash to repay the director's loans in full. On 19 November 2018, at a meeting with Clare Innes and her solicitors, Mr Bald confirmed that the company record keeping had not always been ideal and that accounting errors had been identified but still not corrected. Notwithstanding that unresolved accounting position, the defender proceeded shortly thereafter to pay legal rights in the amount of £81,057.

[462] In the annual judicial factory accounts of charge and discharge from 2015/16 onwards, the defender repeatedly presented the companies as estate assets at fixed values (Roofing at £282,000, Scaffolding at £107,000, later £57,000), but did not present a corresponding, transparent debtor/creditor reconciliation showing the estate's exposure to the director's loan balances later deducted in working out the legal rights. A judicial factor had to act prudently and impartially and proceed only on safe, properly evidenced and reconciled figures before making material distributions affecting residue and creditor exposure. Where the net moveable position was insufficient or materially uncertain, the proper course was abatement or the seeking of directions from the court, not full payment. Damages should be awarded representing the overpayment made by the defender by paying legal rights in full on an unsafe net moveables calculation. Interest was due on the sum awarded in respect of the overpayment from the date of payment (10/11 December 2018).

[463] The defender had proceeded on the basis of company accounts which were repeatedly re-worked, internally inconsistent and acknowledged by her to be unreliable, yet used them to support the date of death valuations, HMRC submissions, the legal rights calculation and payment, and the discharge narrative. The director's loans formed a major element of the companies' net assets, represented liabilities of the estate to the companies, and were used to explain, on paper, large movements in "cash at bank" when the accounts were recast. The defender and Mr Bald accepted that if the director's loan values were not correct then the valuations were not correct.

[464] The record of a meeting in February 2018 noted the defender accepting that, when she challenged the cash at bank figures, Mr Simpson had recast the accounts and simply put in the money that had been removed as a director's loan. Mr Bald's date of death valuations

contained an express disclaimer that they were based on unaudited historic accounting records and that he could not be held responsible for changes resulting from errors in those records.

[465] As an example of their unreliability, the original Roofing accounts recorded dividends of £102,000 for the year to 31 December 2014. A later position reduced that figure to £70,000, with the £32,000 withdrawn between January and early April 2014 disappearing from the company's 2014 dividend figure without a documented rationale. On 26 May 2018 the defender emailed Mr Bald stating that the accounts appeared to show dividends of £102,000 in the year to 31 December 2014, that the 2015 accounts showed dividends of £46,200, and that Scott Cockburn's tax returns recorded dividends of £96,200 and £20,000. She asked Mr Bald to look again at the position because of concern that money accounted for as dividends might have been included in the director's loan.

[466] Understating dividends would inflate retained profits and therefore apparent company value; and misclassification between dividends and loans distorted the position as between the companies and the estate in a way which might directly affect legal rights, solvency presentation, and HMRC submissions. The Roofing dividend confusion was then linked to the Scaffolding "typographical error" loan adjustment, despite Scaffolding itself being recorded as having paid no dividends, further indicating that adjustments were being accepted without documentary safeguards. The Scaffolding director's loan was reduced by £50,000 (from £89,961 to £39,961) and the company valuation reduced correspondingly. The defender's position was that this was a "typographical error", but no contemporaneous working papers or reconciliations from the accountant were produced to demonstrate a genuine clerical mistake, and no forensic reconstruction was instructed.

[467] The produced accounts showed a mirrored intercompany loan position through 2014, but not from 2015 onwards (Roofing showing debtor balances while Scaffolding showed either zero or different figures), with no evidenced repayment or write-off decision. By 11 November 2020 the defender emailed Mr Simpson stating it was urgent to establish solvency, queried the intercompany figures and stated that the accounts simply did not correspond, demonstrating that the intercompany and director's loan foundations for earlier valuations and distributions were not verified even five years after Scott Cockburn's death. The accounting risk was repeatedly flagged, yet the safeguard of independent verification was not applied.

[468] In February 2016 the defender had recorded that external accountants should be brought in to audit the accounts because cash payments and documentation were unclear. In December 2016, Mr Bald's valuation was issued with a disclaimer and a statement that it relied on historic accounting records. In December 2017 and May 2018, the defender herself recorded uncertainty about loans and dividend treatment and identified conflicting dividend and tax figures and a double-counting risk. In November 2018, Mr Bald stated that Mr Simpson's historic accounting errors had still not been corrected, yet legal rights were paid shortly thereafter. In November 2020, the defender noted that the intercompany loan position did not correspond and remained unclear.

[469] By November 2018, the defender had clear notice that the record-keeping was not reliable and that identified accounting errors remained uncorrected. The accounts were bookkeeping outputs rather than audited accounts, and Mr Simpson assumed that independent verification would occur. In a case involving six-figure director loans and competing beneficiary claims, reliance on unverified bookkeeping was not sufficient due diligence. The accounts of charge and discharge presented the companies as fixed-value

shareholdings without candid explanation that the figures depended on disputed, unresolved director's loan and intercompany positions. This impeded effective oversight and supported an unsafe discharge narrative.

[470] The combined effect of the accounting issues was that the company valuations, the HMRC position, the legal rights base, and the solvency and discharge narrative were all unsafe. Once the defender recognised (and recorded) that the accounts did not reconcile with bank realities and that key classifications were uncertain, the prudent safeguard was independent forensic reconstruction from primary records. That safeguard was not applied. The defender's breaches materially caused loss, or materially increased the risk of loss which materialised, and created enduring uncertainty in quantification and solvency which should be resolved against her.

[471] The defender delayed in removing Steven Cockburn from control of the companies and imposing independent banking and record controls during an authority vacuum. On 26 November 2015, Ms Watson advised that the priority was to get Steven out of the business. She expressly stated that she was not entirely sure of the legality of his appointment as sole director, and she advised that the court's interlocutor gave the defender shareholder powers enabling her quickly to appoint other directors and outvote or remove Steven. On the same day, Ms Watson sent copies of the court application and signed affidavits from both Ms Cockburn and Ms Moriarty and provided the defender with Ms Moriarty's phone number, describing her as competent, sensible, having run the business for five years, and knowing where all the paperwork was.

[472] On 8 June 2015, two days after Scott Cockburn's death, Steven had entered the office, stated he was taking over Scott's job and financial drawings, demanded money, and instructed a £500 transfer for funeral clothes. He had taken the company bank card and PIN

from Ms Moriarty and used it to withdraw cash until the card was cancelled on 3 July. He had dismissed Ms Moriarty, who had run the companies for five years, and was taking wages despite not working in the business. The court application stated that the administration of the estate had been irregular and prejudicial to the interests of the pursuer and other beneficiaries, and that it was therefore necessary for the estate to be sequestrated and for a judicial factor (including ad interim) to be appointed.

[473] Prudence in that context required immediate, concrete steps directed to the risks narrated in the papers and communications, namely taking banking control out of the hands of the person creating risk, securing records and payment channels, securing business assets and preventing diversion, and using shareholder powers immediately to remove Steven and install independent directors and controls. The defender received repeated written warnings from Ms Watson after her appointment which escalated concern about Steven's suitability and the risk of dissipation.

[474] By mid-December 2015, bank statements available to the defender showed large cash withdrawals and cheque payments. She had not reconciled these withdrawals and did not have bank statements after 11 December, nor CIS information, payroll breakdowns, or verification of the cash withdrawals. In these circumstances there was no settled administration of the estate, which remained ungathered; authority was contested or unclear; and information was incomplete. Fiduciary prudence required immediate stabilisation, not continued reliance on the person creating risk. That prudence requirement was especially acute because the companies were not incidental assets. They were part of the residue intended for the beneficiaries and were a potential source of dividend income even if the beneficiaries did not work in the companies.

[475] In her first report dated 18 January 2016, the defender stated that Steven had been appointed sole director with effect from 6 June 2015, that he had awarded himself a substantial salary on a par with Scott Cockburn, despite not having comparable expertise, and that that appeared to her to be a breach of his fiduciary duty to the shareholder. She stated there was a significant conflict of interest in Steven's position and that he had taken out a lease on a new Audi car in November 2015 in the name of Roofing, the benefit of which to the companies was not apparent. She stated she had only been provided with wage statements for four weeks and had requested the remaining ones, that she had repeatedly asked for details of cheques drawn on the company account but had been told the cheque books had been removed by HMRC; and that she remained concerned by the size of cash withdrawals when most wages were now paid by bank transfer. She stated that she had bank statements from 2 January to 11 December 2015 showing payments to Steven beginning within days of Scott's death, consisting of both cash and bank transfers; that sums on deposit appeared to have been overstated in the 2013 and 2014 accounts and these accounts would require to be redrawn; that the value of the companies (and thus the moveable estate) might be substantially lower than beneficiaries had believed; and that information appeared to be missing from the company's day-to-day records.

[476] She did not submit her first report until 18 January 2016, seven weeks after her appointment. Steven remained in effective control and was the sole bank signatory until 16 February 2016. On 1 February 2016, the defender met Steven and recorded that many payments had been made in cash and it was not clear whether tax had been paid on each payment. She recorded that Steven could not provide records for these payments and that external accountants should be brought in to audit the accounts. No independent accountant was ever brought in to audit or reconstruct the companies' accounts, and no

independent reconstruction report was ever obtained or produced. The pursuers could not be expected to prove every item that left the company during Steven's period of control. The resulting quantification gap fell to be attributed to the defender's breach of fiduciary prudence, not to any want of diligence by the pursuers. The defender's breach of duty materially caused loss or materially increased the risk of loss which then materialised, including loss of control of banking and records, delayed verification of payment channels and transactions, payments requiring post-event investigation and correction and recovery demands, and enduring quantification uncertainty as to what left the company and why; and it materially contributed to the downstream governance and accounting failures that undermined the companies as valuable estate assets and potential sources of dividend income for the beneficiaries.

[477] The defender acted imprudently as judicial factor when she appointed Ms Cockburn as a director of Roofing and Scaffolding on 16 February 2016, without conducting any due diligence, and in circumstances where the companies were key estate assets, governance was already unstable due to Steven's misconduct, the only experienced administrator (Ms Moriarty) was available for reinstatement, the defender had full shareholder control and fiduciary responsibility, and the appointment of a director carried legal, fiduciary, and personal liability consequences. The defender knew Ms Cockburn was inexperienced and initially indicated that she did not intend her to run the business, but rather to act as an office junior and to provide family involvement and oversight while learning more about the business. The defender did not assess Ms Cockburn's experience or her understanding of directors' duties, did not obtain references, did not consider alternatives, did not provide training or support, and did not appoint an experienced manager alongside her. She ignored the obvious stabilising option of reinstating Ms Moriarty, who had run the business

for five years, held the records, and was competent, experienced, and willing to return. She did not speak to Ms Moriarty until 22 December 2015, and refused her reinstatement, triggering the employment tribunal proceedings. That was not a judgment call, but a failure of basic prudence. The appointment materially increased the risks of governance instability, poor decision-making, inaccurate records, financial mismanagement, loss of company value and downstream disputes, which materialised. The appointment of an inexperienced director was a material contributor to the collapse of the companies and the loss of their residual value.

[478] Further, the defender acted imprudently in appointing Brian Tully as director without basic checks or independent safeguards, despite red flags, an obvious conflict concern, and a specific checkable "cash job" allegation raised before the appointment decision. By 18 January 2016 the defender had decided to remove Steven Cockburn, requiring a decision as to who should run the companies next. By that date, she knew there was a live unfair dismissal claim in which Ms Moriarty was seeking reinstatement, and had been told that she was a proven office manager.

[479] Mr Tully had previously been a director of Scaffolding and had resigned on 1 December 2014. On 15 June 2015 (nine days after Scott Cockburn's death) "Buckstone Roofing Ltd" was incorporated with Mr Tully as sole director. Ms Watson had warned by email on 30 November 2015 that he was a risky appointment and relayed concerns about a cash job. On 13 January 2016, she suggested that the defender speak to key roofers who had worked closely with Scott Cockburn before appointing Mr Tully. On 22 January 2016, Ms Moriarty raised a specific suspected cash job by Mr Tully at Clermiston Road, and suggested two quick verification calls, namely customer feedback and an office records check. The defender refused to discuss the matter with her. On 26 January 2016,

Ms Moriarty emailed her attaching two documents raising appointment risk and health and safety compliance failures and asked that checks be done before any final decision. She requested to be added as a director to safeguard the company and support Ms Cockburn, stating she did not feel Mr Tully had enough experience to run the company, and suggested practical means of uncovering jobs not being put through the books.

[480] The defender did not accede to any of these requests. Fiduciary prudence required the defender to make governance appointments on a safe basis. Where there were clear warning signs about suitability or integrity, prudence required proper due diligence and effective independent safeguards before conferring control. The unsafe appointment of Mr Tully materially increased the risk of company loss and quantification difficulty by placing control in the hands of a risky individual without basic verification and without independent oversight, in circumstances where cash job concerns had already been raised, leaving the companies with an inexperienced beneficiary director supposed to provide oversight. That breach materially increased the risk of loss and materially contributed to later governance and compliance failures, undermining company value and creating enduring quantification uncertainty.

[481] Once the defender possessed specific, written evidence of the particular off-book cash arrangement involving Mr Tully, she failed to preserve evidence, safeguard Ms Cockburn, or to remove or suspend Mr Tully promptly. At a meeting on 26 May 2016 the defender was advised that Mr Tully was suspected of engaging in jobs not being put through the companies' books. Details were provided to her by an email from Ms Cockburn dated 15 June 2016. On 5 August 2016, Ms Cockburn brought £650 in cash to the defender's office for safekeeping; the defender proposed a meeting after hours at the yard with Ms Cockburn and Ms Moriarty, which took place on 9 August 2016. On 24 August 2016 the

defender confronted Mr Tully with the evidence relating to the job, and he tendered his resignation as director to her. She suggested that he arrange for "Buckstone Roofing Limited" to be struck off due to potential confusion; he stated it was dormant and would remain so.

[482] The defender had confronted Mr Tully before the plan to expose him had run its course and then chose not to take protective steps that would secure evidence and remove risk. That course enabled Mr Tully to neutralise the clearest features of his wrongdoing and created avoidable evidential and quantification difficulty. If one named job could be handled off book and then regularised, the court could not safely assume there were no other off-book jobs. That increased uncertainty about VAT, profitability, and transaction values, and made quantification materially harder. The continued involvement of Mr Tully left the business operationally unstable and exposed the companies to continuing risk while governance remained unresolved.

[483] The defender had failed to take prompt and effective action to remove Mr Tully from the companies after 24 August 2016, while giving the Accountant of Court and others the impression that removal and replacement were in hand. On 30 August 2016 the defender emailed Mr Bald stating that Mr Tully had agreed to resign and that Mr Bald was to work with Mr Taylor on a compromise agreement. Mr Bald replied that any compromise must end both directorship and employment as Mr Tully could not remain in any position of trust. The Accountant of Court was told of the situation and that steps were being taken to remove Mr Tully as director and employee. On 16 September 2016 the defender was told by Mr Taylor that a resignation letter had been sent to Mr Tully but not returned. On 19 September 2016 Ms Watson warned that no action had yet been taken to remove Mr Tully

and that delay weakened the position. On 26 September 2016 Mr Tully's solicitors emailed stating that he wished to remain as both director and employee.

[484] Fiduciary prudence required the defender to act promptly and decisively to remove a director whose conduct had been treated as potentially criminal and untrustworthy, rather than allowing drift, to ensure accurate communication to the Accountant of Court and stakeholders about what had actually been done, and to put real oversight in place while removal was pending, so that Mr Tully was not left with continuing day-to-day influence over staff and customers. In the critical period after 24 August, the defender held the shareholder power needed to ensure Mr Tully's removal was executed. She allowed weeks of delay despite repeated warnings that that would weaken the company's position. Indeed, that was the situation which eventuated. The delay materially increased risk and loss by leaving Mr Tully in place, weakened the company position in employment terms and prolonged instability and uncertainty in governance. In February 2017, the defender had affected to be surprised that Mr Tully was still in place and maintained that she had had very little information about the companies since Mr Bald's appointment as a director at the end of September 2016, but it was plain from email traffic that she had been aware of the situation since at least October 2016, and it was not until August 2017 that Mr Tully finally agreed to leave the companies. He remained a director long enough for Tully Roofing Ltd to be incorporated in March 2017, creating an obvious conflict risk and increasing the risk of client diversion and loss of goodwill. The prolonged continuation and inconsistent handling of Mr Tully's status and removal should be regarded as a material contributor to downstream company instability quantification difficulty.

[485] The defender acted imprudently by failing to reinstate Ms Moriarty. She had run the business on a day-to-day basis for about five years prior to Scott Cockburn's death, before

being sacked by Steven, and was competent, sensible and willing to be reinstated. Ms Watson informed the defender on 14 December 2015 that all her clients wanted Ms Moriarty to go back to running the business. However, the defender allowed the employment tribunal proceedings to continue and paid a fee of £2,840 to solicitors despite the company being insured for the defence of the claim and having been advised that the prospects of successful defence of the claim were poor.

[486] As early as 26 January 2016 Ms Moriarty requested the defender to appoint her as a third director to support Ms Cockburn and safeguard the company. It was not until 15 August 2016 that the defender emailed Ms Cockburn and Ms Moriarty suggesting that a consultancy position for the latter might be beneficial to the directors. Prudence required prompt stabilisation of the company as soon as the defender was appointed, to secure the records, impose basic controls, and ensure reliable day-to-day administration. That would have been achieved by re-instating Ms Moriarty, and would also have had the benefit of avoiding the costs of and from the employment tribunal proceedings.

[487] Instead, the defender accepted Mr Tully's objection to Ms Moriarty and proceeded with the appointment of Ms Cockburn and subsequently Mr Bald, which did not deliver hands-on stabilisation. That decision materially increased risk by leaving records and controls unstable during the period when safeguarding was most urgent, entrenched downstream governance problems by excluding the person best placed to stabilise the records and systems, and increased later instability and quantification difficulty. The sum awarded by the employment tribunal (£15,495.28) and the fees paid to the solicitors (£2,840) flowed directly from the defender's failures in this regard.

[488] The strategy pursued by the defender from late 2018 to 2020 to transfer the company shares to the residuary beneficiaries and issue notional dividends to deal with the director's

loans was unworkable and imprudent. A prudent judicial factor faced with cash insufficiency, solvency risk and governance instability would have sought the court's directions, stabilised management, or realised the estate's company interests by sale at the earliest safe opportunity.

[489] At a meeting on 19 November 2018, it was recorded that Ms Cockburn was finding directorship stressful, had been in tears, and that the workforce did not respect her; the defender proposed bringing in a new finance person to take pressure off her, but no such appointment was made. By the time she paid out legal rights in December 2018 the defender was aware that there was insufficient cash to repay the companies' director's loans in full if the proposed amount was paid out. On 7 February 2019 she told the Accountant of Court that the director's loans totalled £118,359 and obviously exceeded the cash available. She did not clarify to the residuary beneficiaries what cash would be left to them at the end of the factory. On 12 February 2019 she instructed an interim repayment of £20,000 from the estate to Roofing, reducing estate cash before a prudent treatment of the loans was agreed and before the beneficiaries' cash reality was explained. That only emerged at the end of February, when Ms Cockburn asked for £100,000 to be paid to her as her share of residue, and was told that her estimated cash entitlement was only about £9,949.55.

[490] On 11 June 2019 Ms Cockburn emailed requesting that the companies be sold. On 5 August 2019 she expressly stated that she did not want the company shares transferred into her name. Nonetheless, on 4 September 2019 the defender stated that she was not inclined to sell and would proceed to transfer shares, leaving any sale to the beneficiaries after transfer. On 25 September 2019 she sought to instruct Mr Bald to issue the paperwork for a first dividend and thereafter put in hand the share transfers, but the following day he resigned as a director, stating he could not fulfil his duties given a lack of information and

engagement. A winding-up order was made for Roofing on 29 March 2021. The defender should not have sought to implement a complex corporate and tax strategy that shifted the risk and compliance burden to inexperienced beneficiaries (including a minor and a guardian) without proper explanation, safeguarding arrangements, and a workable governance plan.

[491] The contemporaneous records framed the proposed share transfer, loan treatment and distribution as the route to the defender's discharge. That influenced the selection of the quickest administrative route, rather than the one which was safest and preserved value. There was no informed engagement from Conner Cockburn, who was sixteen, or from Ms Innes as the guardian of James Cockburn. The plan depended in practice on Ms Cockburn remaining as the functioning director and keeping the companies operational pending transfer, but the defender knew from November 2018 that she was inexperienced and struggling.

[492] Once Ms Cockburn understood the cash reality and sought to exit, the defender persisted with the transfer plan. The proposed scheme depended on either loan write-off or lawful dividends supported by relevant accounts, distributable profits and solvency. However, it was progressed in circumstances where the companies' viability was doubtful and the estate was already insolvent. The payment of legal rights in December 2018 depleted the estate's cash and converted the director's loan issue into an insolvency-driven problem. The share plan then attempted to force closure through tax and dividend structuring rather than confronting the true net moveable position and seeking directions. The strategy delayed realisation of the estate's company assets and left the business to deteriorate. That delay materially reduced the probability of achieving a timely going-concern sale, preserving goodwill, and maintaining dividend-paying capacity.

[493] As a result of the defender's breaches of fiduciary duty, the pursuers were deprived of a real and substantial chance of receiving long-term dividend income and residual shareholder value from Roofing. The produced accounts for Roofing showed dividends were paid in the years 2011 - 2015. In 2013 dividends were lower, but Mr Simpson recorded drawings by Scott Cockburn of approximately £345,419.59 in that year, consistent with extraordinary extraction rather than absence of dividend-bearing capacity. The business generated substantial cash balances in the years before Scott Cockburn's death and significant funds were used to fund the purchase and extension at Oxgangs Road.

[494] Following the liquidation of Roofing, the same underlying roofing trade was re-established in Buckstone Roofing (Edinburgh) Ltd, operated by the same manager and using the same email address and telephone number. The successor company presented to the public a continuity with the former Buckstone business. It generated substantial turnover, profit and dividends. That demonstrated that the goodwill associated with the Buckstone trade was real and commercially viable under competent management. Had the defender reinstated competent management to the original company, the business could realistically have returned to dividend-bearing capacity by 2017. The successor company provided an objective comparator: the same underlying trade, competently managed, producing substantial turnover, strong profits, and real dividends.

[495] The original company's bank statements corroborated the goodwill valuation. They showed sustained advertising and sponsorship expenditure totalling £136,855.74 between 2010 - 2015 with Hibernian FC, Hearts FC and Watsonians RFC, as part of a total advertising expenditure of £295,046.51 between 2011 and 2015. The evidence showed that the beneficiaries lost a real and substantial chance of receiving dividends. The fact that the same underlying trade was successfully rebuilt from liquidation - starting from its lowest

point - demonstrated that the goodwill was real, that the trade was viable, and that competent management could generate substantial turnover, profit and dividends. The evidence supported an assessment that profits of £900 per week, or £46,800 per annum, could have been expected for 40 years, giving a total loss in this connection of £1,872,000, to which an assessed percentage of the chance lost could be applied, and to which interest should be added from 2017 to payment. Alternatively or in any event, a capital sum of £379,000 reflecting the loss of residual company value could be awarded.

[496] Towards the end of the factory, the defender was aware that the estate was effectively insolvent and falsely told HMRC that it had been wound up on 5 April 2021, issued tax certificates recording the payment of dividend income even though no dividend was paid, and co-ordinated with the Accountant of Court on the wording of the discharge report at the point when the insolvency implications were known. On 18 November 2020, Ms Adshead confirmed that Roofing was insolvent and warned the sole director, Ms Cockburn, about a wrongful trading risk. On 11 May 2021, the defender recorded that if the liquidator made a claim against the estate, it would push the estate into insolvency. On 9 August 2021 she expressed concern about appearing to declare a dividend from Roofing to clear the director's loan due to it, given that it was insolvent and in liquidation, and queried whether this could be seen as a fraudulent preference. Ms Cockburn, as the sole director of the companies, was not involved in any lawful declaration of dividends, and no dividend was paid to beneficiaries. The tax certificates therefore recorded dividend income that did not exist as a matter of fact and was not lawfully declared as a matter of company law.

[497] On 5 October 2021 the Accountant of Court emailed the defender stating that he would produce a short report supporting her scheme of division, and asked her to consider the draft report and advise if she wished any changes before it was issued into process. The

defender, facing a situation of insolvency, ought to have treated the ranking of creditor claims and the form of discharge as matters requiring full candour and, where necessary, court directions. The court should infer an attempt at concealment from the pattern of omissions and statements. The defender's conduct caused loss of timely protective action and transparency during liquidation, misstatement of the estate's financial position to HMRC and beneficiaries, and prejudice to beneficiaries forced to rebut a false record that they had received income. The court should grant such relief as was necessary to correct and prevent reliance on a false dividend narrative.

[498] In relation to Oxgangs Road, Mr Scott reported likely remedial costs of £150,000 to £200,000 and the minimum work needed to make the building marketable far exceeded the funds available; there were no funds to effect repairs unless and until Buckstone Loan East could be sold. In early 2016 the estate held approximately £10,988.85 cash and expected net proceeds from Buckstone Loan East to the estate of around £84,000 after secured debt and before selling costs. On those figures, available funds would be under £95,000, leaving a funding gap of approximately £55,000 to £105,000. The arithmetic which might have justified delaying the sale of Oxgangs Road therefore did not work from 2016 onwards. Entirely predictably, the property ultimately had to be marketed in July 2017 and sold for £607,500 in April 2018 in its existing state and without a completion certificate. That should have been obvious to the defender even during her period as interim judicial factor.

[499] The delays increased the deterioration of the property and embedded uncertainty, weakening bargaining position and achievable value. The court should grant decree for such sum as represented the loss attributable to the imprudent delay and failure in preservation, including the shortfall between an earlier prudent outcome and the price ultimately achieved, plus interest. The matter dealt with by the planning enforcement notice

could have been dealt with quickly and more cheaply than the redesign solution in fact implemented at a cost of £5,971.

[500] The defender had acted in breach of duty by failing to take prompt, reasonable steps to narrow and resolve the claim made by Jewsons, despite an early offer of a meeting and an obvious route to agreement, thereby allowing avoidable escalation into defended litigation with unnecessary expense. The basic relevant documents were available from the outset. The solicitors acting for Jewsons had sought to resolve matters in March 2016 but had to raise an action in May. By September it was clear that the sums sought were due and £6,454.10 had been unnecessarily incurred in interest and expenses.

[501] The defender further breached her duty to preserve Oxgangs Road pending its sale. Leaving the property not wind- and watertight, empty and unheated, risked progressive fabric damage, worsening defects, and increasing the scope and cost of remedial work needed. The defender had written notice from February or March 2016 of major water ingress and wind- and watertightness issues, yet the property remained exposed and ingress persisted into later years. The defender had the practical ability to instruct Roofing to carry out urgent wind- and watertightness works without delay, but did not do so until February 2017, with further attendance in January 2018.

[502] The Graham & Sibbald valuation dated 23 July 2015 valued the property at £800,000 on assumptions including that necessary consents, warrants and completion certificates had been obtained. By July 2017 the home report prepared for the sale recorded that the property was still incomplete, with water ingress and damp, roof items requiring repair and completion, and multiple category 3 internal defects. On 12 February 2016, storm damage was reported, including a large fir tree uplifted by its roots and fallen alongside the tree house, requiring removal. The necessary work (tree removal at £610 and fence repair

at £1,753) was paid for by the estate rather than by a claim being made on the insurance policy that had been taken out and paid for. On 23 November 2017 DM Hall warned that the longer the property remained empty, unoccupied and unheated the greater the risk of further defects, noting water ingress was taking place. On remarketing in January 2018, the selling agent reported a big puddle in the kitchen and a persistent wet patch in the gym with other wet patches, demonstrating that active water ingress remained a live issue immediately prior to sale.

[503] The defender had a duty to preserve estate property and act with expedition to prevent avoidable deterioration. Where the estate did not have funds for full completion, the minimum duty was preservation first, making the property wind- and watertight and preventing avoidable exposure deterioration. The issues were not merely cosmetic. They created a foreseeable pathway of deterioration (including damage to internal finishes and concealed elements), increased remedial scope, and uncertainty as to what further defects might exist.

[504] In December 2015 the defender wrote to Alan Scott seeking clarity on the situation with planning permission, warrants and completion certificates and to establish what work was needed to market, with the likely costs. It was obvious that costings were needed to support valuation and marketing. The first structured cost totals appeared from Mr Scott only at the end of June 2017, in the order of £130,350. The delay in obtaining costings materially prolonged the period in which the property remained unmarketed and in limbo. The delayed establishment of an evidenced cost position meant that the property went to market with embedded uncertainty.

[505] On 18 July 2017 the defender wrote to beneficiaries confirming that the property was being advertised at offers over £795,000 and a home report value of £825,000, that being its

valuation by Graham & Sibbald in its then condition on the basis of cost to complete discussions and estimates provided by the defender's firm. There were 70 requests for the home report and 24 viewings, but only one note of interest and an offer of £255,000, together with feedback that the works required and general unknowns were putting buyers off at the asking price. On 24 October 2017 Dixon Heaney Kean Kennedy valued the property at about £500,000 in its then condition. In November, Graham & Sibbald recommended reducing the offers over asking price to £695,000 and DM Hall suggested that an offer of approximately £550,000 should be seriously considered.

[506] The advertised offers over figure moved from £795,000 at launch on 18 July 2017 to £595,000 by January 2018, before a sale at £607,500. The market response was evidence of an uncertainty discount created and compounded by delay, not evidence that the estate achieved best value. The defender's marketing and sale conduct fell below fiduciary standards. Instability and uncertainty were the foreseeable outcomes of the prior failure to obtain and lock down costings timeously. The court should assess loss as the difference between the value that should have been achieved on an earlier sale and the value actually realised, together with time-based costs attributable to the delay period.

[507] In relation to the property at Buckstone Loan East, that property was treated by the defender as the estate's principal liquidity valve. Against that background, the defender's decision to pursue chain-dependent purchasers for the property twice, despite chain-free alternatives, was a risk management decision that materially affected the timing of funds and the estate's ability to control deterioration, uncertainty and lender pressure at the Oxgangs Road property. Despite the Accountant of Court having indicated that the Buckstone Loan East property could be prepared to be ready for marketing upon the factor's permanent appointment, it was not marketed until 12 May 2016. At the first closing date, the

highest offer (which was subject to a chain) was accepted, but the sale did not proceed. After remarketing, the same chain-dependent buyer was selected, but the chain collapsed again. On both occasions a chain-free buyer was an underbidder, but their offers were not unconditional. On 23 September 2016 an offer of £300,000 was accepted, which was £500 less than the chain-free underbidder's £300,500 offer on 1 June 2016 and £7,500 lower than his bid on 15 July 2016.

[508] The estate administration expenses for the period to 30 November 2016 amounted to £45,420. The property was sold later than was necessary, where the defender repeatedly treated the sale as the condition precedent for progress on Oxgangs Road. Where liquidity was central to risk control in an estate, fiduciary duty required expedition and prudent risk management. The delay materially prolonged the estate's period of lack of liquidity when that was the pre-condition for progress, and was a material causal contributor to the overall Oxgangs Road property value diminution and avoidable time-based costs. Separately, the administration and holding costs for Buckstone Loan East had been charged to the estate alone rather than apportioned 50/50 with Clare Innes, resulting in a loss to the estate of £2,511.

[509] In summary on losses flowing from the defender's dealings with Oxgangs Road, the property was valued at £825,000 in its then condition in July 2017, but was sold on 6 April 2018 for £607,500, a shortfall of £217,500. The unnecessary costs incurred in dealing with the enforcement notice and with the Jewsons claim were £5,971.20 and £6,454.10 respectively. The delay in the sale had caused further losses. On the primary hypothesis that the sale of the property at Oxgangs Road ought to have taken place by 30 November 2016, or 8 months after the defender's permanent appointment, the mortgage interest which would not have required to have been paid amounted to £16,209.23, the unnecessary period of building

insurance amounted to £1,488.37, council tax was £6,814.25, unnecessary valuation reports amounted to £700, and unnecessary building warrant and related fees came to £2,043.

[510] Further, the defender had prolonged the judicial factory unnecessarily and thereby generated avoidable commission and professional fees. The judicial factory lasted over ten years. The prolonged duration was caused by the identifiable failures already discussed. Commission and fees increased as a direct result. The Accountant of Court fixed substantial commission for the defender, totalling £157,531.46, including VAT of £26,255.24.

Submissions for the defender

[511] On behalf of the defender, counsel noted that the pursuers had advanced many allegations of a wide-ranging nature. These variously involved allegations of deliberate wrongdoing, express or implied dishonest conduct and breach of duty relative to the defender's conduct as judicial factor. The factory was ongoing. It was now ten years after the defender's appointment, an unusually long period for a factory to last. It could not have been in anyone's reasonable contemplation that the appointment would result in such a long-running and acrimonious dispute with such unusual, if not unique, challenges. The defender was likely to be subject to criticism whatever decisions she made. The pursuers' allegations of breach of duty had not been established. To the extent that any breach had been made out, the pursuers had not established that they had suffered any actionable loss as a result of any such breach. On any view, the sums concluded for were excessive, and several aspects of the claims advanced by the first and second pursuers had prescribed due to the passage of time prior to a relevant claim being made during these proceedings.

[512] The office of judicial factor was fiduciary in nature: *Lord Gray and Others, Petitioners* (1856) 19 D 1 per Lord Justice Clerk Hope and Lord Ardmillan. The most

significant statute governing judicial factors was the Judicial Factors Act 1849, which, amongst other things, created the office of the Accountant of the Court of Session (as it was then known, later shortened to the Accountant of Court) and made express provision for certain duties incumbent on a factor. The Judicial Factors (Scotland) Act 1880 empowered sheriffs to appoint judicial factors over certain estates of a smaller size. The Judicial Factors (Scotland) Act 1889 brought all judicial factors under the terms of the 1849 Act. The Trusts (Scotland) Act 1921 was also an important statutory provision insofar as the powers of a judicial trustee were concerned. The Judicial Factors (Scotland) Act 2025 received Royal Assent on 27 January 2025 but was not yet in force.

[513] A judicial factor might validly be appointed on a deceased person's estate, where that person died testate. The Accountant of Court had a statutory duty to oversee judicial factories. That was done in practice through oversight and supervision of the appointed judicial factor and their acts and conduct, in respect of which the factor was obliged by statute to account to the accountant. The statutory basis for the accountant's oversight was found in the 1849 Act. The defender did not contend that any approval by the accountant of her actions, whether express or implicit, in any way restricted the court's independent assessment of whether or not she had acted in breach of duty.

[514] In the present case, the defender was initially appointed as judicial factor *ad interim* in terms of an interlocutor pronounced on 26 November 2015 by the sheriff at Edinburgh. She was thereafter permanently appointed to the office of judicial factor by the court's interlocutor pronounced on 26 March 2016. The powers of an interim judicial factor were restricted, the appointment being for interim management only. However, if - as here - the interim appointment conferred upon the factor "the usual powers" or "the normal powers", there was little, if any, substantive difference in the powers of an interim judicial factor in

comparison to a permanent judicial factor. Where the interim appointment provided for special powers in addition to the usual powers, those special powers would extend to the same degree as if they were granted within a permanent appointment.

[515] In the present case the defender's interim appointment expressly provided the power to exercise the rights attached to the ordinary shares in the companies (as, in due course, did the permanent appointment). Nonetheless, there was a difference in the correct approach to be taken by an interim factor relative to a permanent one. The powers of an interim factor were directed at the aim of preservation. An interim factor's duty should focus on bringing the estate in question under his own control. An interim factor appointed over a business should carry it on as a going concern so that, if objections to the appointment were upheld, it might be handed back to those entitled to it.

[516] Thus, an interim factor should err on the side of caution before taking such steps as might interfere with the status quo. He should resist calls to adopt a course of action that would, if adopted, lead to the estate being in a materially different state to that which was the case on the date of the interim appointment, unless it was clear that such a course was necessary to preserve the estate. Applied to the facts of the present case, it would not have been appropriate for the defender, for example, to sell the shares in the companies or either of the properties during her interim appointment. However, it was not submitted that there was any barrier to removing Steven Cockburn prior to the permanent appointment (as in fact happened).

[517] The 1849 Act made provision for various duties which were incumbent on judicial factors, but did not attempt to prescribe the entirety of the duties in question. In addition to the 1849 Act, certain duties were imposed on judicial factors at common law. Many (but not all) of those common law duties stemmed from the fiduciary nature of the role of judicial

factor. Section 3 of the 1849 Act provided that, as soon as possible after obtaining the certified copy interlocutor of appointment, and at least within six months from the receipt of the bond of caution by the Accountant of Court, a judicial factor must lodge a detailed inventory of the estate with the accountant. On being approved, that formed the charge for which the factor had to account. The onus of proving the existence of any article at that date lay on an objector: Irons on *Judicial Factors* at p 46.

[518] Sums uplifted and payments made before the factor's appointment did not fall under the factory. The factor had a duty to call his predecessors to account and to sue them and use legal diligence if necessary. Section 4 of the 1849 Act required a factor to lodge annual accounts of charge and discharge. In the present case, the defender did so, and the pursuers did not allege there was any failure to lodge these accounts.

[519] In *Lord Gray*, Lord Ardmillan at 21 considered that the duties and responsibilities of the office of judicial factor were those of a trustee:

> "[I]t appears to me that the office of judicial factor is eminently of a fiduciary character. The duties, the responsibilities, the relations, which are inherent in the office, are in all respects those of a trustee. The protection of the estate, its safe and economical management, and the independent and disinterested exercise of his own judgment in its administration, are intrusted to the factor by the Court; and the appointment of an officer of the Court for the discharge of such duties implies the constitution of a trust."

The Lord Justice Clerk (Hope) at 13 concurred in reaching the conclusion that the constitution of a judicial factory amounted to that of a trust: "Factors are officers of Court with specific duties, in regard to what is declared to be a trust."

[520] Although there was no general statutory equation between the office of judicial factor and that of a trustee, there were specific statutory contexts in which a judicial factor was deemed a trustee. Section 2 of the 1921 Act provided that the appointment of any judicial factor by deed, decree or otherwise was a "trust" for the purposes of the Act. The definition

of "trustee" within the 1921 Act expressly included judicial factors. However, judicial statements about fiduciary duties needed to be understood in the context of the particular facts of the particular case: *Parks of Hamilton (Holdings) Ltd* v *Campbell* [2013] CSOH 67, per Lord Hodge at [27]. Notwithstanding the fiduciary nature of the office, not all duties owed by judicial factors were fiduciary in nature.

[521] A distinction could be drawn between a party in a fiduciary relationship who breached duties arising qua fiduciary and who breached duties arising from another aspect of the role. Leaving aside duties of a fiduciary nature, the standard incumbent upon a judicial factor in the exercise of his powers was that of care, skill and diligence. In authorities pre-dating the 1921 Act, the courts advanced slightly different formulations for the standard of care to which trustees had to adhere, namely "care and caution" or "care and prudence": *Hutton* v *Annan* (1898) 25 R (HL) 23. A judicial factor was now treated as a trustee for the purposes of the 1921 Act.

[522] The test for breach of trust was well-established: it was whether the trustee had failed to exercise that degree of diligence which a man of ordinary prudence would exercise in his own affairs. The standard of care was therefore what degree of care was reasonable in the circumstances. The test was an objective one. Considerations of good faith were not directly relevant to the question of degree of care: *Rae* v *Meek* (1889) 16 R (HL) 31; *Tibbert* v *McColl* 1994 SC 178, 1994 SLT 1227; *McCormack* v *McKinnon* [2023] CSOH 70 at [70]. In English law, it had been said that: " it is the duty of a trustee to conduct the business of the trust with the same care as an ordinary prudent man of business would extend towards his own affairs.": *Bartlett* v *Barclays Bank Trust Co Ltd* [1980] Ch 515, [1980] 2 WLR 430, where it was also said that:

> "The distinction is between a prudent degree of risk on the one hand, and hazard on the other. Nor must the court be astute to fix liability upon a trustee who has committed no more than an error of judgment, from which no business man, however prudent, can expect to be immune".

The approach in *Bartlett* to determining breach of a trustee's standard of care was considered and endorsed by this court in *Lutea Trustees Ltd* v *Orbis Trustees Guernsey Ltd* 1997 SC 255, 1998 SLT 471. In relation to the exercise of a factor's powers, and the standard of care he must meet in the course of administering the estate, the principles governing breach of trust were generally applicable. The appropriate degree of care which the defender had to satisfy was that of ordinary prudence. Ordinary prudence could be equated to ordinary care, skill and diligence, having regard to the interchangeability of those concepts within the Scottish authorities. Even if the defender acted in a manner which, with hindsight, constituted an error of judgment, such an error would not in and of itself attract liability.

[523] Generally, fiduciaries ought to comply with any statutory functions applicable to the discharge of their functions. Failure to do so did not always constitute a breach of fiduciary duty, however: *Kaye's Executor Nominate* v *Kaye's Former Attorney* [2023] CSOH 30, 2023 SLT 589. For example, the defender's omission to lodge the inventory of estate with the Accountant of Court within six months, though a breach of statutory duty, did not amount to breach of fiduciary duty.

[524] The question of whether a judicial factor could have liability in delict to third parties, such as individual beneficiaries to an estate, was not addressed within section 6 of the 1849 Act. In *Inland Revenue Commissioners* v *Clark's Trustees* 1939 SC 11, 1939 SLT 2, Lord President Normand commented on beneficiaries' rights of action as encompassing *inter alia* "a personal action of damages against the trustees for breach of trust", suggesting that beneficiaries had title and interest to seek damages from trustees for any loss suffered by

them as individuals. Reference was also made to *Target Holdings* v *Redferns* [1996] AC 421, [1995] 3 WLR 352 and to *Scottish Brewers Ltd* v *J Douglas Pearson & Co* 1996 SLT (Sh Ct) 50. The Judicial Factors (Scotland) Act 2025, not yet in force, made certain relative provision.

[525] The defender accepted that the pursuers had title and interest to seek damages in respect of any loss which they might have suffered, as individuals, due to breach of duty by her. It was further accepted that beneficiaries did have title and interest to raise an action calling on the executor to realise and account for any assets of the estate which it was claimed had not been realised: *Currie* v *Currie's Executor* [2022] CSIH 58, 2023 SC 90, 202 SLT 113 at [14] to [18], but that was not what had been done in the present case, and the beneficiaries had no entitlement to seek damages on behalf of the estate as a whole.

[526] It was further submitted that any matters to which the beneficiaries had consented at the time could not form the basis of a breach of duty by the judicial factor. It was a principle of the law governing the trustee and beneficiary relationship that the consent of a beneficiary to a course of conduct adopted by a trustee gave rise to a defence in relation to any subsequent claim by that beneficiary. That was available even where the beneficiary's consent had the effect of condoning a breach of trust by the trustee, albeit in those circumstances section 31 of the 1921 Act might be applicable: *Callander* v *Callander's Exr* (No 2) 1975 SC 183, 1976 SLT 10; *De Fazio* v *De Fazio* [2014] CSOH 56. The authorities referred did not disclose any standalone duty on a judicial factor to provide beneficiaries with accurate information so as to enable any consent to be real, but it was accepted that providing inaccurate information would probably fall below the applicable standard of care in most instances.

[527] The defender did not contend that the functions of the Accountant of Court had the effect of relieving a factor from liability for their acts, where the law would otherwise

consider the factor to be liable: *Lord Gray*. Equally, it was not asserted that the fact that the Accountant of Court approved or consented to any actings by the defender in the present case in any way displaced or fettered the court's ability to determine whether the defender has breached any duties incumbent upon her. In *Hutton* v *Annan* at p 29, Lord Shand observed that:

> "In regard to the position of the Accountant of Court, the duties which he has to discharge are undoubtedly a useful and valuable check on the actings of judicial factors and, it may be in many cases, especially on their actings with reference to the securities in which the funds of the estate may be invested. But I am not prepared to say that this check will in any way or to any extent relieve the factor from responsibility for his acts."

It was nonetheless to the defender's credit that she was diligent in keeping the Accountant updated throughout, and the absence of any concerns raised by the Accountant at the time regarding key decisions which the defender proposed to make was deserving of some weight when assessing whether she complied with the relevant standard of care.

[528] Section 32(1) of the 1921 Act provided:

> "If it appears to the court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, then the court may relieve the trustee either wholly or partly from personal liability for the same."

The relief provided for by section 32(1) was equally available in relation to any breach for which personal liability by a judicial factor to the estate arose: *Bristow, Petitioner* 1965 SLT 225. It was however acknowledged that if the court took the view that the defender fell below the relevant standard of care, then it was unlikely to take the view that such conduct was reasonable or ought to be excused from liability. Section 32(1) was more likely to apply to any technical breaches of trust.

[529] There was no evidence from which a finding could be made that the defender acted dishonestly at any point during the currency of the judicial factory. She sought to conclude the judicial factory for the benefit of the estate, not for her own personal gain. She obtained no direct or indirect benefit from the course she in fact followed.

[530] Executors had a duty to pay legal rights where validly claimed. Legal rights were debts due from the deceased's estate. In *Lawford* v *Lawford's Trs* 1927 SC 360, 1927 SLT 303, Lord Ashmore stated:

> "The right to legitim is not a right of succession but a claim of the character of a debt, and it is exigible against the executor of the truster in the event of the truster having died domiciled in Scotland."

That right was, however, postponed to the rights of ordinary creditors. Legal rights were exigible out of the net moveable estate remaining after any such ordinary debts had been met, and if there was a surviving spouse or civil partner, after satisfaction of their prior rights. There were further prior deductible debts over and above those due to general creditors, which included funeral charges, the expense of confirming to and realising the estate, and inheritance tax, in so far as it was due by the moveable estate: *Russel* v *Attorney General* 1917 SC 28, 1916 2 SLT 207; *Cumming* v *Brewster's Trs* 1972 SLT (Notes) 76.

[531] Residuary beneficiaries who were entitled to claim legal rights faced a binary choice: they might elect to make such a claim and renounce their testamentary entitlement, or they might alternatively choose to receive their entitlement under the will. The right to legal rights vested on the death of the truster: *Macdonald* v *Macdonald's Exx* 1932 SC (HL) 79, 1932 SLT 381. Advising residuary beneficiaries on whether to accept their legacy or claim legal rights did not form any part of the duties of a judicial factor appointed to a testate estate.

[532] Legal rights fell to be calculated by reference to the net moveable estate as at the date of the deceased's death: *Cameron's Trustees* v *Cameron* 1917 SC 416, 1917 1 SLT 226. The appropriate date on which the estate had to be valued was accordingly the date of death: *Gilchrist* v *Gilchrist's Trs* (1889) 16 R 1118; *Russel*. If there had been realisation of the estate in ordinary course, it was the actual realised value and not the estimate as at the date of death which determined the value of the estate for the purpose of calculating the legal rights. Where a sale took place without undue delay following the date of death, an inference could be drawn that the true value at date of death was the realised value.

[533] In that scenario, the valuation used for calculating legal rights remained a date of death valuation, informed by the value achieved from the realisation of the asset in ordinary course. Where realisation of any asset held within the estate had not occurred in ordinary course, utilising the estimated value of that asset as at the date of death was appropriate. In *Alexander* v *Alexander's Trs* 1954 SC 436, 1954 SLT 342, Lord Guthrie affirmed that:

> "where there has been realisation in ordinary course, the actual realised value and not the estimated value as at the date of death of the deceased determines the quantum of the moveable estate for the purpose of determining the value of legal rights."

The issue of whether changes in valuation after the date of death were relevant was also at issue in *Gilchrist*. There Lord Adam, in the majority, observed:

> "The claim of legitim by the pursuer is undoubtedly a claim of debt against his father's estate, and the amount must he estimated according to the value of the estate at his death. But the defenders, his trustees, are not bound, in order to ascertain that value, to realise the estate. They may retain the whole or any part of it *in forma specifica*. The trustees are entitled to realise the estate or any part of it, and had they done so, the amount so realised under the deduction of the expenses of the realisation would be the value of the estate of which the pursuer is entitled to a share. On the other hand, the trustees may resolve not to realise the whole or any part of the estate, and in that case the value must be estimated as at the truster's death. While I think that the contingency of a possible or probable prospective rise in value is an element which may fairly be taken into consideration in estimating the value of the shares as at the date of the truster's death, I cannot see that the fact that

> the shares have increased in value since the truster's death can be a reason for taking such increased value as the value at the date of death."

Nor should the decrease in value of an asset since the truster's death necessarily be a reason for taking the decreased value as the value at the date of death. In *Russel* the court held that:

> "By the law of Scotland *jus relicti* is a certain share of the wife's estate fixed, so far as regards value, as at the date of the wife's death. The estate here having been reduced to cash by realisation, admittedly in due course and without undue delay, any question of valuation is obviated, and apart from specialties, which do not exist in the present case, no subsequent change in value, either of decrease or increase, which occurred in the course of the subsequent management of the estate by the executor will diminish or enlarge the value of the *jus relicti*. It follows that the amount of the petitioner's claim is not affected by reason of the depreciation in value of the investments referred to in the question."

In summary, events post-death could be relevant only if they retrospectively informed an assessment of the date of death valuation.

[534] If the court was to hold that the legal rights claimants had been overpaid, a remedy lay against the recipients in error. A person who took trust property gratuitously, even without knowledge of the breach of trust, was a constructive trustee of the property and bound to surrender it to the true beneficiary. The trustee was primarily liable to reimburse the trust estate, but could in turn recover from the party who received it in error.

[535] No grant of confirmation was ever made in favour of Steven or Tracey Cockburn. The defender's evidence was that it was common for executors-nominate to assume other executors prior to confirmation. However, it was accepted that the appointment of the executors in that scenario (those named in the will and any later assumed) was only validated retrospectively if and when confirmation was granted. It followed that neither Tracey nor Steven Cockburn ever had any powers as executors to Scott Cockburn's estates. It followed that Steven Cockburn was not validly appointed as a director of the companies.

That he was registered as such on the Register of Companies did not confer any validity on his status.

[536] A judicial factor's first duty chronologically was to find caution. Only then could he take extract of his appointment and ingather the estate. The factor could not substantively enter on the estate without caution in place, but he was not precluded from acting as needed in an emergency to protect the position, e.g. by raising protective proceedings.

[537] Turning to deal with the witness evidence, counsel submitted that the relevant facts had been established at proof. He had not identified any material issues on which there were competing witness accounts of the primary factual position. On that basis, assessments of credibility and reliability assumed less importance than might otherwise have been the case. The pursuers' witnesses were, in several instances, advancing what amounted to submissions within their witness statements, rather than speaking directly to events they recollected. The witness statements of Ms Cockburn, Ms Moriarty and Ms Innes all fell into this category. Each spoke to matters of which, after inquiry, it transpired they had no first-hand knowledge. The defender did not suggest that this happened for any reason other than a misunderstanding about the nature and purpose of witness statements. Nevertheless, it did diminish the usefulness of parts of those statements and made it more difficult to determine what each witness's evidence actually was.

[538] The defender herself was asked to recall events which took place as far back as November 2015, at times on points of minute detail. That she did so with a degree of hindsight was perhaps inevitable. She accepted certain decisions which she made at the time were, with the benefit of hindsight, not optimal. Her willingness to do so was a sign of the seriousness with which she took her obligations as judicial factor and was consistent with the ethos of that public office. Her present views, with the benefit of hindsight, did not

in any event strictly matter. What mattered was the reasonableness of her conduct at the relevant time, knowing only what she knew (or ought to have known) then. Through that lens, some of her concessions, viewed objectively, may have been overly critical. One example of that might be her expressed regrets about her decision not to reappoint Ms Moriarty to a role within the companies at the outset, when her evidence was that she gave careful consideration to several reasonable and relevant factors when arriving at the decision she did. It was, further, plain that concerns entertained by both Mr Bald and Mr Simpson about the company accounts were not fully communicated to the defender.

[539] The defender maintained objection to the statements of Ms Cockburn, Ms Moriarty and Ms Watson. During cross-examination, Ms Cockburn candidly accepted that large parts of her witness statements were not, in fact, her own evidence, but had been composed in conjunction with Ms Moriarty. Ms Cockburn appeared to be seeking to assist the court when she explained how this had occurred and did so proactively at the start of her evidence. Having said that, those sections of her statement which were not her own evidence were inadmissible. A related issue arose relative to Ms Moriarty's witness statement. It discussed various matters of which she had no direct knowledge. To that extent, it was inadmissible. More generally, the blurring of the lines between giving evidence and advocating for the pursuers gave rise to issues about what, if any weight, should be ascribed to such evidence.

[540] Ms Watson was not presented as a skilled witness and thus to the extent that her evidence was based on opinion as to what the defender ought to have done, rather than her personal knowledge of the facts, it was inadmissible. Separately, it was clear that she generally sought to advocate for the pursuers, to the extent that she candidly volunteered that she wanted them to succeed, and, in effect, she thought they deserved to do so.

[541] Insofar as the pursuers alleged that the defender failed to achieve the relevant standard of care in her administration of the estate, standard causation principles fell to be applied. Those standard principles included (a) the need to establish "but for" causation, (b) scope of duty, (c) foreseeability and (d) remoteness. Insofar as relevant, the law on causation in damages claims for breach of fiduciary duty differed in certain subtle respects from that applicable to damages for breach of contract or negligence. In summary, the rules on remoteness and foreseeability did not apply when assessing damages for breach of fiduciary duty. However, there did still require to be a causal link between the breach and the loss in respect of which damages are claimed. In *Kidd* v *Paull & Williamsons LLP* [2017] CSOH 16, 2018 SC 193 Lord Tyre observed at [46]:

> "where a court in Scotland finds that equitable compensation (as opposed to, for example, restitution of funds or property) is the appropriate remedy for a breach of fiduciary duty, the measure of such compensation is what is required to put the pursuer in the position he would have been in but for the breach. The assessment is to be made with the benefit of hindsight and not as at the date of the breach. Foreseeability is not therefore a relevant consideration. But the loss compensated must flow directly from the breach, and the actings of the pursuer, as well as the actings of third parties after the date of the breach, will be material to the determination of whether the link between breach and loss is sufficiently direct to entitle the pursuer to the compensation sought."

His Lordship went on to say at [47], that "in order to be recoverable, the loss which the pursuer claims to have sustained must flow directly from the first defender's breach of fiduciary duty." The law of Scotland had been said to be materially the same as that of England and Wales in this area. In *AIB Group (UK) Plc* v *Mark Redler & Co Solicitors* [2014] UKSC 58, [2015] AC 1503, [2014] 3 WLR 1367, Lord Reed at [136] summarised the requirement for loss to be caused by the breach of trust as follows:

> "The measure of compensation should therefore normally be assessed at the date of trial, with the benefit of hindsight. The foreseeability of loss is generally irrelevant, but the loss must be caused by the breach of trust, in the sense that it must flow directly from it. Losses resulting from unreasonable behaviour on the part of the

> claimant will be adjudged to flow from that behaviour, and not from the breach. The requirement that the loss should flow directly from the breach is also the key to determining whether causation has been interrupted by the acts of third parties. The point is illustrated by the contrast between *Caffrey v Darby* [(1801) 6 Ves 488], where the trustee's neglect enabled a third party to default on payments due to the trust, and *Canson Enterprises* [*v Boughton & Co* [1991] 3 SCR 534, 85 DLR (4th)129], where the wrongful conduct by the third parties occurred after the plaintiff had taken control of the property, and was unrelated to the defendants' earlier breach of fiduciary duty."

Lord Reed affirmed Lord Browne-Wilkinson's reasoning on the point in *Target*, where the latter said:

> "If specific restitution of the trust property is not possible, then the liability of the trustee is to pay sufficient compensation to the trust estate to put it back to what it would have been had the breach not been committed … thus the common law rules of remoteness of damage and causation do not apply. However, there does have to be some causal connection between the breach of trust and the loss to the trust estate for which compensation is recoverable, namely the fact that the loss would not have occurred but for the breach … in the ordinary case … the court orders, not restitution to the trust estate, but the payment of compensation directly to the beneficiary. The measure of such compensation is the same, i.e. the difference between what the beneficiary has in fact received and the amount he would have received but for the breach of trust".

It followed that establishing "but for" causation was a necessary requirement for the pursuers in the present case even in relation to any allegations which were properly analysed as alleged breaches of fiduciary duty. In relation to any such allegations, the pursuers had to demonstrate the existence of a sufficiently direct link between the defender's alleged breaches and the losses they contended they had suffered, such that a finding could be made that such losses flowed directly from the breaches. In the absence of showing "but for" causation, the pursuers could not demonstrate such a link. It was accepted that issues of remoteness and foreseeability would not apply insofar as the court was assessing breaches of fiduciary duty. Causation was particularly in issue in relation to the removal of Steven Cockburn from the companies and the attempt to recover sums from him, the various decisions said to have impacted on the companies' performance, the heritable property sales, and the payment of tax on the imaginary dividends.

[542] In relation to the law of prescription, a key first step was to categorise the nature of the obligation contended for. Most of the allegations, properly analysed, related to failure to exercise the required standard of care in the administration of the estate, without amounting to an allegation of breach of fiduciary duty. Any obligation to pay damages arising from breach of such an obligation was reparatory in nature and subject to the five-year negative prescription. Some of the contended breaches of duty, if established, would fall to be considered through the prism of the law relative to breach of fiduciary duty and breach of trust. The applicability of the law of prescription to fiduciary obligations was not free from doubt.

[543] In terms of section 6 and Schedule 1 paragraph 1(d) of the Prescription and Limitation (Scotland) Act 1973, obligations to make reparation were subject to the operation of the five-year short negative prescription. Each pursuer had title and interest to pursue any losses which they might have suffered, as individuals, due to any breach of duty by the defender. That claim was inherently reparatory in nature. Certain obligations, specified within Schedule 3 to the 1973 Act, were imprescriptible.

[544] The precise meaning and scope of certain of the obligations within Schedule 3 was not entirely free from doubt. Properly analysed, all of the claims advanced were reparatory in nature, whether they amounted to claims for breach of fiduciary duty or not. The pursuers sought to recover damages in respect of personal losses said to have been suffered by them as beneficiaries. The basis of those claims was alleged breach of the fiduciary and other common law duties incumbent on the defender, and accordingly they were subject to

the operation of the short negative prescription: *Hobday* v *Kirkpatrick's Trs* 1985 SLT 197 at 199, relying on Stair, I, ix, 6 and Bankton, I, x, 13.

[545] "Reparation" had been held to mean a pecuniary remedy which the law of Scotland afforded for a loss caused by a wrong. The term did not fall to be given any wider or different meaning in the context of the 1973 Act than it would normally receive: *Millar* v *Glasgow District Council* 1988 SC 440, 1989 SLT 44. Section 6 of the Judicial Factors Act 1849 referred to potential penalties:

> "over and above such further liability as [the judicial factor] may be subject to as accords of law in reparation of any loss or damage sustained by the estate in consequence of such misconduct or failure".

The statute thus proceeded on the basis that the nature of any obligation by a judicial factor to pay damages at common law was reparatory in nature.

[546] The obligations underlying the pursuers' claims did not fall within those specified in paragraph (e) of Schedule 3 to the 1973 Act. The schedule provided that any obligation of a trustee (i) to produce accounts of the trustee's intromissions with any property of the trust; (ii) to make reparation or restitution in respect of any fraudulent breach of trust to which the trustee was a party or was privy; or (iii) to make furthcoming to any person entitled thereto any trust property, or the proceeds of any such property, in the possession of the trustee, or to make good the value of any such property previously received by the trustee and appropriated to his own use, were imprescriptible obligations.

[547] There was no issue of the defender having failed to produce accounts. The pursuers did not seek any orders in relation to the production of accounts. Neither was there any evidence of fraudulent breach of trust by the defender, or that the defender was privy to such a breach by a third party. Whether, in the context of time bar provisions, "fraud" might be used in a sense that embraced conduct or inactivity which fell short of actionable

fraud at common law, was something that had been considered by the English courts. Both *King* v *Victor Parsons & Co* [1973] 1 WLR 29 and *Tito* v *Waddell* [1977] Ch 106, [1977] 2 WLR 496 considered the point with reference to the concept of fraudulent concealment within the meaning of section 26 of the Limitation Act 1939. In *Tito*, Megarry V-C stated:

> "As I have indicated, the word 'fraud' is here used in a sense which embraces conduct or inactivity which falls far short of fraud at common law: see, e.g., *Kitchen v Royal Air Force Association* [1958] 1 WLR 563; *King v Victor Parsons & Co* [1973] 1 WLR 29. Indeed, as the authorities stand, it can be said that in the ordinary use of language not only does 'fraud' not mean 'fraud' but also 'concealed' does not mean 'concealed', since any unconscionable failure to reveal is enough."

In *King*, Lord Denning stated:

> "In order to show that he 'concealed' the right of action 'by fraud' it is not necessary to show that he took active steps to conceal his wrong-doing or breach of contract. It is sufficient that he knowingly committed it and did not tell the owner anything about it. He did the wrong or committed the breach secretly. By saying nothing he keeps it secret. He conceals the right of action. He conceals it by 'fraud' as those words have been interpreted in the cases. To this word 'knowingly' there must be added 'recklessly': see *Beaman v A.R.T.S. Ltd* [1949] 1 KB 550, 565-566."

In *Canada Square Operations Limited* v *Potter* [2021] EWCA Civ 339, [2022] QB 1, [2021] 3 WLR 777, the Court of Appeal considered the operation of section 32 of the Limitation Act 1980. Rose LJ reviewed the authorities relative to section 26 and commented that the pre-1980 Act law required concealment but did not require the defendant to know that what he was concealing gave rise to an actionable cause. As to when the concealment was unconscionable, her Ladyship concluded that the claimant did not have to show that the defendant knew that the conduct he was concealing gave rise to a cause of action; it was enough that the concealment was unconscionable and it would be unconscionable if he concealed the fact, being reckless as to whether or not he had committed an actionable wrong.

[548] Thus, even proceeding on the hypothesis that Scots law mirrored English law and that, in the context of prescription generally, and section 6 of the 1973 Act in particular, a definition of "fraud" that embraced conduct or inactivity short of actionable fraud was appropriate, there had to be concealment by the defender which had been done knowingly, or at least recklessly by him. Only if those ingredients were present would any question arise as to whether principles of equity ought to hold that to allow the defender to rely on a prescription defence would be unconscionable. The evidence did not disclose any conduct by the defender from which it could be concluded that such concealment took place, such that permitting her to rely on a defence under section 6(1) of the 1973 Act would be unconscionable.

[549] Returning to the terms of Schedule 3 to the 1973 Act, any obligation to make furthcoming to any person entitled thereto any trust property, or the proceeds of any such property, in the possession of the trustee, or to make good the value of any such property previously received by the trustee and appropriated to his own use would be an imprescriptible obligation. The pursuers' claims involved no such obligations. They were for damages in respect of losses they had allegedly suffered as individuals.

[550] It was accepted that no prescription issues arose relative to the third pursuer's claim. He was convened as a pursuer within 5 years of having attained the age of sixteen. The second pursuer was sixteen by 6 June 2019, on the basis that he was twelve when Scott Cockburn died on 6 June 2015. The second pursuer was sisted as a party to the present action on 24 September 2024. That was the date when he first made a relevant claim. That was more than five years after he attained the age of sixteen. Any claims in respect of which there was a concurrence of breach and loss prior to 24 September 2019 (the date five years before the second pursuer was convened and thereby made a relevant claim) had prescribed.

Aspects of the claim by the first pursuer had also prescribed. The present action was served on the defender on 16 February 2021, with the first pursuer then the sole pursuer. On the hypothesis that the pursuers' allegations were well-founded, there had already been a concurrence of breach and loss in respect of some of those allegations. Any obligation to make reparation in relation to those matters had prescribed before service of the summons. Furthermore, the first pursuer, at the time the sole pursuer, introduced new allegations by adjustment on 22 June 2022. Insofar as those amounted to new and distinct allegations of breach, no relevant claim had been made until those adjustments were intimated.

[551] Counsel then turned to deal specifically with the pursuers' stated grounds of complaint.

Delay in the removal of Steven Cockburn as a director of the companies

[552] The relevant period of time was between the defender's appointment on 26 November 2015 and early February 2016. The defender's failure to remove Steven Cockburn more quickly was said to amount to a breach of fiduciary duty. The defender had written to Steven's solicitors on 3 December 2015, and to him directly on 10 December. He had co-operated in providing some information. By 17 December, the defender had reviewed the bank statements. She planned to investigate further by speaking to staff and having an accountant review the finances. The results of her initial investigations were mentioned in her report to the Accountant of Court on 18 January 2016. She recommended that Steven should be removed as the companies' director. Notice of the shareholder's meeting to remove him was given on 1 February 2016 and she gave him a warning not to withdraw funds from the companies meantime. He was removed as the director on 16 February.

[553] The steps taken by the defender to ingather relevant information and speak to people and form a view on matters were done in a relatively short period of time. The real question was whether Steven was so obviously in the wrong that there was no need for an investigation at all. The defender was reasonably cautious to investigate especially given her interim appointment and the fact that no findings as such had been made by the appointing court, at that stage, that Steven had done anything wrong. She considered that one of her initial responsibilities was to investigate whether the allegations made against him could be substantiated. If they could not, and if he was in fact adding value to the companies, the defender could have caused harm in removing or suspending him without any investigation.

[554] The evidence showed that Steven spent or removed around £20,609 in the 3-month period between the defender's appointment and his removal. At most, each pursuer lost one-third of that figure (just under £7,000 each) from his ongoing involvement with the companies. That made no allowance for any time for the defender to identify the need to remove him and to do so. If breach of duty was held to be established, an award of £5,000 to each pursuer would be appropriate.

[555] The second pursuer's claim had prescribed. The pursuers contended that Steven should have been removed immediately on the basis he posed a real risk to the companies and caused the companies (and therefore their interests in the estate) to suffer loss by his actings right up to when he was removed on 16 February 2016. On that analysis, *damnum* and *injuria* concurred more than five years before the second pursuer joined the action on 24 September 2024, and more than five years after he attained the age of sixteen, which was in June 2019 at the latest.

Payment of legal rights

[556] The next allegation was that the defender incorrectly calculated legal rights. It was claimed that the defender owed duties to the residuary beneficiaries accurately to assess the solvency of the estate before distributing funds to the legal rights claimants.

[557] A total of £81,057 was paid by way of legal rights in December 2018. Taken together, the entitlement of Clare Innes and Scott Cockburn's children other than the pursuers was to 7/18ths of the moveable estate. It followed that if the moveable estate was overvalued for legal rights purposes to any extent (by £x) then the total combined loss to the three residuary beneficiaries from any such overvaluation would be 7/18ths of £x.

[558] The main assets for legal rights purposes were the shares in the companies. Between them, they accounted for £339,000 of the £388,755 gross moveable estate at date of death, which was 87%. The remaining 13% of the sums paid in legal rights, or £10,604, was based on other assets such as funds in bank, watches and the Range Rover. The pursuers did not seek to claim that those assets were over-valued. It was important to note that the director's loans due to the companies were disregarded when assigning value to the companies for legal rights purposes. The legal rights claimants did not receive any money based upon the value of those loans. That treatment was appropriate where the loans were an asset of the companies and a debt to the estate, so were neutral overall in assessing the net moveable value of the estate.

[559] The defender would have been prepared to adjust the date of death valuation for moveables, including the company shares, if they had been realised. She considered the issue at the relevant time and sought input from the Accountant of Court. The shares were, however, never realised. In those circumstances the defender did not fall below the requisite standard of care by using the date of death valuations.

[560] A subsidiary complaint concerning legal rights was that only £4,000 was credited towards administration costs when calculating their amount, whereas the final total costs exceeded £142,044 by December 2018, and using the smaller sum gave the legal rights claimants a windfall while pushing the estate closer to insolvency. However, the defender's evidence was that only the expenses to the initial stages of realising an estate were generally deductible as a debt when calculating legal rights. Those would normally include the expenses to the point of obtaining confirmation, but there was no confirmation here, so she treated her appointment as the relevant stage. Her approach to this matter was reasonable.

[561] It was further claimed that the defender prejudiced the beneficiaries by using the proceeds of sale of heritage to pay the legal rights claims. The defender's evidence was that it was usual and accepted practice amongst executry solicitors to make payment of legal rights from the proceeds of the sale of heritable assets. That practice was consistent with legal rights having the character of a debt. The residuary beneficiaries lost out because the value of the companies either fell after the date of Scott Cockburn's death or (more likely) the companies were never worth the amounts assigned in Mr Bald's valuations. It was reasonable for the defender to rely on those valuations when calculating and paying legal rights.

[562] It was further claimed that the defender breached her fiduciary duties by prioritising payment of the legal rights claims over repayment of the director's loans, which led to cashflow issues for Roofing and Scaffolding. However, the director's loans and legal rights were both debts that needed to be paid. There was a plan for the director's loans which was to cancel them out by way of declaring dividends.

[563] Any claim in relation to the calculation and payment of legal rights by the second pursuer had prescribed. If this was a breach, it occurred in December 2018, before he

turned sixteen. More than five years then passed between the second pursuer attaining the age of sixteen, which was no later than June 2019, and when he was sisted as a party to the present action on 24 September 2024.

The dividend proposal

Allegations regarding the company dividend and tax submissions

[564] It was claimed that the defender acted in breach of fiduciary duty by issuing R185 tax certificates on 16 September 2021 to all three residuary beneficiaries, retroactively claiming that each received £12,321 in dividend income for the 2020/2021 tax year, a combined total of £36,963, supposedly as a means of repayment of £39,961 director's loan that the estate owed Scaffolding, whereas in truth no such dividend was paid. The remaining £2,997 of that £39,961 figure was ostensibly allocated to cover taxes on the phantom dividends, and on 9 November 2021 was paid by the defender to HMRC.

[565] The defender was seeking to deal with the inherited situation of withdrawals from the companies by Scott Cockburn not having been accounted for, and to do so in the manner that was most tax efficient for the estate and the residuary beneficiaries who, it was thought, would be receiving shares in the companies as part of their inheritance. With the benefit of hindsight, the defender accepted that the course she chose to adopt was misguided. It was accepted that the defender had no authority to declare dividends from the companies. There was no evidence the defender was acting in anything but good faith by doing what she did. It was not apparent that any loss arose thereby to the pursuers as individuals.

[566] The representation made by the defender to HMRC regarding the estate having been wound up was, on her evidence, essentially seeking to convey to HMRC that no further tax returns would be submitted in future, as the end of the judicial factory was anticipated. To

the extent the phraseology used did not reflect the status of the factory, there was no evidence of any intention on the defender's part to mislead HMRC. Nor was any evidence heard that the defender sought to benefit from doing what she did; in fact, the reporting to HMRC was in the context of ultimately paying tax relative to the dividends which may not otherwise have been due.

Allegation regarding the defender's actings immediately following her interim appointment

[567] It was suggested that it was a breach of duty on the part of the defender to rely on the July 2015 valuations carried out by Thomson Roddick valuing Scott Cockburn's household contents at £370, which were said to have omitted various high-value items.

[568] However, it was appropriate for the defender to rely upon the Thomson Roddick valuations. It was a reputable firm known for providing valuations for inheritance tax purposes. The defender visited both properties following her appointment to check the contents. She took steps to investigate the claimed missing high-value items. No evidence was led that items listed within the list provided by Ms Moriarty went missing after the defender's interim appointment. There would in such circumstances only be loss caused by the defender's actions if the items could and should have been recovered. The defender did take steps to recover various sums she thought were due to the estate and the companies. If the reasons for not pursuing Steven Cockburn further for that money were valid, then the same held true of any claim to recover the other items said to have gone missing.

[569] A further allegation was that the defender did not prepare or obtain an updated list of company assets upon her interim appointment, causing Philip Bald to later rely on outdated or incomplete data. The defender had asked about these assets. It was reasonable to rely upon the company accountant for the asset position. Company assets were primarily

a matter for the directors, not the defender. In any event, the pursuers were not able to articulate what particular losses flowed from this.

[570] Any claim in these respects by the first and second pursuers had in any event prescribed. On the pursuers' hypothesis, the defender relied on the Thomson Roddick valuation and had omitted to obtain a business asset inventory by at the latest 18 January 2016, when she submitted her first report to the Accountant of Court. On that analysis, *damnum* and *injuria* concurred more than five years before the present action was served on the defender on 15 February 2021. Further, a relevant claim relative to this allegation was not made until 22 June 2022 when the first pursuer introduced the allegation via adjustment.

Allegations regarding preparing the inventory of estate following the defender's appointment

[571] A related complaint was that the defender had failed to lodge a full inventory of Scott Cockburn's heritable, moveable, and business assets within six months of receiving her bond of caution, in breach of her fiduciary duty and of the 1849 Act.

[572] A letter from the office of the Accountant of Court dated 27 November 2016 noted that that office had previously failed to request an estate inventory, and asked for it then. By letter to the Accountant dated 8 December 2016 the defender submitted accounts plus accompanying vouching. Those accounts were approved on 15 December 2016.

[573] The defender admitted that the inventory was late due to oversight. It did not necessarily follow that this amounted to breach of a fiduciary duty. The Accountant of Court accepted some responsibility for this. Most if not all information sought within the inventory was in the defender's early reports to the Accountant in any event, just not in the format of a formal inventory. There was no evidence of any loss arising from that oversight.

[574] The second pursuer's claim in this respect had in any event prescribed.

Allegations in relation to the bond of caution

[575] It was alleged that the level of the initial £50,000 bond of caution was woefully inadequate given the estate was valued at £800,000 to £1,250,000 and the defender was in breach of fiduciary duty and the 1849 Act in failing to rectify that. The increase in February 2017 came too late, the subsequent decreases left the estate underinsured, and the defender insulated from liability. However, the defender's conduct as factor was covered by her firm's professional indemnity insurance. There was no issue of the defender having insufficient insurance cover to meet the pursuers' claim. The level of the bond of caution was agreed with the Accountant of Court from time to time.

[576] The first and second pursuers' claims in this regard had in any event prescribed. On the pursuers' hypothesis, to the extent any loss flowed from the initial level of the bond, *damnum* and *injuria* concurred on 2 December 2015 when the bond was issued. Further, a relevant claim relative to this allegation was not made until 31 January 2025 when the pursuers introduced the allegation via adjustment.

Allegations regarding taking possession of and safeguarding the estate

[577] It was alleged that the defender had a duty immediately to take possession of the deceased's estate, including the keys to properties.

[578] The defender's evidence was that her bond of caution was not in place until 2 December 2015, that she obtained the keys to both properties from Steven Cockburn on 15 December 2015, and that she changed the locks proactively on 5 February 2016 when suspicious of a van which had been observed in the driveway at Oxgangs Road. No

evidence was heard that anything was taken from properties after the defender was appointed.

[579] The first and second pursuers' claims in this regard had prescribed. On the pursuers' hypothesis, such a duty was engaged immediately upon the defender's interim appointment. If any loss flowed from breach of that duty, that would have occurred more than five years before the present action was served.

[580] It was further claimed that the defender did not take steps to seek to recover the speedboat or the Range Rover, or take steps to raise proceedings against Steven or Tracey Cockburn, or seek inhibition on the dependence in such proceedings against Tracey Cockburn's home.

[581] The defender investigated these issues and wrote to Steven's solicitors at the end of March 2016 asking for repayment of what she considered he had improperly taken from the estate. She considered instructing solicitors to pursue an action. A letter of claim was also sent to Tracey Cockburn. ELP subsequently intimated that they were considering whether it was worth taxing the judicial expenses from the sheriff court action against Steven and Tracey if recovery was not likely. The defender proposed that ELP seek to enforce their account with a view to informing whether further enforcement action for debts was merited. A report was sent to the defender on 13 April 2017 by ELP noting poor prospects of recovery. No evidence was heard that Steven and Tracey Cockburn ever did, in fact, own sufficient assets to justify raising proceedings against them.

[582] Ms Watson suggested that Tracey had put her house on the market and that there might be an opportunity to inhibit, suggesting that there might be equity because Steven had paid off the mortgage. She then advised that she had been given incorrect information on the equity as it was his mother's mortgage he had paid, not Tracey's. Executors were not

jointly and severally liable for each other's wrongs: see Macdonald, *Succession* 3rd Edition at [13.105]. Tracey had not demonstrably done anything wrong in law.

[583] The defender decided not to pursue either Steven or Tracey in these circumstances. She understood both to be in receipt of benefits. The defender's evidence was that the estate lacked free funds at this time, from which it could be inferred it would have lacked the ability to fund litigation against Steven. The defender acted reasonably in declining to pursue matters further.

[584] Around £19,000 from the sale of the car was recovered. It was unclear whether the purchaser of the speedboat formally made any offer to return it to the estate. In any event, there was no evidence that Ms Cockburn or Ms Moriarty took any steps to arrange its return.

[585] The first and second pursuers' claims had prescribed. To the extent the pursuers contended that the defender should have taken such steps prior to Steven's removal as a director, that was more than five years before the present action was served.

Allegations relative to the directors: the appointment of the first pursuer and Brian Tully as directors and decision not to appoint Jaci Moriarty

[586] It was firstly alleged in this connection that the defender breached her fiduciary duty by appointing Ms Cockburn as director when she was inexperienced and without putting in place experienced management to support her or exploring less risky options such as a sale or winding up of the business.

[587] However, these were family businesses and Ms Cockburn's role as director would continue that aspect of matters. She had a clear incentive to do well for her own inheritance and that of her siblings. The family were not in favour of an early sale of the companies. Their preference was that the companies remained in the family and carried on trading on

that basis. Ms Cockburn considered herself able to discharge the duties of the role, even after having been in post for some time. The defender was impressed with Ms Cockburn's actions in having the factory instituted and subsequently with her work for the company. Mr Bald was (admittedly after the event) impressed with her capabilities. Ms Watson and Ms Moriarty were content with the plan to appoint her. The defender provided support to Ms Cockburn by way of meetings. She believed that Mr Simpson was providing support to her also. The defender stepped back from the companies at Ms Cockburn's request, conveyed via Ms Watson, after Mr Bald was appointed in September 2016. When this issue was put to the defender in cross-examination, the focus was on her decision not to appoint Ms Moriarty alongside the first pursuer, as opposed to the first pursuer's appointment having been inappropriate in and of itself.

[588] The first and second pursuers' claims in this regard had prescribed. The appointment of the first pursuer as a director took place more than five years before the present proceedings were served.

[589] The next allegation was that the defender overlooked warnings against appointing Brian Tully as director, standing concerns he had undertaken "cash jobs", and in so doing breached her fiduciary duties. Ms Cockburn's summary application for the appointment of a judicial factor stated that Mr Tully had responsibility for the work done by the companies. Ms Moriarty was expressing reservations about Mr Tully but still concluding that he was an asset to the business. In her oral evidence she confirmed that Mr Tully had good qualities and was an experienced estimator (a role in which she had no experience). Ms Watson's initial email to the defender on 26 November 2015 was fairly positive regarding Mr Tully, describing him as Scott Cockburn's "right hand man" and a "key member of staff". Concerns were subsequently raised by Ms Cockburn and Ms Moriarty. By August 2016, the

defender's evidence was that she too became concerned after learning about Mr Tully's conduct in lending out scaffolding and undertaking a cash job.

[590] The defender's decision to appoint Mr Tully was, in all the circumstances, reasonable at the time at which it was taken. Her evidence was that, with hindsight, she might have taken a different decision, but at the time she considered that appointing Mr Tully together with the first pursuer was the preferable course. The first pursuer had supported the appointment of Mr Tully. It had the benefit of continuity since he knew the business and had been central to running it prior to Scott Cockburn's death.

[591] In any event, no loss had been shown to flow from this alleged breach. The funds from the cash job addressed in evidence were repaid by Mr Tully to the company. There was no evidence of any other cash jobs or amounts involved. Furthermore, if the pursuers' true complaint was in relation to the cash jobs Mr Tully was undertaking, the companies would have needed to remove him as an employee as well as a director in order to prevent that. In fact, Ms Cockburn and Philip Bald elected to retain Mr Tully within the business until August 2017.

[592] In relation to Mr Tully's own company, this was an entirely separate company that never traded. It was not linked to any cash jobs issue. Ms Moriarty herself set up another Buckstone company (and indeed had gone on to trade it, albeit only after Roofing ceased trading, having gone into liquidation). It was impossible for the defender to know with any reasonable certainty at the outset who to trust. Mr Tully and Ms Moriarty both claimed to have formed new companies for honest reasons.

[593] The first and second pursuers' claims in this regard had prescribed. The appointment of Mr Tully as a director took place more than five years before the present proceedings were served.

[594] The next (and apparently the most weighty) complaint in this group was that the defender failed to reinstate Ms Moriarty or appoint her as a director and unnecessarily incurred costs relative to her unfair dismissal claim.

[595] Steven Cockburn had sacked Ms Moriarty. Given the apparent lack of any authority in favour of Tracey Cockburn to appoint Steven as a director of the companies, it could be queried on what authority he dismissed her. In practical terms, however, she was no longer in the business due to his actings. It was accepted that the beneficiaries did appear to want Ms Moriarty back. The defender considered the possibility of her returning given her previous role. The issues considered included whether she would she be as effective when no longer the partner of the boss; a replacement office manager, Ms Skinner, had been appointed in the interim; there was at least a potential to clash with Mr Tully, whom the defender did not want to lose from the business given what she had been told about his importance to it; Ms Moriarty's subsisting unfair dismissal claim; and her possible role in the creation of inaccurate accounts for the businesses during Scott's lifetime. It was objectively reasonable for the defender to have reservations on those grounds.

[596] As to the unfair dismissal claim, Steven Cockburn had instructed Young & Co, and the defender had been kept in the loop by him about it. When the defender became aware of the availability of representation via Peninsula, it was agreed that Young & Co would complete their initial work then hand over to Peninsula.

[597] Ms Moriarty appeared to have made a success of her own business using the Buckstone name after Roofing became insolvent. It did not follow that she would have been able to save the existing companies had she been brought back sooner. No evidence was led from which such a finding could be made, besides speculation based on her role in the business while Scott Cockburn was still alive. On the other hand, evidence was heard that

Ms Moriarty had at least some role in the estate companies' accounting and financial position being irregular. She was also involved to some extent with those companies from around December 2016, yet this did not lead to a material improvement in the performance of the companies. Even if Ms Moriarty would have improved matters, that could only be seen with the benefit of hindsight. The defender was in a very difficult position at the relevant time in knowing who would be good or bad for the business.

[598] The first and second pursuers' claims in this regard had prescribed. The fees incurred to Young & Co related to work undertaken in January 2016. *Damnum* and *injuria* thus concurred more than five years before the present proceedings were served. Separately, a relevant claim relative to the Young & Co fees was not made until 22 June 2022 when Ms Cockburn introduced the allegation via adjustment.

Allegations relative to the removal of Brian Tully and appointment of Philip Bald as director

[599] Another ground of complaint was that the defender mishandled confronting Mr Tully about his alleged cash jobs.

[600] The pursuers' position was that the defender was told at the 26 May 2016 meeting about a specific cash job. The defender's evidence was that she was not told of any specific job, or at least did not understand the other attendees to be discussing a particular job. That accorded with her contemporaneous file note. Subsequently, the defender was surprised to learn in February 2017 that Mr Tully had not been removed. Her evidence was that she had left it to Mr Bald (and her colleague Mr Taylor) to remove Mr Tully. She believed that was in hand. Neither Mr Bald nor Ms Cockburn thereafter sought her assistance or input in relation to removing him. She received correspondence referring to Mr Tully but

understood that he had been removed as a director and that Mr Bald and Ms Cockburn were deciding what to do about his employment status. Mr Tully eventually resigned in August 2017.

[601] The defender's approach in confronting Mr Tully given what happened at their meeting was entirely reasonable. He agreed that he should resign. It was then for the directors (namely Ms Cockburn and Mr Bald following his appointment shortly thereafter) to remove him if he did not make good on his stated intention to resign. Mr Bald accepted that it was for him and Ms Cockburn to take a view and that they decided not to remove Mr Tully at that stage due to the impact that was likely to have on the companies. The prospect of a claim against the companies due to delay in removing him may also have played a role but was by no means the sole factor. Mr Bald also accepted that the defender was perhaps not kept fully abreast of these developments.

[602] The second pursuer's claim in this respect had prescribed.

Allegations regarding Oxgangs Road

[603] The first allegation concerning Oxgangs Road was that the defender failed to act timeously regarding water ingress there occurring as early as February 2016. She was supposed to have delayed in instructing any works until September, leading to black mould and defective render.

[604] Ms Cockburn was staying temporarily in the property in around May 2016. There was no evidence in the defender's file that any complaint was made that the property was suffering significantly due to water ingress at this time. The defender encouraged Alan Scott to speak with Ms Innes and Ms Moriarty about the tradesmen used and the status of the works to the property prior to Scott Cockburn's death, and he did so.

[605] The defender's oral evidence was that she had concerns about the safety and security of the property and took appropriate steps to preserve it. She stated that the issues of most concern were the structural ones and the fact that the property did not conform to applicable buildings standards. Water ingress was not the only issue, nor was it the most serious one.

[606] In any event, there was no evidence of any loss relating to this issue, and the first pursuer's claim had prescribed. A relevant claim relative to the specific allegation involving water ingress was not made until 22 June 2022 when the first pursuer introduced the allegation by adjustment.

[607] The second issue was that no insurance claim was made relative to storm damage in February 2016, which cost £2,295 to remedy. The only mention of that damage was in one email exchange with Steven Cockburn. It noted that Mr Tully was assessing the damage. The company engaged by the defender to manage the property were arranging for the fallen tree to be removed. The defender stated in her oral evidence that she investigated whether the applicable policy of insurance would respond, but it did not cover this kind of damage.

[608] The first pursuer's claim had in any event prescribed. A relevant claim relative to the specific allegation involving the failure to make an insurance claim was not made until 22 June 2022 when the first pursuer introduced the allegation by adjustment.

[609] The third allegation concerning Oxgangs Road was that the defender ought to have marketed it for sale in its existing condition from January 2016, as she should have realised that the required works were too costly for the estate to afford.

[610] The defender's file showed that Alan Scott was being asked to comment on the works required later than this point in time. His initial investigations were with Ms Innes and Ms Moriarty in April. The defender's evidence was that the property was not capable of being sold at this time, as the absence of relevant building standards certification was a

barrier to any such sale. It was accordingly reasonable for her to proceed on the basis that no sale could take place, or at least that a better return could be achieved for the estate, if certain works were undertaken first. The nature and scope of those works needed to be investigated. The pursuers led no evidence from which a finding could be made that the defender should have known the cost of the required works in January 2016. In the event, it took Alan Scott, with the assistance of input from tradespeople and structural engineer, some considerable time to ascertain the true scale of the remedial works required. In any event, there was no evidence that a better return could have been made from an earlier sale.

[611] The first and second pursuers' claims had prescribed. To the extent that any loss was caused by a failure to market the Oxgangs Road property in January 2016, this was more than five years before the present proceedings were served.

[612] It was further alleged that the defender did not act promptly to satisfy the enforcement notice relating to Oxgangs Road. The estate had £10,583 available at that time which would have been sufficient to remedy the notice issue by removing the fence panels and electrical gate.

[613] An appeal against the enforcement notice was rejected on 9 February 2016. The defender's oral evidence was that Buckstone Loan East had to be sold to secure funds before any remedial works could be commenced. At the time she did not consider it appropriate to proceed to obtain quotations for works where she knew they could not be paid for. By 28 January 2017 the enforcement action had been closed. By May 2017 a decision to market Oxgangs Road as soon as possible was taken following further pressure from the secured lender. The defender acted appropriately. She was unaware of any potential to alter the scope of the proposed remedial works relative to the fencing and gates at the relevant time.

[614] The first pursuer's claim had prescribed. A relevant claim concerning satisfaction of the enforcement notice was not made until 22 June 2022, when the first pursuer introduced the allegation via adjustment.

[615] The next complaint was that the defender delayed in addressing the Jewsons debt until an action was served on 23 May 2016, escalating the dispute and incurring £6,454.10 of legal costs.

[616] Jewson instructed solicitors on 22 March 2016. A site meeting took place between Mr Scott and representatives of Jewsons to attempt to resolve matters in around June. It was accepted on behalf of Jewsons that various matters needed clarification. The court action ultimately settled on 8 November 2016 for £16,664.69 plus £6,454.10 legal fees. Settlement included Jewsons agreeing to fix certain issues with the kitchen. The defender's handling of the Jewsons debt was reasonable. A large part of the debt claimed was properly due by Roofing and then by the estate, but that only became fully apparent after investigation owing to the manner in which Scott Cockburn had dealt with the kitchen works prior to his death. A discount on the claim was secured along with works undertaken by Jewsons.

[617] The first pursuer's claim had prescribed. A relevant claim relative to the Jewsons dispute was not made until 22 June 2022 when the first pursuer introduced the allegation via adjustment.

[618] The final allegation concerning Oxgangs Road was that the defender sold it at an undervalue.

[619] The defender's actions were entirely proper and a clear process was followed. The enforcement notice needed to be dealt with first. The defender liaised with Mr Scott to deal with that and generally regarding the property. She explored the cost of doing some work before sale with a view to maximising return. When it became clear that that would be too

expensive, the property was marketed. The secured lender's pressure also made that necessary. It was clear by June 2017 that doing work would be too costly. The defender's responses to offers were appropriate, and the sale price ultimately received was consistent with professional advice. The defender obtained a valuation from DM Hall which supported accepting the offer. Graham & Sibbald also confirmed that the offer was appropriate. No evidence was led that an earlier sale would have achieved a better sale price. Likewise, no evidence was led that the price ultimately achieved was not fair market value for the property. That the property was repeatedly exposed to the market, and sold for the price that it did, confirmed that market value was achieved.

[620] The second pursuer's claim had prescribed.

Allegation regarding Buckstone Loan East

[621] It was said that the defender mishandled the costs relative to the sale of Buckstone Loan East by paying the entire £5,021 sum from the estate when Clare Innes should have been liable for 50%.

[622] The defender's firm's fee of £7,221 including outlays for the sale was split equally between the estate and Ms Innes. The pursuers' complaint concerned other expenses relating to Buckstone Loan East which were paid fully by the estate without a half share being claimed from Ms Innes. The treatment of the costs was reasonable. The costs that were met fully by the estate were things like council tax and other bills. The defender thought it appropriate for the estate to meet those because Scott Cockburn had been living in the property during the period to which the bills related. The total was just under £5,000. Had these costs been split, the estate would have been £2,487.14 better off.

[623] The first pursuer's claim had prescribed. A relevant claim relative to payments made to Ms Innes was not made until 22 June 2022 when the first pursuer introduced the allegation via adjustment. *Damnum* and *injuria* concurred more than five years before that claim was made.

Decision

Witnesses

[624] The extensive witness statements and oral evidence in this case, combined with the content of the thousands of documents lodged, have left little or no room for doubt on what actually happened in every material respect. The criticisms made by the defender of some aspects of the witness statements for the pursuer are valid, but it was, very fairly, not suggested that those failings were reflective of anything other than a misunderstanding of the precise role of such statements in the process. The evidence of Ms Watson did indulge in a degree of advocacy, essentially in relation to matters of opinion, but as she was adduced purely as a witness to fact, I disregarded her views on what the defender should and should not have done as factor, just as I did with the opinions on the same matter expressed by Mr Allan, which were equally irrelevant.

[625] The credibility of the pursuers' witnesses was not questioned, and it was clear that their evidence represented their genuine understanding of what had happened, albeit one heavily influenced by their own point of view. The defender likewise took a very responsible approach to her evidence and it was to her credit, in particular, that she was prepared as matters developed to accept that some of the actions taken by her which she had at the outset considered to be unimpeachable were in fact open to serious criticism. Some witnesses, in particular Messrs Taylor, McHugh and Paterson, and Ms Adshead, were

justifiably puzzled as to why they had been called to give evidence at all, but answered the questions they were asked straightforwardly enough. Of the two witnesses speaking to the companies' financial records and affairs, Mr Simpson appreciated at an early stage that the process was such that the whole and unvarnished truth about the matters he was being asked to speak to was going to emerge and that there was no point in attempting to hinder that process; Mr Bald took rather longer to come to the same realisation.

[626] One or two final observations may usefully be made about matters revealed by the evidence which were significant for how events developed in general, without being specifically tied to any particular issue in dispute between the parties. Firstly, it was apparent that, during the course of the factory, relations between the defender on the one hand and Ms Cockburn and Ms Moriarty on the other irretrievably broke down, to the extent that the defender would, had this been an ordinary private client case, have felt constrained to withdraw from acting because of a fundamental lack of mutual trust and confidence. Whoever was responsible for that situation developing (a matter on which I express no opinion), it is unfortunate that, once it did, no party sought to return to the sheriff to request, quite properly in such circumstances, that the defender be relieved of her factorial duties. Much if not all of the difficulty which subsequently emerged could have been avoided had that step been taken.

[627] Indeed, given that the reason for the interim appointment of a factor in the first place was the adverse effect of the actions of Steven Cockburn on the estate, it is difficult to see why a permanent appointment was needed at all, since that situation had already been dealt with by the time that such an appointment was considered. It would have been appropriate for the sheriff to have been asked at that stage simply to appoint an executor-dative agreed upon by the beneficiaries as a whole, which was eminently possible and would again

probably have set the administration of the estate on a very different and preferable path. However, the task of the court is not to consider how history could and should have been better written, but to determine the consequences in law of what in fact occurred.

[628] The other matter which regrettably appeared very clearly from the evidence was that the factory was not provided with any meaningful supervision by the Accountant of Court. Mr Allan had no legal or other professional qualifications to provide such supervision, and did not appear to have been furnished with any training, formal or otherwise, which proved sufficient to remedy the deficiencies inherent in that situation. A particular difficulty in expecting people to learn how to perform a particular task adequately by simply doing it repeatedly under light-touch supervision is that they fail to recognise the existence of a situation which lies outwith their competences, and so it proved in this case. By way of example, the quite inexplicable decisions of the defender, as part of her attempts to bring the factory to an end, to maintain to HMRC that company dividends had been declared, and to pay the tax which would have been due on those dividends, when in fact no such dividends either had been or could lawfully have been declared, was something that ought to have been recognised and stymied by the Accountant, but instead was met with uncomprehending acquiescence.

[629] Although it was submitted on her behalf that the defender should be credited for having referred matters arising in the administration of the factory so frequently to the Accountant of Court, in fact the extent of that reference must have added a great deal of unnecessary expense, naturally caused the focus of the Accountant to be on day-to-day and often quite minor matters, and distracted attention from the greater issues concerning the strategy to be adopted towards bringing the factory to an orderly end within a reasonable time. A more proportionate approach, reporting as required by statute and otherwise

seeking the view of the Accountant only when matters of importance and genuine doubt attending some aspect of the administration arose, might have prevented the relationship between the defender and the Accountant assuming the features of an empty echo chamber in quite the way it did. As was rightly conceded on behalf of the defender under reference to *Hutton*, the Accountant's approval did not absolve her from personal responsibility for the running of the factory, and if that was understood during its course, it is difficult to see why her approaches to the Accountant were quite so frequent or, indeed, not actively discouraged by the latter.

[630] The actions of the Accountant as a whole caused the pursuers to lose faith in the efficacy of the system put in place in ensure that proper and independent regard was given to their interests in the conduct of the factory. It is difficult to regard that loss of faith as unjustified.

Legal background

[631] The legal background against which the issues in this case fall to be decided was canvassed extensively and largely correctly in the defender's submissions, and is not particularly complex to state or to apply to the facts, even though not all aspects of it appear to have been considered or understood by the actors in this particular drama as events unfolded. A judicial factor is a species of trustee. The nature of the trust in question consists of the ingathering, administration and distribution of the estate in the charge of the factor. It is (contrary to the defender's somewhat optimistic submission in this regard) a breach of trust to carry out those tasks with a degree of diligence less than would be shown by a man of ordinary prudence in the conduct of his own affairs. That is an objective test, essentially of reasonableness, and so a factor in breach of trust in this context is very unlikely to be able

to pray in aid the terms of section 32(1) of the Trusts (Scotland) Act 1921. I did not consider that the terms of the section applied to any allegation in the present case for that reason.

[632] A beneficiary claiming to have been harmed as a result of a breach of trust such as is here under consideration may sue in respect of the loss which he or she has personally suffered, but must demonstrate that that loss would not have been suffered had the breach of trust not occurred. The restraints of foreseeability and remoteness are, however, not applied as they would be in the context of an action for damages in which the alleged wrong is not a breach of trust.

[633] The duties of an interim judicial factor are to bring the estate in question under his charge and to preserve it as well as may be pending a decision being made on the grant or refusal of a permanent appointment. That is not necessarily the same thing as preserving the *status quo ante*, especially where (as here) the reason for the interim appointment is the alleged depredation of the estate by those in *de facto* control of it. A need for urgent action in this connection justifies the factor acting before he has obtained his bond of caution. If those in *de facto* control of a deceased person's estate have not been confirmed as his executors, they have no right in law to interfere with it, whether or not nominated in the deceased's will as executors, and the validity of any actions they may take will depend upon any subsequent confirmation and the ratification of those actions which that confirmation entails.

[634] In relation to the payment of legal rights, a judicial factor on a deceased's estate, just as an executor, must recognise that this variety of debt due from the estate is subordinate to debt owed otherwise than by operation of the law of succession. In the present context, that included the debts owed by the estate to the companies in respect of the sums taken from them by Scott Cockburn and categorised as director's loans, notwithstanding the fact that

the estate in turn wholly owned the companies. The approach of the defender in this case, namely to treat those debts as debts owed both from and by the estate, and effectively to treat them as capable of being netted off against each other in the administration of the factory, was wrong in law. It was an error which would have had no practical consequences had the valuation of the non-cash assets of the estate (in this case, in particular, the evaluation of the worth of the company shares) been accurate. However, in the event that that valuation was incorrect (as I consider it was, for reasons to be set out later), the error enabled non-cash assets to be treated as the equivalent of cash assets for the purpose of the calculation of legal rights entitlement when there was in fact no such equivalence.

[635] I accept that the valuation of the moveable property of an estate for legal rights purposes falls to be carried out as at the date of the relevant death (but, to be quite clear, taking any due account on their value of the fact of that death). However, events after that date (including but not limited to the realisation of the assets in question) may be of such a nature as to be eminently capable of casting doubt on the accuracy of any such valuation, and the payment of legal rights should only proceed on the basis of a date of death valuation upon which confidence may still reasonably be placed. An overpayment of legal rights made by a factor (or executor) other than as a result of the exercise of reasonable diligence in the assessment of the true value of the moveable estate is likely to be an act in breach of fiduciary duty for which reparation may require to be made, leaving the fiduciary to such remedy as may exist against overpaid beneficiaries.

[636] The claims made by the pursuers in this action (whether properly categorised as for damages or equitable compensation) are reparatory in nature, and thus subject to the short negative prescription. The exceptions set out in paragraph (e) of Schedule 3 to the Prescription and Limitation (Scotland) Act 1973 have no application to the facts of this case.

In particular, the defender's behaviour was neither unconscionable nor reckless as to whether or not a relevant wrong had been committed by her. In some respects subsequently dealt with, it was unreasonable in the sense already discussed, but that does not take it outwith the scope of the quinquennial prescription. It follows that the first pursuer has no subsisting claim in these proceedings for loss suffered by her before 16 February 2016 (or, where the relative complaint was not made until the action was underway, before 22 June 2017), and that the second pursuer has no subsisting claim here for loss suffered by him before 24 September 2019. The third pursuer's minority for much of the relevant period has the consequence that time has not effectively run against him in respect of any claim advanced in the action.

[637] Although the defender (whose interests in these proceedings were represented on the instructions of her professional indemnity insurers) insisted upon her prescription plea in this action, and to the extent afterwards described it falls to be sustained, it should not be thought that the refusal of a remedy in whole or in part on that basis represents an end to the defender's responsibility in the relevant regards. She has not been exonered or discharged from her office, and any scheme of division which she may ultimately present to the sheriff for approval that fails to reflect the wrongful diminution in the value of the estate which has been under her charge and which has not been made good to all the beneficiaries as a result of the decree in this action will not be an acceptable such scheme. Her bond of caution may be called upon in that regard, or she may otherwise have to make good the shortfall for distribution. These are matters for the sheriff to deal with. That is a result of the unusual interplay between the fact that the court supervising the factory is the sheriff court, but that this action for reparation has been brought in this court.

Specific complaints

Initial steps in the factory

[638] The pursuers maintain that the defender failed properly to inventorise the estate placed in her charge. So far as the personal property of Scott Cockburn is concerned, the defender inherited an inventory and valuation of that property from an experienced and reputable firm of auctioneers and valuers, which had been instructed by solicitors acting for Tracey and Steven Cockburn. That inventory appeared to her to represent a fairly approximate reflection of what she had herself observed to be present when visiting the property at Oxgangs Road. In these circumstances, it was reasonable for her to accept the inventory as an adequate record of what in fact was capable of being taken into her possession as part of the estate under her control at the outset, and of the value of those items. Commissioning a further inventory and valuation of what was to be found as at the date of her appointment would not have been a reasonable use of the estate's resources.

[639] That said, the defender's functions as factor included ascertaining what ought to have been capable of being taken into her possession as part of the estate as at that date, and she displayed an unreasonable degree of incuriosity in relation to that matter when it came to moveable items of some apparent or at least potential value which she was consistently being told, by Ms Moriarty in particular, had previously been abstracted by family members.

[640] However, since the breach of duty in this regard consisted in a failure to take steps to recover that which had been taken, or at least its value, rather than a failure to prevent it being taken in the first place, it would be productive of a claim in the hands of the pursuers only if it could be shown on the balance of probabilities that something the defender could

reasonably have done to those ends once in place as factor would have borne fruit. The evidence before the court justifies no such conclusion.

[641] Steven and Tracey Cockburn were asked by the defender to make voluntary reparation to the estate, but did not do so. The defender's decision not to pursue them at law was justified in light of the poor apparent prospects of recovery from them given their lack of obvious assets or meaningful income. The institution of legal proceedings in such circumstances would probably have been productive of loss (by way of irrecoverable legal expenses) rather than gain to the estate. Although Tracey owned heritable property at one stage, there is no evidence that there was material equity in that property which could have been accessed for the benefit of the estate, and in any event the extent to which Tracey (as opposed to Steven) was actually personally liable to make reparation to the estate was sufficiently unclear as to render action against her unjustified. The evidence did not indicate that any other person was a suitable candidate to be sued in relation to the unlawful removal of Scott Cockburn's personal property, or that a complaint to the police in respect of anyone's relative actions would have been beneficial to the estate.

[642] I also consider that the defender was in breach of duty, in circumstances where her appointment proceeded in part upon claims that items of moveable property were being abstracted by family members, in not taking steps to gain and secure access to the heritable properties previously occupied by Scott Cockburn until mid-December 2015. The defender ought in the exercise of reasonable diligence to have gained exclusive control of those properties within days at most of her interim appointment. The pursuers were, however, unable to demonstrate that that breach of duty resulted in further abstraction of items of value belonging to the estate and was thus productive of loss to it or to them.

[643] Turning to specific items of moveable property, I consider that the defender acted reasonably in accepting the valuation of £5,000 for Scott Cockburn's Rolex watch provided by the valuers instructed on behalf of Steven and Tracey. Although it is no doubt true that factors such as the particular model under consideration and its state of preservation and repair may affect the value of such an item one way or another, there is no evidence which suggests that the formal valuation obtained was clearly wrong or that the defender was acting unreasonably in accepting it rather than instructing another valuation at further expense. Moreover, since the Rolex was given to the second pursuer as part of his entitlement to his father's estate, an increase in its deemed value would result in a corresponding reduction to the extent of his further entitlement thereto, to his disadvantage.

[644] In relation to the arrangement made by Steven whereby Scott Cockburn's Range Rover and speedboat were sold in a composite transaction to the same buyer, I accept the pursuers' evidence that the buyer had expressed himself not particularly to want the speedboat and to be willing to return it without deduction from the total price he had paid. The defender ought to have ascertained that position and arranged for its return. By not doing so, she was in breach of duty and thereby caused the estate to suffer loss in the amount of its value. There was some evidence about the make and model of the speedboat (a Glastron SE199), and some relatively indirect evidence that it would have had a value in the range of £7,500 to £10,000. I consider that the lower end of that range would reasonably represent the loss caused to the estate by the defender's failure to retrieve and sell it.

[645] Turning to the Range Rover, there was some relatively vague evidence that it required repairs of one kind or another, or else that the person to whom it was sold was owed certain other sums by Scott Cockburn, which were written off as part of the transaction. Those considerations, coupled with the offer to return the speedboat which the

defender ought to have accepted, result in the conclusion that a reasonable person in the position of the defender would not have had a proper basis to seek further to disturb the transaction which had been entered into.

[646] The evidence suggested that the buyer of the Range Rover and speedboat was willing to return it during the first quarter of 2016 at least, so that the first pursuer's claim in relation to the defender's breach of duty in this regard has not prescribed. In relation to the second pursuer, however, that willingness would have had to subsist into 2019 if his relative claim is not to have prescribed, and the evidence did not support any inference that the offer was still a live one at that point. No question of prescription arises in this or any other connection in relation to the claim of the third pursuer. The first and third pursuers will accordingly receive an award in the principal sum of £2,500 each in this connection.

[647] The defender proposes, in her final accounts and scheme of division, to disregard the sum of £1,050 from what would otherwise be reckoned the content of the estate in respect of gym equipment and a power washer which Ms Cockburn, with the consent of the defender, took into her possession and attempted unsuccessfully to sell on behalf of the estate. There is no warrant in such circumstances for treating those items as having been abstracted from the estate, and the accounts and scheme of division falls to be adjusted accordingly. If, at this remove, the items are no longer to hand or do not retain their assessed value, then the defender will have to be treated as having, in breach of duty, failed to realise that value. That is a matter that can also be dealt with in the proceedings which will be necessary to achieve her exoneration and discharge.

[648] Finally in the context of dealings with Scott Cockburn's corporeal moveable property, there was some discussion in the evidence about storage costs for, in particular, television sets removed by or with the authority of the defender from the heritable

properties. I understood this evidence to be directed, at least primarily, at seeking to undermine the accuracy of the inventory taken of the contents of those properties. I have already indicated that the defender's decision not to reopen that inventory was within the bounds of the reasonable discretion properly open to her. The evidence did not provide an adequate basis for any conclusion that storage fees incurred were excessive in amount or incurred for longer than a reasonable time. No claim accordingly exists in that regard.

[649] In relation to the assets of the companies, although in ordinary circumstances it would be the duty of the company directors to be aware of the extent of their assets and to safeguard those assets, when the defender was appointed as factor in this case there was no *de jure* director of the companies, and the alleged actions of the person in *de facto* charge of them, Steven Cockburn, were the reason for the institution of the factory in the first place. There was no inventory of business assets, the company accounts did not sufficiently identify them, and allegations were being made about the removal or concealment of some assets.

[650] In those particular circumstances, the action of a prudent owner of the companies would, at least pending the appointment of a trustworthy director, have been to take reasonable steps to ascertain what was actually within the possession of the companies, what was supposed to be present but was missing, and where any missing items might have gone. The defender took no such steps and was thus in breach of her duty as factor. Again, however, it is for the pursuers to demonstrate in the context of this action that that breach of duty was productive of loss to the estate. Although the lack of a register of company assets may well have contributed to the uncertainty attending the valuation of the companies, a matter to be dealt with shortly, there is no evidence apt to form the basis for any conclusion that, had the defender adequately inventorised the company assets towards the start of the

factory, any such assets would have been preserved or their value restored to the companies, either at all or at any rate to the extent that the value of the companies to the estate would have been greater than it eventually proved to be.

[651] The defender's failure to provide an inventory of the estate to the Accountant of Court within six months of the commencement of the factory was a breach of duty on her part, notwithstanding the secondary failure of the Accountant to remind her of her obligation in that regard. It was not, however, a breach of fiduciary duty, and no link with any loss to the estate was made out in the evidence.

[652] The pursuers' criticism of the drastic reduction over time of the amount covered by the bond of caution which the defender was required to maintain from time to time is well-founded, even though those reductions were permitted by the Accountant of Court; the amount covered by a bond should be reasonably sufficient to cover a factor's potential liability for breach of duty at any time, which is not an amount bearing any necessary relation to the value of the estate remaining in the factor's hands at that particular point. However, the liabilities of the defender which can be reflected in an award of reparation in the context of this action are catered for by the professional indemnity insurance maintained by her firm, and so even if failure to maintain the bond of caution at an appropriate level qualifies as breach of a duty owed to the pursuers, whether fiduciary or otherwise (which I doubt), no harm has, for present purposes at least, been caused to them thereby.

Removal of Steven Cockburn from the companies

[653] The defender was appointed as interim factor against a narration that the estate was being plundered as a result, in particular, of the actions of Steven Cockburn. Those allegations were evidently considered by the sheriff to be sufficiently credible and weighty

to justify the appointment in question. The defender ought to have appreciated that that was the case and that it was appropriate, indeed necessary, in such circumstances to neutralise the ongoing threat to the integrity of the estate immediately. I have already indicated what that ought to have involved in relation to the corporeal moveables formerly owned by Scott Cockburn. In relation to the companies, Steven had simply appeared at their offices shortly after Scott's death and announced himself thenceforth to be in charge. A form supposedly appointing him as their director was filed with Companies House, but it ought to have been apparent to anyone considering matters with any degree of care that there was no one lawfully able to make that appointment, since on Scott's death the companies had lost their sole director and shareholder, and no confirmation in respect of any executor had been granted. It followed that Steven could and in the circumstances should simply have been immediately told by the defender to cease any activities in relation to the companies, to return any property belonging to them which he held, and to keep away from the offices. Failure to comply with those instructions should have been met with appropriate and timely legal action. The companies' bank should have been informed of the existence of the factory and that Steven was not authorised to operate the company accounts. All of that ought to have been done within, at most, a couple of working days of the defender's interim appointment.

[654] Instead, the defender took no immediate steps directed at the prevention of further harm to the companies at the hands of Steven. Rather, she permitted him to continue as a pretended director of the companies until mid-February 2016 and, somewhat bizarrely given her status as a practising solicitor, took legal advice from a firm of accountants about what steps would be required lawfully to remove him as director, resulting in her believing, wrongly, that she had to give relatively lengthy notice to herself of the calling of a

shareholder's meeting when she was the only shareholder in the companies before that removal could be effected, ignorant to the obvious fact that Steven was not and could never have been a *de jure* director of the companies in the first place.

[655] With the encouragement of the Accountant of Court, she also conceived - again, quite wrongly - that it was some part of her role as interim factor to gather evidence in relation to Steven's activities in the companies for use by the sheriff court in deciding whether to make the factory permanent, thereby rather losing sight of the fact that the very reason for her interim appointment was the urgent stabilisation of the estate rather than a leisurely consideration of the effects of the *status quo ante*. I have no hesitation in finding that the defender's failure to excise Steven from the companies until 16 February 2016 was a breach of fiduciary duty on her part.

[656] It is not possible to say precisely what degree of harm was caused to the estate by the defender's failure to remove Steven from the companies promptly, since quite what he did and exactly when is not clearly disclosed by the extant evidence. It was, however, suggested on behalf of the defender that a figure of around £20,000 would adequately approximate to the value of that which he had managed improperly to abstract from the companies in the period during which he remained in a position to do so as a result of the defender's breach of duty, which accorded in general terms with the impression and rough calculations which had commended themselves to me in the course of the proof.

[657] I consider that an award of £18,000 in total in this regard would represent a fair estimate of the harm caused to the estate in consequence of the defender's breach. The second pursuer's claim in this respect has, however, prescribed for the reasons stated on the defender's behalf, and so that is something that will have to be dealt with in the context of the defender's application to the sheriff for approval of a scheme of division, exoneration

and discharge. In this action, each of the first and third defenders will be awarded the principal sum of £6,000 under this heading.

Legal rights payment

[658] In December 2018 the defender made payment in cash to legal rights claimants (Scott Cockburn's widow and his three daughters who were not otherwise provided for in terms of his will) in the total sum of £81,057. That payment proceeded on the basis (treating all sums as rounded to the nearest pound) that the total value of the moveable estate was £388,755, represented by a valuation of the company shares in the sum of £339,000 and other moveable property worth £49,755. The deductible debts for the purpose of the legal rights calculation were assessed at £226,640, leaving a net moveable estate which was assessed for that purpose at £162,114. Ms Innes received £54,038 as her one-third share of that sum and each of Mr Cockburn's daughters Gabrielle, Chloe and Chanel received £9,006.

[659] When she paid out on the legal rights claims, the defender was aware that she had not paid the sums due by the estate to the companies as director's loans and that she retained insufficient funds to do so. It appears that the ramifications of that state of affairs were not thought through as the company shares, whatever they might be worth, were in the defender's mind destined to form part of the residue of the estate which would in due course be conveyed, probably *in forma specifica*, to the residuary beneficiaries. The cash used to pay the legal rights was in effect generated by the sale of the heritable properties owned by Scott Cockburn. That is not something that is inherently objectionable, but the accuracy of the calculation which led to the payment of legal rights was dependent in large measure on the accuracy of the date of death valuations of the company shares. The defender was aware (not least because the valuations she obtained from Mr Bald in December 2016 said so

expressly) that their accuracy was in turn dependent on the truth and accuracy of the company accounts upon which they were based.

[660] Long before December 2018 - indeed, from the outset of the company valuation process - the defender had every reason to suppose that those accounts were unreliable. It was apparent that great uncertainty surrounded the amounts and treatment of the large sums of money which Scott Cockburn had taken from the companies. It was unclear which withdrawals had been treated as dividends as opposed to loans, and the amount supposedly due to Scaffolding as a director's loan had been reduced by £50,000 on the hypothesis that the original statement in the higher amount must have been a typographical error in the accounts, even though that suggestion had not been checked with the person supposedly responsible for it, Mr Simpson (who in due course denied when giving evidence that that was what had happened, although he advanced no other positive explanation). The amounts stated in the accounts of each company as loans owed to each other were, in no small way, irreconcilable, and the defender had not obtained any explanation for that state of affairs, let alone an explanation consistent with an assumption that the respective accounts had been prepared with due care. It is true that it was not until the evidence of Mr Simpson was given in the course of the proof that it became fully apparent just how impressionistic (to use the kindest possible word) the companies' accounts were, but equally the defender had no proper basis to suppose that the serious errors which had clearly been identified in them before she paid out the legal rights claimants were other than representative of their quality as a whole.

[661] At a meeting with the defender on 1 December 2017, Mr Bald had told her that the net current assets of Roofing were worth as little as £24,000 (as opposed to a net current asset figure for Roofing in the date of death valuation of £177,758), with no explanation advanced

for such a gross discrepancy in the company's apparent asset base over a relatively short period. At the same meeting, the defender (according to Mr Bald and not denied by her) acknowledged that the director's loans could not be repaid if the legal rights claims were paid in cash, and suggested that the legal rights claimants might have to take an interest in the company shares as their means of being paid out.

[662] All of that warrants the conclusion that, certainly by 2018, a reasonably prudent person in the position of the defender would have had the company valuations reassessed, or would at least have secured the informed consent of the residuary beneficiaries to proceeding on the faith of their accuracy, before taking any important action in reliance on them.

[663] No such consent was ever obtained, and no revaluation was ever carried out. In order to do substantive justice amongst the parties, some sort of assessment of the true worth of the company shares as at the date of Scott Cockburn's death is necessary in order to estimate what ought in fact to have been paid out by the defender by way of legal rights had she been exercising reasonable care in the operation of the factory, on the assumption (favourable to her) that it was right to make any such payment at all while the debts due to the companies by the estate remained unpaid. It was clear from the evidence before me that Mr Cockburn had been the driving force behind the companies, devising and implementing their marketing strategy, representing the face of the businesses to the public at large, and, in particular, maintaining the cohesion of the various elements of the workforce. Upon his death, the outlook for the companies changed dramatically, and their future prospects became wholly uncertain. Even leaving that consideration aside, the adjusted earnings for Roofing had, before his death, spectacularly declined from an adjusted profit of £198,072 in

the year to end 2012 to £10,668 in the year to end 2013, and to a loss of £27,669 in the year to end 2014. The unadjusted earnings followed a similar trajectory.

[664] I do not consider that it was at all realistic in these circumstances for the company valuations to proceed, as happened in the case of Roofing, partly on the basis of a multiplier applied to historic earnings. It is not necessary to enumerate the various particular failings which, at least to an eye used to dealing with company valuations, appear to have attended Mr Bald's attempt to do just that and which brought out a value for the goodwill which he attributed to Roofing of £85,251. Rather, the companies could only prudently be valued in that state of affairs on the basis of the net worth of their assets, with a modest allowance for the prospect that a notional buyer might have been prepared to pay a little more than that amount in respect of whatever residual goodwill or marriage value might remain despite Mr Cockburn's death. That raises its own issues, because against the background already narrated, the carrying value of those assets in the company accounts bore no necessary correlation to any objective assessment of their worth. The acid test only came years later, when the companies' remaining assets were sold for around £25,000 as they failed.

[665] Doing the best I can on the basis of the information which emerged from the proof, in re-evaluating the probable true worth of Roofing as at the date of Scott Cockburn's death, I would accept the figures used by Mr Bald in relation to the value of its fixed assets and current liabilities, not because I have any particular degree of confidence that those figures are indeed correct, but because I have no better alternative information upon which to rely. Within his figures for current assets, I again retain the sum which he used for the director's loan (£78,398). Since the purpose of this exercise is to ascertain the net worth of the companies to the estate, it does not matter which particular figure one uses for the true amount of the director's loan so long as the same figure is used to represent the estate's

liability to the company in question when working out the net value of the moveable estate. I have, further, disregarded the figure (£34,360) which Mr Bald used in his calculation as the amount which Scaffolding owed Roofing by way of intercompany loan. There is no reliable evidence as to what the state of the intercompany debt was at the date of Mr Cockburn's death. Again, since whatever the net figure owed by one company to the other as at that date was would properly fall to be shown as a credit in one set of accounts and as a debit in the same amount in the other, and one is concerned for these purposes to ascertain the composite and not the individual values of the companies to the estate, it would not matter what figure was actually chosen to represent the intercompany debt, since it would in any event be reduced to a zero net worth when the value of both companies together to the estate was assessed. I have accordingly carried the intercompany debt at zero in both company valuations for the purposes of this calculation. I have accepted Mr Bald's figures for the remaining current assets, again simply for the lack of any better alternative assessment of their true worth.

[666] Turning to an evaluation of the goodwill pertaining to Roofing as at the date of Mr Cockburn's death, I would allow a figure of £10,000 in that regard. That takes into account the fact that the company was plainly fully equipped to carry on a functioning roofing business of some sort in the period leading up to Mr Cockburn's death, was well-known and trusted in the geographical area in which it operated, and could have been attractive for those reasons to an entity in the same market looking to expand or move into that area and which could itself have supplied the necessary management resources to enable the administration and guidance which would have been required and which the companies themselves lacked in the aftermath of Mr Cockburn's death. Mr Bald's goodwill figure, amongst other issues, was hugely influenced by the extraordinary profit apparently

made in the third year before that death (i.e. to the end of 2012). By way of illustration, a potential buyer looking at the adjusted profit figures for only the 2 years before the death would have seen an expected annual loss of c. £8,500 going forward on an unweighted basis, and an annual loss of c. £15,000 going forward on a 1:2 weighting, before the fact of Mr Cockburn's death was even taken into account. Questions of an appropriate multiplier fall away when the multiplicand becomes negative. I consider that an estimate of the goodwill value truly attributable to Roofing in the amount of £10,000 is as ample as it can reasonably be in the circumstances and that, if and to the extent that it errs, it does so in the direction of over- rather than under-valuation.

[667] The value of Roofing for these purposes may accordingly be taken as (£10,000 goodwill + £19,180 fixed assets + £192,398 current assets less £49,000 current liabilities) £172,578.

[668] Turning to Scaffolding, Mr Bald ascribed no goodwill value to it, and I agree. I have applied the same valuation approach as described above in relation to Roofing, accepting in particular £39,961 as the true amount of the director's loan owed to it by the estate, and treating it as having no intercompany liability. That brings out a value for these purposes of (£20,770 fixed assets + £70,971 current assets, less £300 current liabilities) £91,441. That is higher than Mr Bald's corrected valuation of £57,081 because of the disregard for present purposes of the intercompany liability.

[669] If one plugs those valuations into the calculation of legal rights, the gross moveable estate was worth (£172,578 Roofing + £91,441 Scaffolding + £49,755 remaining moveable estate) £313,774. I accept the defender's calculation of the moveable debt (which reflects the director's loan figures used in the valuations of Roofing and Scaffolding) at £226,640, meaning that the net moveable estate was £87,134 rather than the £162,114 at which she

assessed it. The appropriate legal rights sum which ought to have been paid out was thus £43,568 rather than the £81,057 in fact paid (£29,045 to Ms Innes and £4,841 to each of Gabrielle, Chloe and Chanel), meaning that the defender overpaid the legal rights claims, and thus diminished the estate available for proper payment to the pursuers, in the total sum of £37,489, amounting to a loss of £12,496 for each pursuer. The second pursuer's claim in this regard has prescribed for the reasons advanced on behalf of the defender, and again he will have to look for appropriate redress to the further proceedings which will be necessary to approve the defender's proposed final scheme of division and to exonerate and discharge her from her duties and responsibilities as factor. The scheme of division ultimately approved will also require to reflect the true value of the moveable estate more generally. Each of the first and third pursuers will be awarded a principal sum of £12,496 in this connection.

[670] A subsidiary criticism concerning the legal rights calculation was that the amount of £4,000 deducted from the amount of the moveable estate before determining what was available for distribution to the legal rights claimants was unjustified. However, it is well-established that expense incurred in establishing the administration of an estate may properly be deducted from the moveable estate before calculating the extent of legal rights. In the more usual situation where that administration proceeds upon the grant of confirmation, it will be fairly clear what amount falls to be deducted in that connection. In a case like this one, where no confirmation was ever granted, the situation is less clear. While not necessarily endorsing the view that expense incurred in getting to the stage of appointment as factor will always be the appropriate amount deductible for this purpose, the principle underlying some allowable deduction was not challenged and it has not been

demonstrated that the actual amount deducted was unreasonably high or low. I accordingly see no proper basis for the court's intervention in this regard.

Buckstone Loan East

[671] On the basis of the evidence I heard, the defender's decisions to expose the property at Buckstone Loan East in May 2016, and to sell it in the September of that year, fell well within the timescales for action which would have been open to a reasonably prudent owner of the property, and no proper criticism of her can be levelled on that basis. The questions of whether any offer received for the property should be accepted, and if so which one, inherently raised questions of judgment for the defender, and in dealing with them she also had to deal with the views of Ms Innes as a common owner of the property. Although the defender might now, with the benefit of hindsight, make choices different from those which she in fact made at the time, that in no way indicates that what was decided fell below the required standard of prudence.

[672] On the question of the distribution of the proceeds of sale of the property, however, I consider that the pursuers were correct to criticize the fact that the defender chose to pay from the estate certain elements of the overall expenses attending the disposal of the property which a reasonably prudent person in her position would have required to have been borne equally by Ms Innes as the co-owner of the property. There was no sufficient material before me to justify a conclusion that those elements fell to be ascribed only to Scott Cockburn, and through him to the estate. Although there is some minor disagreement as to the exact amount overpaid, I consider that the sum of £2,480 in total adequately represents that overpayment. The first and second pursuers' claims for a share of that total

has for present purposes prescribed. The third pursuer will receive an award of £827 in this regard.

Oxgangs Road

[673] A principal issue arising out of the sale of the property at Oxgangs Road is whether it ought to have been exposed for sale, and ultimately sold, at a much earlier stage in the factory than in fact was the case. The defender's position was that she required to understand how much it would cost to put the property into a state of repair in which it could be sold as not requiring further very substantial works by a buyer. She understood that she had asked Mr Scott to gather relevant information and estimate that cost by around the start of 2016, but that he did not revert to her with a relatively firm number in that regard (£130,000) until June 2017. Only at that stage, she maintains, did it become apparent to her that the estate lacked the funds to carry out the necessary repairs, and the property was marketed in its existing state at around that time and sold in April 2018. Mr Scott's evidence was that he was not instructed to provide any such comprehensive estimate until a month or so before he in fact provided it. I incline to regard Mr Scott's account as more accurate, although there is every possibility of a misunderstanding having occurred. The resolution of that issue does not, however, matter.

[674] Shortly after her permanent appointment as factor, the defender ought in the exercise of reasonable diligence to have taken overall stock of the nature of the factory estate. She ought to have appreciated from an early point as part of that exercise that the estate was not rich in cash and that, whatever exact sum would be required to put right the many deficiencies from which Oxgangs Road was known even at that point to suffer, there was no way in which she could be reasonably assured that such a sum, or anything like it, would be

available to her in the short or medium term. She should have appreciated that retaining the property involved considerable holding costs, including council tax and mortgage interest, and that if the latter in particular was not paid, the lender would be entitled to and very well might decide that it should be repossessed and sold in any event. Finally, she had no information at all to suggest that spending any particular sum on the property was more likely than not to produce a return for the estate greater than the sum which had been spent. That calculus ought to have indicated very clearly to her that the appropriate course of action was to expose Oxgangs Road for sale in essentially its existing state (as in fact was ultimately done after more than a year had passed) at the same time as Buckstone Loan East.

[675] I say "essentially" its existing state because the arrangement which the defender made to settle the claim from Jewsons involved the completion of the kitchen, she paid Roofing to carry out some works to the roof, and I have narrowly been persuaded that it was within the bounds of reasonableness for the defender to do the work which was in fact done to address the enforcement notice which had been served by the local authority. Although the defender's actual motivation in doing that work was the erroneous belief that the property could not in point of law be sold without the notice being withdrawn, and even had that been correct, removing the offending fencing and gate and leaving a new owner scope to decide what he wanted to replace them with would have been a viable option at a cost less than the approximately £6,000 actually spent, I consider that doing what the defender did was something that a reasonably prudent owner might have done, and that doing it accordingly did not amount to a breach of fiduciary duty on her part. The same applies to the costs incurred in dealing with obtaining building warrants reflecting what was actually built where that differed from what had been originally warranted.

[676] The consequences of the defender's failure to market Oxgangs Road more quickly than she did now fall to be considered. The delay did result in some deterioration of its condition, but the evidence does not establish the cost of any repair works in fact carried out at the expense of the estate, nor (in circumstances where the buyer was going in any event to have to carry out very substantial works) that the deterioration sounded in any ascertainable diminution in the price ultimately achieved. More substantively, the evidence also fails to establish that an earlier sale of the property would have resulted in any greater price being obtained. The exercise of valuation of the property in its unfinished state was essentially a matter of speculation as opposed to accurate estimate, and it is simply not possible to say that it would have sold for any greater amount at a different time, or indeed that excessive cost was incurred in taking valuation advice, however limited in utility that advice transpired to be.

[677] There remains the question of the holding costs incurred in consequence of the delay in marketing the property. Had it been marketed, as it should have been had the defender acted in accordance with her duties as judicial factor, in spring 2016, I consider that it would have taken a little longer to sell than Buckstone Loan East, but would have been sold by around the end of that year. A reasonable estimate of the total time-related costs incurred in relation to the holding of Oxgangs Road (such as mortgage interest, council tax and insurance) over to the period from Scott Cockburn's death in June 2015 until the actual sale in April 2018, derived from the content of the defender's accounts, is £60,000. If the sale had taken place at the start of 2017 instead, again erring on the side of caution where substantial doubt exists, the appropriate element of that total which falls to be allocated to the period from January 2017 until April 2018 is fairly estimated at £25,000, which is accordingly the amount of which the residual estate has been deprived in consequence of the defender's

breach of duty. That amounts to £8,333 for each pursuer. The second pursuer's claim in this respect has prescribed; the other two pursuers will receive an award in the principal sum of £8,333 each in this regard.

[678] A more minor issue in relation to Oxgangs Road is the claimed failure of the defender to make an insurance claim in respect of damage caused by a storm-fallen tree. The evidence showed, however, that the insurance coverage in place was essentially for fire and ancillary risks only, so no claim lies in this regard.

[679] The remaining issue concerning Oxgangs Road is the additional expense (amounting to approximately £6,500 between legal expenses and interest) said to have been incurred in consequence of the defender's alleged failure to deal effectively with the claim made by Jewsons in respect of the kitchen there. I accept that the defender was reasonably entitled to take some time to ascertain the situation and consider the position before engaging in settlement discussions with Jewsons' solicitors. However, those enquiries could have been conducted much more efficiently and with a greater degree of expedition than they were, and did not result in any substantive alteration in Jewsons' position which would not otherwise have been achieved. The exercise of reasonable diligence on the part of the defender would have resulted in effectively the same substantive outcome to the dispute, but at lesser expense. A reasonable estimate of the cost which could and should have been saved, taking account of the fact that the defender was short of cash until the sale of Buckstone Loan East in November 2016, is £3,000. The first and second pursuers' claims to a share in that total sum have prescribed as not having been stated until June 2022. The third pursuer will be awarded a principal sum of £1,000 in this regard.

Company appointments, etc

[680] The pursuers criticised the defender's appointment of the first pursuer as a director of the companies, her appointment of Mr Tully to the same role, her failure to appoint Ms Moriarty, and her failure to remove Mr Tully once his involvement in a "cash job" had been established.

[681] Dealing firstly with the first pursuer's appointment, in this as in every decision made by the defender about who should serve as the company's officers, a great deal of subjective judgment was involved. Although the first pursuer lacked experience in corporate management, the companies had been functioning since the departure of Ms Moriarty and the first pursuer was someone who could represent the interests of the residuary beneficiaries as matters moved forward. She was not being appointed alone; Mr Tully was joining her and he had lengthy experience in how the companies were run and knew the staff. The first pursuer was agreeable to being appointed and her appointment was not objected to by other family members. In these circumstances it cannot be said that that appointment was so devoid of suitable rationale as to lie outside the range of options reasonably open to a controlling shareholder of the companies, and thus to the defender. Once appointed, it was open to the first pursuer to see how matters went and to resign if she came to feel that the demands of the position were more than she could deal with. It was not part of the function of the defender as judicial factor to provide her with practical support in the role or proactively to ensure that she felt comfortable in it.

[682] Similar considerations apply to the appointment of Mr Tully. As already noted, he had been, at least in the past, a trusted colleague of Scott Cockburn with much experience in the business of the companies. He was liked and supported by the first pursuer. Although Ms Moriarty was briefing against him, that was in the context of her wishing to be

considered as an alternative candidate, and nothing concrete had been established to his detriment. The roofing company which he had set up in the aftermath of Scott Cockburn's death had never traded and its existence could be explained as a means to protect his own interests in the event that Steven Cockburn's actions destroyed the existing companies. Again, while the defender might have taken a different view of the situation confronting her, her appointment of Mr Tully was one that was reasonably open to her.

[683] Turning to Mr Tully's exit from the companies, the defender's actions can be subject to more valid criticism. I do not consider that she was initially particularly receptive to the concerns which were expressed to her by the first pursuer about the cash job which Mr Tully was supposedly undertaking, but she was not obliged to go along with whatever plan the first pursuer and Ms Moriarty had come up with in order conclusively to expose him, and was entitled to confront him as and when she did. However, when in the course of that confrontation he accepted the truth of the allegation against him and indicated that he would resign from the companies, it was incumbent on her to see that through. She was quite entitled to go on holiday immediately thereafter, as she did, but when she returned she ought to have made sure that Mr Taylor, to whom she had delegated the task of dealing with the mechanics of the resignation, had closed the matter off. She did not. Thereafter, once Mr Bald had been appointed a director of the companies, she appeared to be under the impression that he and the first pursuer could deal with the matter (which, at least so far as it concerned Mr Tully's removal as a director of the companies, they entirely lacked the power to do), resulting in the ability to remove him for the "cash job" being lost by acquiescence and his continuing with the companies for the best part of another year. The defender should not, if acting with reasonable care and diligence, have allowed any of that to happen and was in breach of her fiduciary duty in doing so.

[684] However, despite the intense annoyance which that sequence of events caused to the first pursuer and Ms Moriarty, the evidence does not disclose that Mr Tully remaining in the companies for much longer than the defender should have permitted caused any harm to them, or through them the estate. The money which he had proposed to keep from the companies through the "cash job" was paid over. There is nothing to suggest that the roofing companies he set up ever abstracted any business from the estate companies.

[685] I turn to the defender's failure to appoint Ms Moriarty, either as a director of the companies or at least as office manager. These were decisions which can certainly be criticised with the benefit of hindsight, but that is not a permissible means of judging the defender's actions, whether in this or in any other instance. Again, it was a matter for the exercise of the defender's reasonable judgment in the circumstances known to her whenever the question of appointment arose. At the initial stage, Ms Moriarty had left the companies after her purported dismissal by Steven Cockburn and had been replaced by another office manager. There was apparent antipathy between her and Mr Tully, and the latter had necessary estimating skills not otherwise available to the companies. As matters developed, it became apparent that there had been serious accounting irregularities during the period when Ms Moriarty had been involved in the companies and had been Scott Cockburn's domestic partner. She was a very strong-willed individual who, if reinstated, would have overshadowed the first pursuer and might have conflicted with other members of staff or indeed with the defender herself in her capacity as the companies' sole shareholder.
Ms Moriarty was eventually asked to, and did, return in some capacity after the departure of Mr Tully. While the defender might have taken different decisions about her involvement at various stages, it is not possible to say that the decisions she did take fell outwith the range

of such decisions open to a reasonably prudent shareholder in her position. Accordingly, no valid claim lies against her in this regard.

[686] Even if the defender had been in breach of duty in relation to her decisions about Ms Moriarty's involvement in the companies from time to time, it would not have been possible to establish that loss was thereby caused to the estate. The pursuers, naturally enough, sought to argue that when a group of individuals including Ms Moriarty purchased the assets of the companies at the point of their failure, they were able to create a reasonably successful business using the same trading styles, and that it could be assumed that the same would have happened with the companies had she been restored to their management at an earlier point in time. The supposed comparison has not, however, be shown to be an apt one. The new company entered the market long after it is suggested that Ms Moriarty should have been restored to the estate companies. No attempt was made to show the state of market conditions in the roofing industry from time to time; there was some evidence that, as in most fields of business endeavour, the market was sometimes good and sometimes bad. No evidence was led about the amount of capital or other support made available to the new business or how that might compare to what could realistically have been afforded to the estate companies given the lack of liquidity and the other demands on the estate's cash resources. Setting up a new business enables the selection of staff and a choice of working and administrative practices which could not practically have been replicated in the existing companies. If a great deal more detail had been provided about the set-up and operation of the new business, then comparisons might more readily have been drawn. As it is, any such comparisons would be entirely speculative and could not establish on a balance of probabilities that a breach of duty on the part of the defender in connection with Ms Moriarty caused loss to the estate.

[687] A subsidiary issue relating to Ms Moriarty concerns the costs arising out of the proceedings which she took against Roofing in the employment tribunal on the basis of her (apparent) dismissal by Steven Cockburn. The amount of compensation awarded to her in those proceedings was approximately £15,500. Payment of that amount might have been averted had the defender permitted Ms Moriarty to return to the companies before the proceedings concluded, but - as already explained - the decision not to permit that return was one reasonably open to the defender, and it cannot effectively be suggested that the avoidance of that liability ought to have persuaded her otherwise. In relation to the costs incurred in dealing with the proceedings, Steven Cockburn initially instructed Young & Co, solicitors, to act for the company, and a liability of £2,840 was incurred by Roofing in that connection before it emerged that it was insured against the costs of such claims if its defence was put in the hands of the Peninsula employment services group, which it then was. None of that can be laid at the door of the defender, but the £2,840 liability was then in fact paid by the estate rather than by Roofing. The defender had no explanation for that other than that it was a mistake. I agree. It was a mistake in breach of her duty of reasonable prudence which deprived the estate of £2,840 which ought to have been its, and for which she is responsible. The claims of the first and second pursuers have, however, prescribed for the purposes of these proceedings for the reasons stated by the defender, and thus only the third pursuer's portion of the total can be sustained in this context. He will receive an award in the principal sum of £946 in this regard.

Company dividend and share transfer scheme

[688] It is not necessary to deal in detail with the many difficulties, shading into impossibilities, which attended the defender's scheme to proceed on the fictitious basis that

dividends had been declared in order to clear the debts due by the estate to the companies, and to transfer the estate's shares in the companies to the pursuers, despite the first pursuer's declared unwillingness to receive them, in an attempt to bring the affairs of the factory to an end. The scheme should never have been conceived, let alone partially implemented, and ultimately no submission in its defence was even essayed on behalf of the defender. The facts that the debts owed to the companies by the estate had not been repaid (which was what lay behind the first pursuer's unwillingness to take the company shares, despite a misunderstanding on her part as to the legal significance of that state of affairs) and that the estate lacked the ability to effect any substantial such repayment after legal rights had been paid out were entirely the consequence of the choices made by the defender in the administration of the factory. She ought to have sought the directions of the supervising court as soon as it was appreciated that that was the situation which she had created. Her attempts to extricate herself from it, by pretending that the debts had been discharged, to the benefit of the estate and commensurately devaluing the companies which she was intent on transferring to the residuary beneficiaries, only made matters worse. The failure of the Accountant of Court to intervene can only betoken a complete lack of understanding as to what was actually going on.

[689] I have considered carefully whether the evidence provides the basis for a conclusion that payment of the debts owed to the companies by the estate, at least to the extent it could do so, would have prevented their insolvency and liquidation. However, my view is that the trading history of the companies from at least the time of Scott Cockburn's death indicates that they would more probably than not have failed in any event, and that any further working capital which the estate could have provided would simply have postponed, rather than prevented, that outcome. I am, further, not persuaded that anything

done by the defender in her dealings with the liquidator of Roofing resulted in any loss to the estate. It follows that the only such loss was the payment of £2,997 made by the defender out of the estate's money to pay the tax on the imaginary dividends. Each of the pursuers has a valid claim for a share of that total sum.

Commission

[690] It will have become apparent that the defender's administration of the factory was in various regards unsatisfactory. However, the commission which she has taken from the estate was assessed by the Accountant of Court, and taking it did not amount to a breach of fiduciary duty on her part, being the only matter with which these proceedings are concerned. I do consider, however, that in the context of the further proceedings for approval of the final and necessarily restated scheme of division, and for her exoneration and discharge, it would be appropriate for the Accountant of Court to be asked by the supervising court to review and revise the commission allowed in the factory. In addition to the quality of the work done by the defender, it would also be appropriate to take into account in that revision the very lengthy (and frankly unnecessary) amount of time taken to conclude the factory. Having had the benefit of a detailed enquiry into its incidents, it appears to me that, had the appropriate degree of diligence been used, and taking full account of those matters which were outwith the defender's control, the factory ought comfortably to have been concluded by the end of 2018 at the latest. I note that the defender's own evidence was that she was in a position to complete the estate's administration by April 2019, supporting my own assessment that it could and should have been complete just 4 months earlier had matters been dealt with efficiently and effectively.

Conclusion

[691] For the various reasons set out, I shall award the first pursuer £30,328, the second pursuer £999 and the third pursuer £33,101, together in each case with interest at the rate of 8% a year from 1 January 2019 (being the date by which the factory ought to have concluded and thus by which the pursuers as residuary beneficiaries ought to have been paid out) until payment. The remaining issues which this opinion has identified, but which fall outside the scope of these proceedings, will unfortunately require to be resolved elsewhere, unless the interested parties succeed in the more sensible course of coming to an agreement about them.