

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

FINDINGS

in Complaint

by

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

Complainers

against

**CAROLINE McCALLUM, Solicitor, 5
Cameron Close, Bonnybank, Leven**

Respondent

1. A Complaint dated 1 August 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Caroline McCallum, Solicitor, 5 Cameron Close, Bonnybank, Leven (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to call for a hearing on 11 October 2017. Notice thereof could not be served at the address then noted on the Complaint. The Complaint was re-served upon the Respondent at the above address. No Answers were lodged.
5. The Tribunal appointed the Complaint to call for a hearing on 14 December 2017 and notice thereof was duly served on the Respondent, who accepted service by email.

6. At the hearing on 14 December 2017, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented herself.
7. Two Joint Minutes were lodged with the Tribunal, one of which agreed, subject to slight amendment, all of the averments of fact, duties and professional misconduct. No evidence was led. Submissions were made on behalf of both parties.
8. The Tribunal found the following facts established:-

8.1 The Respondent's date of birth is 7 June 1969. She was enrolled as a Solicitor on 6 August 2001. She practised as a Solicitor and a partner of Leddie & McCallum Solicitors from 01 November 2011 at 546-548 Wellesley Road, Methil to 22 December 2011. She thereafter continued as a sole practitioner as Caroline McCallum Court Solicitor until 1 September 2015, initially at 546-548 Wellesley Road, thereafter from 01 July 2012 at 564 Wellesley Road and then from April 2015 until 1 September 2015 at Craigs View, 3 Cairngreen, Cupar.

The Respondent does not presently hold a Practising Certificate but remains on the Complainers' Roll of Solicitors.

8.2 The Respondent was responsible for the submission by the Practice Unit of an Accounts Certificate for the 6 month period to 30 April 2015 in terms of The Law Society of Scotland Practice Rules 2011 (hereinafter referred to as "the 2011 Rules") Rule B6.15.1.

In the absence of a Certificate being submitted to them, the Complainers wrote to the Respondent on 9 July 2015 advising that unless a Certificate was submitted by 20 July 2015 further action would be taken.

A Certificate not having been submitted, the Complainers e-mailed the Respondent on 23 July 2015 advising that the matter would be referred to the Client Protection Fund Sub-Committee.

- 8.3 On 6 August 2015 the said Sub-Committee decided to invite the Respondent to an interview on 20 August to explain why her practising certificate should not be suspended in terms of the Solicitors (Scotland) Act 1980 Section 40.
- 8.4 The Complainers carried out an Inspection of the Respondent's Records on 17 August 2015. The Inspection disclosed apparent breaches of the 2011 Rules.
- 8.5 The Respondent did not attend on 20 August. At a meeting on 3 September 2015 the Sub-Committee decided to invite the Respondent to attend a meeting on 17 September 2015. The Respondent did not attend.

The Respondent's Practising Certificate was suspended on 1 October 2015.

- 8.6 The said Inspection and subsequent investigations disclosed that:-
- a. the Respondent's accounting records had last been balanced on 31 October 2014 and that no postings had been made since that date.
 - b. the financial records were in such a condition that it was not possible to discover the true Firm or Client financial position of the practice unit.
 - c. there were no bank reconciliations after 31 October 2014.
 - d. on consideration of the limited records available, on many occasions between 21 November 2014 and June 2015 the client bank balance was in deficit:-

21.11.14 to 04.12.14	Deficit £48.91
09.12.14 to 08.01.15	Deficit £48.90
09.01.15 to 20.01.15	Deficit £48.89
21.01.15 -	Deficit £48.89
23.01.15	Deficit £48.91
09.04.15	Deficit £342.74
30.04.15 (at the month end)	Deficit £342.74
31.05.15 (at the month end)	Deficit £342.69
30.06.15 (at the month end)	Deficit £342.67

No deficits in the Client Bank Account were noted by the Complainers in the completed accounting records prior to 31.10.14.

- e. At a meeting on 3 September 2015 the Guarantee Fund Sub Committee imposed a deadline of 5 pm on 10 September 2015 for the provision of the Certificate to 30 April 2015. The Respondent provided a Partial Certificate in advance of the deadline.

- 8.7 The Complainers submitted a complaint to the Scottish Legal Complaints Commission who following consideration of the matter referred it back to the Complainers to investigate as a conduct complaint.

The Complainers intimated the complaint to the Respondent by letter dated 8 November 2016. The letter explained that the Complainers required to investigate the issues in terms of the Legal Profession and Legal Aid (Scotland) Act 2007, Section 47(1) that she had a professional obligation to reply and that she could reply within twenty-one days providing her professional files setting out her position in respect of the complaint and providing any additional information which she considered to be relevant.

The letter further advised the Respondent that if she did not respond within the appointed timescale the Complainers would require to serve Notices in terms of the 2007 Act. Ultimately, following further correspondence from the Complainers, the Respondent replied.

- 8.8 On 22 February 2017 the Complainers wrote inter alia to the Respondent advising that the complaint was being moved to the report stage.
- 8.9 A Report was duly completed and a copy provided to the Respondent by letter dated 16 May 2017. Inter alia, the letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.
- 8.10 The Report and all other relevant documentation was considered by the Complainers' Professional Conduct Sub Committee on 29 June 2017.

The Committee determined that the Respondent's conduct in respect of:-

- (1) Mrs McCallum, in the period between 31 October 2014 and the cessation of trading of the practice unit on 1 October 2015,
 - i. Failed to keep at all times properly written up such accounting records as were necessary to show all of the practice unit's dealings with clients' money, thereby [acting] in breach of Rule B6.7.1 of The Law Society of Scotland Practice Rules 2011 ('the Practice Rules');
 - ii. Failed to keep at all times properly written up such accounting records as were necessary to show the true financial position of the practice unit, thereby [acting] in breach of Rule B6.7.3 of the Practice Rules;
 - iii. Failed to undertake or retain records of having undertaken reconciliations of the practice unit's bank statements with its client bank ledger, account or client bank 'lodged and drawn' columns of its cash book, thereby [acting] in breach of Rule B6.8.1 of the Practice Rules;
 - iv. Failed to extract from the practice unit's clients ledger lists of balances due by it to clients, and failed to prepare statements comparing the total of the said balances with the reconciled balance in the client bank account, or to retain records of having done so, thereby [acting] in breach of Rule B6.8.2 of the Practice Rules;
 - v. Failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge her responsibilities throughout the period she was designated as Cash room Manager of the practice unit, thereby [acting] in breach of Rule B6.13 of the Practice Rules.
- (2) Mrs. McCallum, on multiple occasions between November 2014 and June 2015, failed to ensure that the sum at credit of the practice unit's client

account was not less than the total of the clients' money held by the practice unit, in breach of Rule B6.3.1 of the Practice Rules.

- (3) Mrs. McCallum failed to submit to the Council of the Law Society of Scotland an Accounts Certificate for the accounting period ending 30 April 2015, in breach of Rule B6.15.1 of the Practice Rules”.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

The Sub Committee determined that a Fiscal should be appointed in terms of Section 51 of the Solicitors (Scotland) Act 1980 to prosecute the complaint before the Scottish Solicitors Discipline Tribunal.

8.11 By letter dated 5 July 2017 the Complainers wrote to the Respondent enclosing the Schedule narrating the Professional Conduct Sub Committee Determination.

8.12 The Respondent ceased trading on 1 September 2015.

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that she failed:

- (a) to ensure that the practice unit's client account credit balance was not less than the total clients money held by the practice unit (contrary to Rule B6.3.1 of the 2011 Rules);
- (b) to keep records in terms of Rules B6.7.1 and 6.7.3;
- (c) to undertake or retain records and statements in terms of Rules B6.8.1 and 6.8.2;
- (d) to acquire and maintain the skills necessary to discharge her responsibilities in terms of Rule B6.13; and
- (e) to submit an accounts certificate timeously in terms of Rule B6.15.1.

10. Having heard the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 14 December 2017. The Tribunal having considered the Complaint dated 1 August 2017 at the instance of the Council of the Law Society of Scotland against Caroline McCallum, Solicitor, 5 Cameron Close, Bonnybank, Leven; Find the Respondent guilty of professional misconduct in respect of her contraventions of Rules B6.3.1, 6.7.1, 6.7.3, 6.8.1, 6.8.2, 6.13 and 6.15.1 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

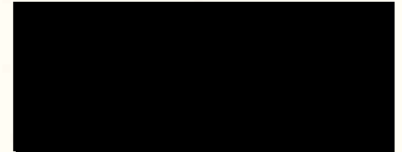
(signed)

Alistair Cockburn

Vice Chairman

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 17 JANUARY 2018.

IN THE NAME OF THE TRIBUNAL



Alistair Cockburn

Vice Chairman

NOTE

Two Joint Minutes were lodged with the Tribunal: one agreeing all of the averments of fact, duty and misconduct, subject to some small amendments and the other agreeing the level of deficits noted on the Respondent's client account. The Fiscal made a formal motion to amend the address on the Complaint in accordance with the Joint Minute, which was granted. Given the extensive agreement between the parties, no evidence required to be led and the Tribunal proceeded to hear submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that, albeit the Respondent had admitted professional misconduct, that remained a matter to be considered by the Tribunal. It was his submission that the circumstances here amount to professional misconduct.

Averments 5.1 to 5.5 of the Complaint set out the background circumstances. Essentially, an absence of an accounts certificate prompted Guarantee Fund discussions and then an inspection of the Respondent's firm in August 2015. Thereafter, the Respondent was invited to a meeting of the Guarantee Fund and then, at a subsequent stage, her practising certificate was suspended.

In answer to a question from the Tribunal in relation to the amount of business conducted by the firm, the Fiscal confirmed that the Respondent was a sole practitioner who attended court and the business was unlikely to be large.

SUBMISSIONS FOR THE RESPONDENT

The Respondent accepted that she was cashroom manager and therefore had to accept responsibility for what had happened here. She explained that she had employed a cashier who went off work on medical grounds. She was off work intermittently and then entirely at the end of February. The Respondent believed that the accounts were up to date until the end of the year but it transpired that they were only up to date until 31 October 2014. The Respondent had hoped that the cashier was going to be fit to return to work. In the interim, she had made approaches to a local firm of accountants who gave a quotation for bringing her records up to date but unfortunately, given the level of business, the Respondent could not afford to instruct that firm.

The Respondent went onto describe significant personal and family circumstances which had impacted upon the conduct of her professional affairs. Her family circumstances had meant that she was not able to stay at court for custodies to be processed but had instead had to pass these clients onto others and this had significantly impacted upon her business. She confirmed that she ceased to work as a solicitor on 1 September 2015.

In answer to a question from the Tribunal, the Respondent confirmed that she had been working under considerable strain. Her practice had only entailed herself and the cashier who had doubled up as a secretary and receptionist. When the cashier became ill, the office was intermittently closed without the Respondent being aware of that. The Respondent had moved the office to her own home to try and improve circumstances. She accepted that she had stuck her head in the sand and that she had been aware that postings and reconciliations had required to be done. The deficits on the client account had been caused by the mis-accounting of two transactions: one being a client making instalments towards her fee and the other the cost of a report to an expert witness in a criminal case which she had in fact paid.

When the opportunity had arisen to cease to practise she had grabbed that with both hands. Her financial circumstances continued to be strained with significant family commitments and little income.

Both parties confirmed to the Tribunal that no claim arose out of the circumstances and no individual sustained any loss.

DECISION

The Respondent had entered into a Joint Minute agreeing all of the averments in the Complaint, subject to some small amendment, including those of professional misconduct. Nonetheless, it was for the Tribunal to assess the agreed conduct of the Respondent and be satisfied that the conduct met the test for professional misconduct as set out in the case of Sharp.

The Respondent had admitted that for a period of 11 months she had continued to practise without keeping the required accounting records as a consequence of which her client account had been in deficit for much of that time. The Accounts Rules, and in particular those relating to a firm's client account, are there to protect the public. Solicitors are in a privileged position of trust when handling clients' funds and it is extremely important that the public can have confidence that the profession can be trusted to do so.

Whilst the Respondent had described very difficult personal circumstances and difficulties within the firm, the Tribunal considered these to be mitigation. The Respondent had persisted in continuing to practise in a state of affairs where it was impossible to assess the financial position of the firm or the client account. This conduct was clearly conduct which fell well below the standard of conduct to be expected of a competent and reputable solicitor and this conduct could only be described as serious and reprehensible. Accordingly, the Tribunal found the Respondent guilty of misconduct.

MITIGATION

The Tribunal invited the parties to make further submissions in relation to mitigation.

The Tribunal asked the Respondent what her intentions were for practising in the future. The Respondent indicated that at the current time she had no intention of returning to the profession and had actually decided to stop practise before the firm had even been inspected. She explained that she had not maintained her CPD and believed that if she ever did return to the profession it would not be as a principal. She was currently looking for work as a driver on a self-employed basis.

PENALTY

The Fiscal had been clear from the outset that there was no question of dishonesty in this case whatsoever.

The Respondent had demonstrated insight into the misconduct and had, at her own instigation, given up practice in September 2015. Her demeanour and submissions before the Tribunal confirmed clear remorse in relation to the matter.

The deficits on the client account had been small and were explained by the lack of proper accounting, rather than misuse of client funds. No one had sustained any loss.

Prior to 31 October 2014, there appeared to have been no accounting difficulties. The Respondent was a sole practitioner supported by one member of staff, the cashier, who had become ill. The Respondent was clearly unable to deal with accounting matters herself. At the same time, the Respondent had suffered extreme personal difficulties which had impacted upon her ability to practise and had significantly affected the firm's level of business. She no longer practises as a solicitor and her financial circumstances are strained.

As stated above, the Accounts Rules exist in order to protect the public and therefore the Tribunal required to have in the forefront of its mind the question of public safety. Given the Respondent's circumstances, there seemed little likelihood of her attempting to re-join the profession in the near future. The Tribunal was aware that, given the length of time out of practice, any practising certificate the Respondent might apply for was likely to be subject to restriction. Consequently, there appeared to be no ongoing risk to the public.

Having regard to all of the above, in the special circumstances of this particular case, the Tribunal concluded that the appropriate penalty was one of Censure.

The Tribunal invited submissions in relation to expenses and publicity. The Fiscal moved for an award of expenses and no party made any submissions in relation to publicity. In the circumstances of this case, the Tribunal determined that it was appropriate to award expenses to the Complainers and that the usual order with regard to publicity should be made.



Alistair Cockburn
Vice Chairman