

**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, 26
Drumsheugh Gardens, Edinburgh**

against

**FORBES GILLIES LESLIE, First
Floor, Regent Court, 70 West
Regent Street, Glasgow**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Forbes Gillies Leslie, First Floor, Regent Court, 70 West Regent Street, Glasgow (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 29 August 2013 and notice thereof was duly served on the Respondent.
4. The hearing took place on 29 August 2013. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by Mr Leak, Senior Counsel.

5. An amended Complaint was lodged with the Tribunal and a Joint Minute was lodged whereby the Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint. No evidence was led.
6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 7th February 1954 and he was enrolled as a Solicitor on 4th December 1978. He is a Partner and was Cashroom Partner in the firm of Dallas McMillan which has a place of business at 1st Floor, Regent Court, 70 West Regent Street, Glasgow.

6.2 The Financial Compliance Department of the Complainers conducted an inspection of the Respondent's firm's financial records, books, accounts and documentation on 18th April 2011. This inspection identified matters of serious concern in relation to The Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001. The Respondent failed to fully address the issues and concerns which were raised to the satisfaction of the Complainers and as a consequence of which a formal complaint was intimated to the Respondent.

Accounts Rules

6.3 On 1st November 2010, a cheque for £17,200 drawn from the Respondents own funds was paid into the Respondent's Firm's Client Account. Said cheque had been dishonoured and returned by the Respondent's bank on 4th November. Whilst the credit entry in respect of said funds had been processed timeously, the debit entry was not processed by the Respondent's firm until 25th February 2011 resulting in the

balance of the Respondent's firm's Client Account being overstated by that amount between 1st November 2010 and 25th February 2011.

- 6.4 A transfer from the Respondent's firm's Client Account to the Respondent's firm's account of £8,225 had been effected on 2nd November 2010 but was not processed until 14th March 2011 resulting in the Respondent's firm's Client Account balance being overstated by that amount between 2nd November 2010 and 14th March 2011.
- 6.5 On 1st February 2011 a cheque for £14,900 drawn from the Respondent's own funds was paid into the Respondent's firm's Client Account and the same amount was thereafter transferred from the Respondent firm's Client Account to the Respondent's firm Account. Neither entry was processed.
- 6.6 On 2nd February 2011 a payment of £14,900 was made from the Respondent's firm's Client Account to the Respondent but the said payment was not processed until 25th February 2011.
- 6.7 As a result of the foregoing transactions in paragraphs 6.3 and 6.4 and the failure to record these timeously and correctly, the Respondent's firm's Client Account was in deficit during the period from 1st November 2010 to 14th March 2011.
7. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his client account being in deficit between 1 November 2010 and 14 March 2011 in breach of Rule 4 of the Solicitors (Scotland) Accounts etc Rules 2001.
8. Having heard Counsel for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 August 2013. The Tribunal having considered the Complaint as amended on 23 August 2013 at the instance of the Council of the Law Society of Scotland against Forbes Gillies Leslie, First Floor, Regent Court, 70 West Regent Street, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his breach of Rule 4 of the Solicitors (Scotland) Accounts etc Rules 2001; Censure the Respondent and Fine him in the sum of £1,500 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alan McDonald
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

An amended Complaint was lodged with the Tribunal deleting a number of the averments in the original Complaint. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint. There was accordingly no need for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Knight advised that there had been helpful discussions between himself and the Respondent's solicitor which had resulted in an amended Complaint and a Joint Minute admitting the averments of fact, averments of duty and averments of professional misconduct. Mr Knight stated that the Respondent had been extremely cooperative throughout the process.

What was left in the Complaint was a breach of the Accounts Rules. Paragraphs 2.2 and 2.3 had been left in to show the issues with the cash room and transactions not being fully recorded but did not form part of the averments of misconduct. The investigation revealed the level of the deficit which fluctuated but remained a deficit during the whole period. Mr Knight emphasised that the Accounts Rules are in place so that clients can have confidence that solicitors are able to repay money at any time and are there to protect the public and the reputation of the profession. The Respondent had always accepted the breach of the Accounts Rules.

Mr Knight asked the Tribunal to make a finding of professional misconduct. He however confirmed to the Tribunal that the Respondent had not come to the previous adverse attention of the Law Society.

SUBMISSIONS FOR THE RESPONDENT

Mr Leak explained that the Respondent's firm had been having problems due to the downturn in business. The Respondent was the managing partner and had not wished to have to downsize and get rid of valuable staff. There were six partners in the firm, two being equity partners. The Respondent shouldered all the responsibility and did

not share his troubles with the other partners. He tried to mitigate the financial consequences and paid personal money into the firm. He was the only one who did this and he took sole responsibility.

In connection with the £17,200, this was a payment of monies by him personally into the firm. The money was due to be paid to him but the cheque bounced. A debit entry should have been made but this was hidden which led to the deficit occurring. The Respondent accepted that this was a breach of the Accounts Rules and that there should have been better accounting systems in place.

In respect of Article 2.1, a cheque was received in payment of fees plus VAT. This was paid into the client account but there was a book keeping problem and it was not credited to the firm's records which led to a deficit. This should not happen in terms of the Accounts Rules. Paragraphs 2.2 and 2.3 did not result in a deficit.

The sum of £14,900 arose in the same context of the Respondent paying personal money into the firm.

The Law Society accepted that the deficits had been cleared by 14 March before the investigation by the Financial Compliance Department of the Law Society. The deficit had been discovered and this led to changes being made within the Respondent's firm to address accounting issues. The Respondent was no longer the partner responsible for dealing with the accounts and the software system had been upgraded. The Respondent now shared problems and his load with the other partners in the firm. Under the new system the information is available to all the partners. This should prevent any errors in future and if there were any they would be detected and rectified immediately.

Mr Leak stated that the Respondent accepted that his conduct amounted to professional misconduct and he was full of remorse and very contrite. He had been in the profession for 34 years and had a completely clean record. Mr Leak referred to the references lodged by his partners. These referred to the Respondent's professionalism and his important role in keeping the firm together. Mr Leak submitted that the Respondent was a person of complete honesty and integrity.

The fortunes of the firm had now improved and the borrowings had been reduced. There were three new assistants and two trainees. The firm employed seven solicitors, two trainees and nine support staff. The Respondent had a pivotal role and a restriction on his practising certificate would be likely to cause the firm to disintegrate and result in the loss of jobs. Mr Leak stated that the Respondent recognised that a Censure and a Fine would be necessary but Mr Leak submitted that it would not be necessary to restrict the Respondent's practising certificate in order to protect the public as there had been no risk of harm to the public. There was little chance of repetition. Steps have been taken to address the problems in the accounting system. Mr Leak stated that the Respondent had learned a salutary lesson and submitted that the effect on the firm if the Respondent's practising certificate was restricted would be disproportionate.

In response to a question from the Tribunal, Mr Leak confirmed that the first error was that the money was put into a client account and not the firm account. In response to a further question from the Tribunal, Mr Leak confirmed that the cashier probably picked the matter up. Matters took so long to come to light because the Respondent was taking sole responsibility for everything. The cashier had now been SOLAS trained.

Mr Knight confirmed that there have not been any further Law Society inspections since. Mr Leak confirmed that the Respondent would be in a position to pay a Fine.

DECISION

At the time of the conduct the Respondent was the cash room partner and was responsible for ensuring that the provisions of the Accounts Rules were met. It is imperative that solicitors comply with the provisions of the Accounts Rules in order to ensure protection of the public and protect the reputation of the profession. In this case the Respondent breached Rule 4 of the Accounts Rules due to the deficit on the client account for a period of four and a half months and the Tribunal consider that this is sufficiently serious and reprehensible so as to amount to professional misconduct.

The Tribunal however took account of the fact that the Respondent was extremely remorseful and contrite, had fully cooperated with the Law Society from the outset, had picked up the failure prior to the Law Society inspection, had put things in place to ensure that the same mistake does not happen again and no member of the public was adversely affected by the Respondent's conduct. The Tribunal also took account of the fact that the Respondent has an unblemished 34 years record in the profession and is clearly held in high regard by his partners. His honesty and integrity are not in doubt. The Law Society has not considered it necessary to re-inspect the Respondent's firm.

The difficulties that the Respondent found himself in occurred at a time when the firm was having problems in a difficult financial climate and the Respondent was introducing personal money into the firm. The Tribunal was satisfied on the basis of the submissions made on behalf of the Respondent that there was no risk of a similar situation arising in future and did not consider any need to restrict the Respondent's practising certificate for protection of the public.

The Tribunal however considered that a Fine of £1,500 in addition to a Censure was necessary in order to mark the Tribunal's concern with regard to a deficit occurring on the client account. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman