

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2005)**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**RICHARD ALLAN SANDEMAN,  
Solicitor, Messrs Sandemans,  
Solicitors, 34 Union Road,  
Camelon, Falkirk**

1. A Complaint dated 5 April 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Richard Allan Sandeman, Solicitor, Messrs Sandemans, Solicitors, 34 Union Road, Camelon, Falkirk (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. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be set down for a procedural hearing on 23 August 2013 and notice thereof was duly served on the Respondent.

5. When the Complaint called on 23 August 2013. Mr Jim Reid, Solicitor, Glasgow appeared on behalf of the Law Society and for Mr McCann for the Respondent. It was agreed that a further procedural hearing be fixed for 15 October 2013.
6. When the case called on 15 October 2013 the Law Society were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Respondent was represented by James McCann, Solicitor, Clydebank. It was agreed that a substantive hearing be fixed for 19 December 2013. This substantive hearing was converted to a procedural hearing as there were difficulties in having a witness attend. A further substantive hearing was fixed for 7 March 2014.
7. Due to ongoing difficulties with the witness the hearing on 7 March 2014 was cancelled and the Complaint was sisted.
8. The case then called for a procedural hearing on 1 May 2015 when the sist was recalled and a substantive hearing was fixed for 4 August 2015.
9. When the case called for hearing on 4 August 2015 the Complainers were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by Iain Ferguson, Solicitor, Glasgow. A Joint Minute was lodged admitting the averments of facts and averments of duty in the Complaint. The Respondent then gave evidence.
10. Having regard to the Complaint, the Joint Minute, the Respondent's evidence and the Productions lodged, the Tribunal found the following facts established.
  - 10.1 The Respondent was born on 11 July 1953. He was admitted as a Solicitor on 10 December 1976. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 6 January 1977.

10.2 He was a partner with Messrs Milligan, Telford & Morrow from 1 March 1987 to 3 December 1993. From 13 December 1993 he has been a partner with Messrs Sandemans, Solicitors, 34 Union Road, Camelon, Falkirk FK1 4PG. From 1 June 1994 to 31 December 1995 he was a partner with Young & Co.

10.3 On 17 and 18 August 2009 the Complainers carried out an inspection of the Respondent's Firm, Messrs Sandemans, Solicitors, Falkirk. The inspectors noted a Client Matter for a client, Company 1 in respect of the sale of a site at Property 1.

The entry dated 18 September 2008, showed a debit of £18,000 with a narrative of "Funds to Messrs Sandemans"

10.4 The Complainers issued an Inspection Report of 20 August 2009 inter alia referring to the Solicitors (Scotland) Accounts Etc Rules 2001, Rule 6(1)(c) and Rule 21.

Rule 6(1)(c) permits money drawn on a client's authority to be drawn from a Client Account and Rule 21 provides that a Solicitor shall not borrow money from his client unless the client is in the business of lending money or his client has been independently advised in regard to the making of the loan

10.5 On 21 January 2010 the Respondent attended an interview with the Complainers' Scottish Solicitors Guarantee Fund Committee.

In respect of the Client Matter entry of 18 September 2008 in respect of Company 1, the Respondent was asked to explain the payment of £18,000. The Respondent offered an explanation in respect of a loan to him by the client but in response to questions as to whether he had advised Mr A, the Director of

Company 1, that he required independent advice in regard to the making of the loan, the Respondent advised the Committee that he had not so advised Mr A.

The Respondent had known Mr A for in excess of 30 years and they were good friends. Mr A had his own separate financial advisers. The Respondent met Mr A regularly on Saturdays and on one such Saturday they met socially at Mr A's garage office. They were discussing personal issues but then started to talk about business matters. The Respondent advised Mr A that there was an unexpected delay in the funding coming from his SIPP for his new legal offices. Mr A offered the Respondent a short term loan to allow the transaction to complete. The loan was offered without interest or security and without any documentation being put in place at the time the loan was given.

The Respondent was advised that his failure to advise Mr A in relation to Rule 21 was a breach of the Rules, viewed very seriously by the Committee. The Respondent acknowledged the Committee's opinion

- 10.6 The Complainers wrote further to the Respondent on 22 January 2010 in relation to the loan from Company 1, referring the Respondent to Rule 21 and advising that the Complainers had not seen any evidence that the Respondent had complied with Rule 21 before accepting the £18,000 loan from Company 1.
- 10.7 The Respondent replied on 9 February 2010 inter alia enclosing a copy of an Agreement. The enclosed copy Agreement was between Richard Allan Sandeman and Company 1 in relation to the loan to the Respondent of £18,000 but the Agreement was

dated 9 February 2010 thereby post-dating the Client Matter entry and the loan of 18 September 2008

- 10.8 By letter dated 28 June 2010 the Complainers intimated a Complaint to the Respondent setting out the Issue:

“On or around 18 September 2008 Mr Sandeman borrowed the sum of £18,000 from his firm’s client, Company 1, despite the client not being in the business of lending money and in circumstances where the client was not independently advised in regard to making the loan, all contrary to Rule 21 of the Solicitors (Scotland) Accounts Etc Rules 2001”

- 10.9 On 30 June 2011 the Complainers’ Professional Conduct Sub Committee considered the matter and determined that the Respondent’s conduct appeared to amount to a serious 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. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal

11. Having heard submissions from both parties in respect of whether or not the Respondent’s conduct amounted to professional misconduct, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- 11.1 His borrowing the sum of £18,000 on 18 September 2008 from a client, Company 1, when that client was not a client in the business of lending money, the Respondent did not advise the client that the client required to be independently advised in regard to making the loan and the client was not independently

advised in respect of the loan, all in breach of Rule 21 of the Solicitors (Scotland) Accounts Etc Rules 2001.

12. Having noted three previous findings of professional misconduct against the Respondent and having heard mitigation on the Respondent's behalf, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 August 2015. The Tribunal having considered the Complaint dated 5 April 2013 at the instance of the Council of the Law Society of Scotland against Richard Allan Sandeman, Solicitor, Messrs Sandemans, Solicitors, 34 Union Road, Camelon, Falkirk; Find the Respondent guilty of professional misconduct in respect of his breach of Rule 21 of the Solicitors (Scotland) Accounts Etc Rules 2001; Censure the Respondent and fine him in the sum of £3000 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 and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

**Kenneth Paterson**

**Vice Chairman**

13. 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**

**Kenneth Paterson**  
**Vice Chairman**

**NOTE**

The Respondent had lodged Answers to the Complaint but on the morning of the Tribunal a Joint Minute was lodged admitting all the averments of fact and averments of duty in the Complaint. The Joint Minute also admitted that the documents contained in the Inventory of Productions for the Respondent 1 and 2 were what they bore to be and that Production 2 for the Respondent was sent to the Complainers after 8 October 2010.

**EVIDENCE FOR THE RESPONDENT**

Mr Sandeman gave evidence on his own behalf in respect of the Complaint. He advised that Mr A had been a personal friend of his for 33 years. Mr A had never sought financial advice from the Respondent and had his own financial advisers. The Respondent explained that he was in the course of purchasing office premises and he was to be using his SIPP but his SIPP was wound up by HMRC which led to a delay.

The Respondent was at Mr A's premises in the garage office for a social meeting. Mr A and the Respondent knew about each other's circumstances and the Respondent told Mr A about his SIPP being wound up and the fact that the Clydesdale Bank were not prepared to give him bridging for the whole amount required. Mr A offered to loan the Respondent the money. The Respondent stated that Mr A is an experienced business man and had his own accountant. Mr Ferguson referred the Respondent to Respondent's Production 1, being the Agreement between Mr A and the Respondent, which was drawn up on 9 February 2010 in response to the Guarantee Fund Committee's request that documentation be produced. The Respondent confirmed that Mr A did not seek legal advice before giving him the loan. The Respondent also confirmed that he received Respondent's Production 2 from Mr A and sent it to the Law Society. In response to a question from the Tribunal he confirmed that it was himself who drafted the letter but it was on Mr A's instructions and Mr A gave him the wording and was happy to sign it. The Respondent indicated that the loan was repaid and he regretted not advising his friend to take independent advice.



In cross examination the Respondent confirmed that £18,000 was borrowed in September 2008 and the Agreement was done some time later. He confirmed that at the time of the loan there was no documentation in place to protect Mr A. The Respondent stated he did not think anything was required. The Respondent accepted that Rule 21 required that solicitors must not borrow from clients unless clients are in the business of lending money or clients have independent advice. The Respondent accepted that he acted in breach of Rule 21 in this case. He however stated that the loan was between friends.

### **SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that in this case the Respondent had admitted a breach of Rule 21. Mr Reid submitted that this was a significant breach due to the amount of money involved and the circumstances. Mr Reid said that Rule 21 was in place to protect solicitor's clients and their funds. In this case the client was deprived of any protection under Rule 21. The Respondent was a solicitor in a position of trust and no consideration appears to have been given by the Respondent to the terms of Rule 21. The Respondent had a direct and personal interest in the loan. No documentation of any kind was prepared at the time and it was only after the Law Society asked for documentation that an Agreement was prepared, 17 months after the event. Mr A, the lender in this case, had little or no protection. The Respondent's interests were adverse to Mr A's as Mr A would suffer if the loan was not repaid.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Ferguson referred to his written submissions as set out below.

You will be aware from the Answers for the Respondent and from a Joint Minute entered into between the Fiscal and myself as the Respondent's Solicitor, that the averments of fact and of the law are admitted and agreed. The Respondent has at no stage challenged or denied any of the relevant facts. My client accepts that he should have advised his client to take independent legal advice and regrets not having done so.

What is not agreed is whether or not the conduct complained of amounts to professional misconduct.

#### CLARIFICATION

First of all I would refer to paragraph 2.5 of the complaint refers to a copy Agreement between the Respondent and Company 1 in relation to the loan to the Respondent of £18,000.00 dated 9<sup>th</sup> February 2010 thereby post dating the loan of 18<sup>th</sup> September 2008.

I would like to clarify that it is of course fully accepted that this was "after the event" but it is the practice of Financial Compliance Department to request a solicitor or practice unit to take steps to rectify any deficiencies from an inspection. I refer you to the Law Society of Scotland (LSS) letter of 20 August 2009 (no 4 of Inventory of Productions for the Complainers). It said :-

"Please provide full explanations for the above payments and forward written authority/loan agreements from your client along with any other relevant documentation" and it was the Respondent's response to that that produced this Agreement.

The Agreement is however indicative of the fact that the loan by Company 1 was one where the parties were agreed as to the terms of the loan and the Agreement simply confirmed this. You will be aware that efforts were being made to have an Officer of that Company appear as a witness in this complaint as the Respondents wished to make clear that the Company were entirely happy with the position despite not being advised to take independent legal advice.

#### UNIQUE AND MITIGATING CIRCUMSTANCES

The circumstances of this particular case are somewhat unique and mitigating and I would draw your attention to the following:-

1. It was a short term loan.
2. The loan was between long standing friends as Mr A of the Company was a personal friend of the Respondent over many years who had become a client.

3. The amount was not regarded as a significant amount of money by Mr A in the circumstances pertaining at the time.
4. Mr A and the Company retained their own separate advisors and never sought any financial advice of any kind from the Respondent.
5. The basis of the loan was in view of an unexpected delay in funds arriving from the Respondent's SIPP for his new legal offices. The meeting took place at Mr A's office in his garage premises and not in a work setting. It was a social meeting with a friend outwith business hours. It was a meeting with the Respondent during which he explained his difficulties and Mr A offered a short term loan to allow the transaction to complete.
6. The Respondent has never disputed the loan was offered without interest and without security but it was in a situation where Mr A as an experienced businessman had ample recourse to independent advice in terms of accounting or business advice and legal advice if he so wished. Mr A did not wish to take such advice. That remained the case when Mr A signed the Loan Agreement, which confirms Mr A had been advised to seek legal advice but had declined to do so.
7. It was Mr A who offered the loan out of longstanding personal friendship and outside of any professional relationship.
8. The loan was repaid by Summer 2011.

Compare this with the leading case involving a loan by a client to a solicitor which is the case of

Doran - v - Council of the Law Society of Scotland 1992 SLT 456

This was an appeal case against the decision of the SSDT heard before the First Division including the then Lord President Lord Hope.

The Court found that there were two possible conflicts of interest to which Mr and Mrs Lamont were exposed by these transactions:-

1. A potential conflict of interest between them and the Building Society as to the terms of the Standard Security which was to be granted over their house in security of their loan and the taking of the various steps necessary to complete the Security. They quote as an example the delay in recording the Standard Security.
  
2. The Court identified a further possible potential conflict of interest between the Lamonts and the Petitioner. The Petitioner's interest was in receiving the money by way of loan for his own benefit. The Lamonts interest was to obtain as much protection as could reasonably be given to them to ensure that repayment of the loan could be enforced should this be required. This was a matter of particular importance to them because they had decided to create an enforceable security in favour of the Building Society over their own dwellinghouse. Their interest was to be protected against the risk that due to insolvency, death or some other misfortune the Petitioner would be unable to repay the loan, this exposing them to the demands of the Building Society.

It goes on

“it is this second and more serious conflict which is fundamental to a proper understanding of this case. This is not a transaction which can be looked at simply as an arrangement between close relatives for which the formalities of separate representation were unnecessary. The fact that it was Mr Lamont's own idea to borrow from the Building Society is of relatively little significance in the circumstances. The transaction which he was to undertake with them was for the sole benefit of the Petitioner whose interest in the underlying transaction of loan was adverse to that of the Lamonts in obtaining protection which they needed against default”.

The Court sided with the Tribunal and stated:-

“the Tribunal were right to regard it as significant that the Petitioner had a very real interest in the transaction which the Lamonts were to enter into with the Building Society, and to proceed upon the basis that the transaction with the Building Society was an integral part of the whole arrangement where the balance of the purchase price of the Petitioner's office premises was to be financed from funds to be lent on the security of the Lamonts' dwellinghouse”.

"Once this is understood the challenge to the Tribunal's decision on this point loses all its force, because the essential point in the argument which we are invited to accept was that there was no significant conflict of interest which made it necessary for separate advice to be obtained. We do not regard the Lamont's transaction with the Petitioner in the way which was suggested and the Tribunal reasoning on the matter seems to us to be beyond criticism."

#### SUMMARY and CONCLUSION

It is fully acknowledged that such a breach may be treated as Professional Misconduct (PM). A single breach of a rule does not necessarily have to be treated as such.

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

I respectfully submit that in the absence of any aggravation such as a

- (1) Client complaint.
- (2) An averment of actual prejudice or loss to Mr A or his company who have not chosen to make a complaint and
- (3) Any of the difficulties or aggravations which arose in the Doran - v - Council of the Law Society of Scotland case,

then the case for professional misconduct is not made out. This is clearly not a case where a solicitor took advantage of a client.

There is now a need for the SSDT to consider in every case whether the conduct complained of is PM, unsatisfactory professional conduct (UPC) or neither.

The Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act) introduced the new lower level or category of misconduct called UPC and defined in the 2007 Act as:-

"which means, with respect to a practitioner who is a conveyancing practitioner, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner, but which does not amount to professional misconduct and which does not comprise merely inadequate professional services".

The facts and the law have been admitted but it is submitted in the circumstances do not amount to either PM or UPC.

Mr Ferguson emphasised in oral submissions that this case was different from the case of Doran because there was no security which had to be registered.

Mr Reid stated that in his submission the case of Doran was very similar to this case and pointed out that in the Doran case it was considered significant that the solicitor had a very real interest in the transaction, which was similar to what had happened here. There was also no documentation in respect of the loan and the transaction was for the sole benefit of the Respondent, which was again similar to the case of Doran. Mr Ferguson stated that in the Doran case the solicitor concerned had to give advice about the obtaining of the loan and repayments etc, whereas in this case there was no loan as Mr A had the money. Mr Ferguson stated that it did not occur to the Respondent that Mr A should have taken independent advice.

## **DECISION**

The Tribunal noted that all the averments of fact in the Complaint had been admitted. The Tribunal made further findings in fact based on the evidence given by the Respondent. The Tribunal did not make a finding in fact in respect of the letter at Respondent's Production 2, written by Mr A, to whom it may concern. Mr A did not

appear as a witness and no affidavit evidence was provided from him. The Tribunal gave little weight to a letter which was dated October 2010, sometime after the loan was given by a witness who did not attend the Tribunal and did not provide a sworn affidavit.

In this case the Respondent accepts that he breached Rule 21 of the Accounts Rules. It is clear however from the case of Sharp that a breach of the Accounts Rules may amount to professional misconduct but only if it is serious and reprehensible enough to meet the terms of the Sharp test. The Tribunal accepted the Respondent's evidence that the meeting with Mr A had started as a social meeting but as soon as they started to talk business and Mr A offered to make the loan it became a matter where the Respondent required to bear in mind his responsibilities as a solicitor and he did not do so. The Respondent left Mr A totally exposed. It was of concern to the Tribunal that it apparently did not even cross the Respondent's mind to get Mr A to obtain independent advice. £18,000 is a significant amount of money. The Respondent's interest was in receiving the money by way of loan for his own sole benefit whereas Mr A's interest would be to be given as much protection as possible to ensure that repayment of the loan could be enforced if required. At the time the loan was given no loan documentation was prepared. The Respondent's underlying interest in the transaction was adverse to that of Mr A. The Tribunal considered it inexcusable that the Respondent put such a close friend at risk in this way. The Tribunal considered this case to be very similar to the case of Doran and do not accept Mr Ferguson's submission that because there was no loan in this case it does not amount to professional misconduct. Doran refers to the underlying principle that a solicitor ought not to enter into any contracts or transactions with his clients where his own personal interests may be in conflict. This was clearly the case here and the Tribunal had no hesitation in making a finding of professional misconduct.

Mr Ferguson indicated that he had nothing further to add in mitigation and Mr Reid lodged three previous findings of misconduct against the Respondent made in 1996, 2007 and 2010. The Tribunal was concerned to note that one of the findings of misconduct related to a conflict of interest situation. The Tribunal however did not consider that the Respondent would pose a risk to the public and accordingly imposed

a Censure plus a Fine of £3000. There was no suggestion that he would be unable to pay a fine. The Tribunal made the usual order with regard to expenses and publicity.

**Kenneth Paterson**  
**Chairman**