

**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**

against

**WILLIAM WALLS, 1 Muir Gardens, St
Andrews**

1. A Complaint dated 11 April 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that William Walls, 1 Muir Gardens, St Andrews (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 be heard on 5 July 2017 with a procedural hearing on 21 June 2017 and notice thereof was duly served upon the Respondent. Before either of those dates, the matter was adjourned to a procedural hearing on 1 August 2017. Notice thereof was duly served upon the Respondent.
5. The procedural hearing took place on 1 August 2017. The Complainers were represented by their Fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Simon Collins, Solicitor Advocate, Edinburgh. Of consent, the Tribunal granted the Fiscal's motion to amend Article 39 of the Complaint. Mr Collins indicated that the Respondent admitted all averments of fact, duty and misconduct in the Complaint. The case was continued to a hearing on 4 October 2017 for submissions.

6. The hearing took place on 4 October 2017. The Complainers were represented by their Fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Simon Collins, Solicitor Advocate, Edinburgh. A Joint Minute was lodged admitting the facts and averments in the Complaint. No evidence was led.

7. The Tribunal found the following facts established:-

7.1 The Respondent's date of birth is 21 September 1955. He was enrolled as a solicitor on 24 January 1980. Between 1 February 1989 and 9 September 1992 he was a partner in Cantley & Caithness. From 1 November 1992 until 30 June 1995 he was an employee of Muir, Myles, Laverty and from 1 July 1995 until 30 April 1999 he was a partner in that firm. Thereafter between 4 May 1999 and 30 April 2000 he was an employee of McQuittys and from 1 May 2000 until 30 November 2012 he was a partner of McQuittys, Solicitors, 97 Bonnygate, Cupar. With effect from 30 November 2012, the Respondent's practising certificate was suspended under the provisions of Section 40 of the Solicitors (Scotland) Act 1980. Thereafter on 13 February 2013 a Judicial Factor Ad Interim was appointed over the estates of the Respondent and to the said firm of McQuittys. On 12 February 2015 the Respondent was found guilty of professional misconduct by this Tribunal and was suspended from practice for a period of five years from that date. He is not currently employed by any legal firm.

Mr A's Trust

7.2 Mr A died in June 1999. A trust was set up to meet the needs of his son over the course of his lifetime. The Respondent administered the trust. A series of fee notes were properly taken up until June 2008 all of which were preceded by an audit by the Auditor of Cupar Sheriff Court who assessed the fee in respect of work carried out to 5 June 2008.

7.3 Between 12 June 2009 and 17 October 2012 fees totalling £13,428.46 exclusive of VAT were taken by the Respondent in respect of the trust. The fee properly due in respect of the work carried out by the Respondent in relation to the trust was assessed by the Auditor of the Court of Session on 30 August 2013 as being £2910 plus VAT for the period from 6 June 2008 to 26 November 2012. There was

accordingly an overcharge of £10,518.46 excluding VAT. The Judicial Factor accepted a claim from the trustees.

- 7.4 Fee notes were not issued to the non solicitor trustee when fee notes were debited during that period.

Mrs B's Executry

- 7.5 Mrs B died on 28 November 2011. The Respondent undertook the administration of her estate. Confirmation was issued by the Sheriff Clerk at Cupar on 23 July 2012.

- 7.6 Between 30 December 2011 and 31 August 2012 the Respondent debited fees totalling £5,416.67 exclusive of VAT in respect of the administration of the estate. On 30 August 2013 the Auditor of the Court of Session assessed the fee properly due to the Respondent in respect of the work done for the period 27 November 2011 to the close of the executry as being £3,460 plus VAT of £692. There was accordingly an overcharge of £1,956.67 exclusive of VAT.

- 7.7 Fee notes were not issued to the executors when fees were taken.

Miss C Executry

- 7.8 Miss C died on 1 April 2012. Confirmation was issued by the Sheriff Clerk at Cupar on 24 August 2012. Between 26 June 2012 and 24 August 2012, fees were taken by the Respondent. No fee notes were issued to the executors when fees were taken.

Mrs D Executry

- 7.10 Mrs D died on 1 January 2012. The Respondent was instructed in relation to the administration of her estate. Confirmation was issued by the Sheriff Clerk at Cupar on 15 November 2012. Between 15 February 2012 and 31 May 2012 fees totalling £2,104.17 together with VAT of £420.83 coming in total to £2,525 were debited to the executry. The Auditor of the Court of Session on 30 August 2013 assessed the fees properly due to the Respondent in respect of his administration of the estate for the period 1 January 2012 until 28 November 2012 at £880 plus VAT of £176. The overcharge accordingly amounted to £1,224.17 excluding VAT.

- 7.11 The Respondent was also instructed in the sale of the late Mrs D's property. The Respondent issued a terms of business letter to the executor on 12 November 2012, and provided an estimate of fees, VAT and outlays in the amount of £1,028.50. The Respondent carried out the work in relation to the sale, which duly settled, but did not charge a fee.
- 7.12 Taking into account the fees which would properly have been payable to the Respondent in relation to the conveyancing work as well as the fees due in respect of the executry, as assessed, there was an overcharge of £440.50.
- 7.13 Fee notes were not issued to the executors when fees were debited.

Mrs E

- 7.14 Mrs E instructed the Respondent to let two properties. The first of these was known as Property 1. The Respondent wrote to Mrs E on 18 March 2011 enclosing a copy of his terms of business letter. The letter stated that his fee would be £200 plus VAT for the lease of this property, and another property, known as Property 2.
- 7.15 On 18 June 2011 the Property 1 tenant wrote to the Respondent advising that she had transferred £1,150 to the Respondent's client account in respect of the first month's rent and the deposit. Thereafter she was arranging to set up a standing order to make payment of the rent directly to the landlord.
- 7.16 The Respondent raised a fee note on 24 June 2011 for £100 plus VAT of £20 in respect of "work carried out on your behalf in connection with let of Property 1". The letter under cover of which the Respondent issued the fee note to Mrs E advised the £1,150 had been received from the tenant, that a deposit of £575 had been invested until the end of the tenancy, that the firm's fee of £120 had been deducted, and that a balance was due to the client of £455.
- 7.17 The Respondent's ledger card recorded receipt of the £1,150 from the tenant; the raising and payment of the firm's fee; the balance of £455 being passed to Mrs E, and the deposit of £575 being transferred to "other funds" on the ledger. The ledger further recorded that the deposit (plus interest of 39p) was transferred to the

landlord in order that she might deal with its return to the tenant, on 22 December 2011.

- 7.18 Mrs E also instructed the Respondent in relation to the lease of a property known as Property 2. The Respondent raised on 2 November 2011 a fee of £100 plus VAT of £20 in respect of “work carried out on your behalf in connection with let of Property 2”. The Respondent issued the fee note to Mrs E under cover of a letter which advised that £1,100 had been received from the tenant, that a deposit of £550 had been invested until the end of the tenancy, and that the firm's fee of £120 inclusive of VAT had been settled by deduction, leaving a balance due to the client of £430 which was transferred from the firm to Mrs E by BACS.
- 7.19 The ledger card recorded the receipt of £1,100 from the tenant, the payment of the firm's fee and VAT, the transfer of £430 to Mrs E and the deposit of £550 being transferred to “other funds”. The ledger card recorded that the deposit was transferred back to the landlord in order that she might deal with its return to the tenant on 22 December 2011.
- 7.20 Despite the terms of the ledger card, the Respondent did not make payment of the deposit of £550 for Property 2 to Mrs E. Neither did he make payment of the full £575.39 due to her in respect of Property 1 although he did make a payment in this respect of £460. The Respondent appropriated these sums totalling £665.39 to his own use. The Judicial Factor reimbursed Mrs E in that amount on 23 May 2013.

Mr & Mrs F

- 7.21 The Respondent dealt with the letting of three properties on behalf of Mr & Mrs F. The first of these was at Property 3. The ledger relative to this property was opened on 13 January 2003. It recorded the receipt of the tenants' deposits on the “other funds” section of the ledger card. This was the position until 2008/2009. Thereafter, when new tenants moved into the property in 2009 and subsequently there was no mention of any further deposits being taken. As at 24 January 2013 there was a credit balance on the ledger relative to this property of £855.85.
- 7.22 The Respondent dealt with the lease of Property 4 on behalf of Mr & Mrs F. The first letting of the property by the Respondent appears to have been in August 2005.

The tenant's deposit was recorded by the Respondent on the "other funds" section of the ledger. This ceased to happen when a new tenant moved in to the property in February 2006. On 22 February 2006 there was a cross entry made on the ledger showing the receipt of a deposit of £550 and payment to the Respondent of the same amount. The tenant remained in the property until July 2012. There was no record in the ledger of the subsequent tenant's deposit being placed in the client account. As at 24 January 2013 this ledger had a nil balance.

7.23 The Respondent acted on behalf of Mr & Mrs F in connection with the lease of Property 5. On the Respondent's file there was an unsigned receipt dated 23 March 2011 acknowledging receipt of a deposit from the last tenants of the property. The ledger card commences on 13 November 2006. No deposits were recorded as being received. As at 24 January 2013 the ledger recorded a nil balance.

7.24 The Judicial Factor's investigations revealed that a deposit of £1,700 had been received from the tenants of Property 3, a deposit of £1,250 from the tenants of Property 4 and a deposit of £920 from the tenants of Property 5. The said sums totalling £3,870 were appropriated by the Respondent to his own use. Along with the credit balance of £855.85 in the Property 3 ledger, these sums were refunded to Mr & Mrs F by the Judicial Factor.

Mr & Mrs G

7.25 The Respondent acted for Mr & Mrs G in connection with the letting of properties at Property 6 and Property 7. The ledger for Property 6 was opened on 20 August 2007. It did not record the most recent tenant's deposit being deposited in the client account and as at 24 January 2013 there was a credit balance of £74.84. The ledger for Property 7 was opened on 7 February 2005. It failed to record the most recent tenant's deposit and as at 24 January 2013 recorded a balance of nil.

7.26 The Judicial Factor's investigations revealed that a deposit had been received from the tenants of Property 6 in the amount of £1,240 and a deposit of £660 had been received from the tenants of Property 7. These sums total £1,900. The Respondent appropriated these sums to his own use. Along with the sum of £74.85 condoned upon these sums were refunded to Mr & Mrs G by the Judicial Factor.

Mr & Mrs H

- 7.27 The Respondent acted for Mr & Mrs H in connection with the letting of Property 8. The ledger recorded that on 26 October 2009 a tenant's deposit was invested by the firm and placed on "other funds" and that a second deposit was received on 5 September 2011 and, similarly, placed in "other funds". The ledger recorded that both deposits were repaid to Mr & Mrs H on 7 December 2011. Notwithstanding the terms of the ledger card the true position was that the Respondent appropriated these funds to his own use and did not refund them to Mr & Mrs H. The amount in question was £802.81 which was refunded to Mr & Mrs H by the Judicial Factor.

Mr & Mrs I

- 7.28 Mr & Mrs I instructed the Respondent in connection with the letting of Property 9. Miss LS was the tenant of the property between 1 June 2010 and 31 May 2011. She paid a deposit amounting to £450 on 19 April 2010. The Respondent did not record payment in his ledgers. He appropriated that sum to his own use. He subsequently provided the Judicial Factor with a cheque to refund the deposit. Commencing in 2011 Miss GG and Miss HC were tenants of the property. Miss HC made a payment by the faster payment system to the Respondent of £490 on 23 February 2012. Miss GG made a payment to "Mr & Mrs W Walls" account on 16 February 2012. The total of the deposit namely £980 was appropriated by the Respondent to his own use. The Respondent confirmed this in an email to the Judicial Factor's office dated 15 January 2014. The Judicial Factor reimbursed the sum of £980 to the tenants, less utility payments of £195.91 which fell due in respect of the property.

Mrs J

- 7.29 In 2006 Mrs J purchased Property 10. The missives were concluded on 30 March 2006. The date of entry was 26 May 2006. The purchase price was £180,000. Mrs J was at the material time an employee of the Respondent. It was agreed between Mrs J and the Respondent that the Respondent would meet the Stamp Duty Land Tax and recording dues associated with the transaction in lieu of salary which he owed to Mrs J. Settlement took place as arranged on 26 May 2006. Thereafter until the conclusion of his practice the Respondent took no steps to settle the Stamp Duty Land Tax which was due, or to register the disposition in favour of Mrs J. That was

done after the appointment of the Judicial Factor, and payment of the necessary penalties for the late submission of form SDLT 5. Payment was made from funds held by the Judicial Factor.

Failure to keep Accurate Records/ True Financial Position/Shortage

7.30 As a result of the misappropriation of funds and falsification of records, the Respondent's records did not accurately show all dealings with client's money and failed to show the true financial position of the firm. Moreover, as a result of the misappropriation of funds the Respondent's client account was continually in deficit at least from 30 April 2012 until the cessation of the Respondent's practice.

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

8.1 He charged grossly excessive fees in respect of executry and other matters;

8.2 He took fees without rendering fee notes or otherwise obtaining authority from clients to do so;

8.3 His financial records did not contain correct firm balances or any ledger reflecting the financial position of the firm, or correct client bank accounts or client balances, all in breach of Rules B6.7 of the Practice Rules;

8.4 He misappropriated funds held on behalf of clients to his own use;

8.5 He failed timeously to stamp and record a disposition.

9. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 October 2017. The Tribunal having considered the Complaint dated 11 April 2017 at the instance of the Council of the Law Society of Scotland against William Walls, 1 Muir Gardens, St Andrews; Find the Respondent guilty of professional misconduct in respect that he charged grossly excessive fees in respect of executry and other matters; he took fees without rendering fee notes or

otherwise obtaining authority from clients to do so; his financial records did not contain correct firm balances or no ledger reflecting the financial position of the firm, or correct client bank accounts or client balances, all in breach of Rules B6.7 of the Practice Rules; he misappropriated funds held on behalf of clients to his own use; and he failed timeously to stamp and record a disposition; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to 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 but need not identify any other person

(signed)

Eric Lumsden
Acting Vice Chairman

10. 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 26 OCTOBER 2017 .

IN THE NAME OF THE TRIBUNAL



Eric Lumsden
Acting Vice Chairman

NOTE

At the hearing on 1 August 2017, of consent the Tribunal allowed the Fiscal to amend paragraph 39 of the Complaint so that it read “The respondent charged grossly excessive fees in respect of executry and other matters (Articles 5-13).” No evidence was led.

The Tribunal considered that the presentation of the fees in the Complaint, some of which were represented as inclusive of VAT and others exclusive of VAT, was confusing. Therefore, in its findings in fact, the Tribunal has referred to all fees exclusive of VAT.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal drew attention to the previous finding of professional misconduct made by this Tribunal against the Respondent. This related to breaches of the CML Handbook. The Fiscal briefly described the facts of the present Complaint and explained how these constituted professional misconduct with regard to overcharging, failure to render fee notes, misappropriation of clients’ funds, failing to stamp and record a disposition, and failure to keep proper accounting records. He noted that there was a continual shortage on the client account from 30 April 2012 until the cessation of the Respondent’s practice. He invited the Tribunal to make findings of professional misconduct in terms of the averments of professional misconduct contained in Articles 39-43 of the Complaint.

SUBMISSIONS FOR THE RESPONDENT

Mr Collins indicated that the Respondent did not dispute the factual position detailed in the Complaint and outlined by the Fiscal. The Respondent was not practising as a solicitor and did not intend to practise again. Mr Collins explained that he did not wish to say anything more at this stage and would make a plea in mitigation once the Tribunal had come to a decision on professional misconduct.

DECISION

The Tribunal considered carefully the admitted averments of fact in the Complaint. The Tribunal had regard to the test for professional misconduct as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In *Sharp* it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the Complaint it made.

The Tribunal considered all the circumstances and found that the Respondent's conduct, with the exception of the averment of overcharging contained at paragraph 10 of the Complaint, was sufficiently serious and reprehensible to amount to professional misconduct. The Respondent pursued a dishonest course of conduct over a significant period whereby he overcharged clients, failed to render fees and misappropriated their money for his own use. He failed to record a disposition for over seven years. His books and accounts did not accurately show all his dealings with client money and therefore failed to reflect the true financial position of the firm. His client account was in deficit for at least seven months.

The Tribunal noted that the Auditor included in the assessment of the Mrs D executry, work which was not charged by the Respondent. The Tribunal did not consider this to be relevant to the overcharge. The fact that the Respondent failed to charge a fee for the conveyancing did not justify overcharging in relation to the executry.

The Tribunal acknowledged the fee at paragraph 10 in relation to Miss C's executry was only slightly in excess of that assessed by the Auditor and the Tribunal was not persuaded that this particular overcharge constituted a serious and reprehensible departure from the standards of competent and reputable solicitors.

MITIGATION

Mr Collins informed the Tribunal that the Respondent inherited a firm which was struggling but he did not appreciate the extent of the financial difficulties. The Respondent was not equipped to deal with these problems. His conduct represented his endeavours to prevent the firm from going down. The Tribunal could see from the Complaint that he was unable to pay one of his employees at one stage and so resorted to waiving her conveyancing fees. This was indicative of the problems his firm was experiencing and the Respondent's approach to them. The Respondent ought to have admitted defeat much earlier. However, he was concerned about the impact that would have not only on himself, but also on his wife and employees. Mr Collins had received verbal confirmation that the Respondent was suffering from depression at the time of the misconduct and his health continued to suffer although he had no medical report to put before the Tribunal.

Mr Collins highlighted that there was a criminal prosecution linked to the circumstances of this case and the Respondent had already pleaded guilty to that matter by way of a Section 76 letter. Sentence was deferred to 6 November 2017. That matter concerned the embezzlement of £260,000 using the Power

of Attorney the Respondent held over his Aunt's affairs. This money, and the monies referred to in the Complaint, have all been repaid through the Trustee in Bankruptcy.

The Respondent currently works as a golf tourism driver. His practising certificate remains suspended. He has no intention to reapply for a practising certificate. He is aware that he will be struck off the Roll of Solicitors. He is also facing the real possibility of a custodial sentence.

SANCTION

The Tribunal noted the health of the Respondent and his cooperation with the Fiscal in providing a Joint Minute. It appreciated that the Respondent attended the hearing in person and the candour with which Mr Collins spoke on his behalf. However, the Tribunal had previously made a finding of professional misconduct against the Respondent. The Tribunal considered that the professional misconduct in this case was very serious. His dishonest course of conduct involving a significant number of transactions was likely to damage the reputation of the legal profession. If the Respondent continued to practice, it was likely that he would be a danger to the public.

Therefore, the Tribunal considered that the only appropriate sanction in this case was to order that the name of the Respondent be struck off the Roll of Solicitors in Scotland. As was noted in McMahon v Council of the Law Society of Scotland 2002 SC 475, a solicitor who is guilty of dishonesty with client money forfeits the respect and trust of the public and his colleagues, and has disgraced his profession. It is a fundamental principle that the client account is sacrosanct. When it is persistently and repeatedly in deficit and when money is taken dishonestly the Court has noted that it is difficult to see how the penalty could be anything other than striking off.

Following submissions on publicity and expenses, the Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal. The Tribunal ordered that publicity should be given to the decision but only the Respondent required to be named because publication of personal data is likely to damage individuals' interests.



Eric Lumsden
Acting Vice Chairman