

**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**

**JOHN HENRY ADAM, Adam Legal LLP, 2  
Marischal Street, Peterhead**

1. A Complaint dated 9 May 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that John Henry Adam, Adam Legal LLP, 2 Marischal Street, Peterhead (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 23 August 2017 and notice thereof was duly served upon the Respondent.
  5. The hearing took place on 23 August 2017. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. An amended Complaint was by agreement of the parties substituted for the original Complaint. A signed Joint Minute admitting the averments of fact, duty and misconduct in the amended Complaint was lodged with the Tribunal. Of consent, the
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Tribunal granted the Fiscal's motion to delete paragraphs 3.43(h) and 3.45(j) from the amended Complaint.

6. The Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled in the Registers of Scotland. He is a designated member of Adam Legal LLP (the firm), having its registered office at 2 Marischal Street, Peterhead. His date of birth is 12 August 1972. He was enrolled as a solicitor on 23 September 1996. From 10 April 2007 until 19 January 2009 he was a Partner in, and the Cashroom Partner of, the firm of Adam Legal. He was the Client Relations Partner from 17 August 2007 until 19 January 2009. From 20 January 2009 he has been a Partner in, and the Cashroom Partner of, the firm. He has been the firm's Compliance Partner since 16 November 2011.

#### **The Law Society of Scotland – 2013 inspection background**

6.2 On 13 November 2013 and 16 December 2013 the Complainers' Financial Compliance Department (FCD) carried out an inspection of the firm. The FCD concluded that the risks and findings identified were of a serious nature, such as would merit the submission of their inspection report to the Guarantee Fund Sub Committee (GFSC).

6.3 The findings detailed in the inspection report included, amongst other matters, the following.

##### a. Rule B6.7.4 - keeping properly written up records/preparation of balances

The Respondent failed to provide a trial balance for the month ending 31 October 2013, and instead provided one brought down to 13 November 2013; moreover, during the initial inspection no client or firm bank reconciliations were seen, allegedly because these had been prepared using a particular software system, and the Respondent was unsure how to print these off.

When reconciliations were provided, the inspectors saw that adjustments had been made, dating back to July 2011, and so the firm's records had not reflected its true financial position for over two years.

Later reconciliations also proved to be inaccurate: the firm bank reconciliations as at 31 December 2013 and 31 January 2014 showed a mis-balance of £458.96, whilst the client bank reconciliations for the same dates showed mis-balances of £3,480.24 and £273.24 respectively.

The trial balance as at 31 December 2013 and 31 January 2014 recorded a credit balance of £3,546.46 on a ledger entitled "held postings".

Furthermore, the firm was making only periodical payments to HMRC relating to VAT, as evidenced by its bank statements, and no schedule of VAT due by the practice unit was available at the time of the inspection. When the inspectors discussed these matters with the Respondent, he confirmed that an arrangement was in place with HMRC for paying arrears of VAT. No formal agreement was provided, therefore it could not be ascertained how much VAT was outstanding. It was produced later.

The firm's true financial position was further skewed, in respect that several loans made to it were not showing the accurate liability amount outstanding.

b. Rule B6.7.1 - record keeping

The inspectors referred to the firm's failure to provide bank reconciliations for the client and firm bank accounts on the initial date of the inspection. Subsequently, the firm did provide client and firm bank reconciliations from November 2012 to October 2013 which showed many adjustments dating back to July 2011 which consisted of sums posted to the nominal bank ledgers but not deducted from the bank, sums deducted from the bank but not posted to the nominal ledger, as well as transfers from the client to the firm bank, some of which had been posted but not deducted from the bank and some deducted from the bank but not posted.

Due to the number of adjustments made, the books and records could not be

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relied upon and the true financial position of the firm had not been reflected for over two years, however the majority if not all of the adjustments on the client bank had been corrected by 10 December 2013.

Furthermore, whereas all transactions through the bank accounts should be mirrored in the firm's records, to maintain a full audit trail, various movements on the client bank statement had not been posted, some of which were listed in the report.

The inspectors detailed a number of errors, which related to the adjustments detailed on the client bank reconciliation, and which had led to inaccuracies on the client ledger.

The items mentioned were said to comprise a sample only of the firm's breaches of Rule B6.7.1. Many more examples were seen. It appeared that correcting entries were posted to the books and records of the practice unit on 11 November 2013 and 10 December 2013.

Also, many adjustments in respect of sums lodged and drawn on the client bank were outstanding. A number of these were posted to the books and records of the firm after these had occurred, however the original date was not seen to be included in the narrative in order that a full audit trail was maintained.

c. Rule B6.13 - Cashroom Manager's responsibilities

The report emphasised that, as Cashroom Manager, the Respondent was responsible for the staff and systems employed.

The inspectors cautioned that continued rule breaches were deemed to be a serious matter and these would be considered by the GFSC, and that failure to have adequate systems in place may be regarded as professional misconduct. It was recorded that the GFSC would be extremely concerned, so long as the firm's books were in such condition that it was not reasonably practicable to ascertain, definitively, what its true position was, and that it would require the Respondent to take immediate action to rectify matters.

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The inspectors observed that the firm's records were insufficient and did not demonstrate compliance with the Accounts Rules requirements. Many Rule breaches were noted from the inspection, involving failures to reconcile the client and firm accounts; record-keeping issues, including the many adjustments outstanding on the client and firm bank reconciliations dating back to July 2011; and deficits, which had been caused by the outstanding adjustments.

Also, whereas they had identified an opening correction of £415.76, it was not clear from the bank reconciliation what this sum represented.

Whereas the firm had debited £964 on 29 June 2012, in relation to Miss J.B.'s ledger, on the list of outstanding cheques a cheque for the same amount was seen. On review of the client ledger, only a cheque issued on 24 May 2012 had been posted, however both the cheque and the direct transfer were no longer showing as outstanding on the client bank reconciliation as at 30 November 2013.

Furthermore, two sums had been transferred from the client account to the firm account on 3 September 2012, however it was not clear from the corrections carried out when these sums were posted to the books and records.

d. Rule B6.3.1 - deficits

The inspectors referred to several deficits which had occurred, including one of £5,166.54 on 24 January 2012. Whereas the Respondent had attributed this to a bank error, no letter from the bank had been seen confirming this. Various further deficits had occurred due to the adjustments noted on the client bank reconciliation.

e. Rule B6.15 - Accounts Certificate disclosures

The firm's Accounts Certificate stated that client bank reconciliations had been carried out. However, during the inspection no reconciliations were seen to have been carried out for some time. This was not disclosed as a breach on the recent Accounts Certificate submitted to the Society, whereas all Rule breaches required to be disclosed.

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The inspectors cautioned that if future inspections highlighted breaches which had not been reported, this would be viewed as a very serious matter.

f. Rule B6.9.1 - invested funds - verification of balances

No quarterly verification was being obtained for the invested funds balances. Whilst these were small in number it was not recorded that they had been checked.

g. Rule B6.9.1 - invested funds - reconciliation of balances

Although reconciliations must be carried out at each quarter end date, comparing the balances recorded in the firm's records with the independent verifications obtained, no formal reconciliations were seen to be carried out.

h. Rule B6.11 - review of client balances

The firm had retained historic balances and funds held on a small balances ledger amounting to £607.16 as at 16 December 2013 with sums over £10 having been written off to this ledger.

The inspectors discovered other cases where historic balances were held, and their report referred to some of these. More examples were noted at the time of the inspection on 13 November 2013 but were seen to have been dealt with by 16 December 2013.

i. Rule 6.7.5 – Cheques to be obtained from the bank

The firm did not obtain client account cheques from the bank. The Respondent could obtain these but did not have written confirmation at the time.

**The GFSC Meeting – 6 March 2014**

- 6.4 The report following the inspections on 13 November 2013 and 16 December 2013 was considered by the GFSC at its meeting on 6 March 2014. The GFSC was satisfied that the firm's true financial position could not be determined from the books and records made available at the time of the inspection. It observed that the firm had been in deficit at various points. The GFSC agreed that, whilst

it would treat any further issues seriously, no further action was necessary on this occasion. The GFSC agreed also that the firm should be subject to a further inspection, to ensure compliance with all of the Accounts Rules, and, in particular, Rules B6.3 and B6.7.

### **The Law Society of Scotland - 2014 Inspection**

- 6.5 On 24 March 2014 the Solicitor to the Guarantee Fund wrote to the Respondent, giving formal notice of the further inspection to be carried out, and enclosing an Extract Minute of the GFSC's Meeting of 6 March 2014.
- 6.6 On 15 April 2014 the FCD emailed the Respondent, noting that no further response has been received in relation to the outstanding inspection matters, and calling upon him to provide a full response regarding all the outstanding matters by close of business on 22 April 2014.
- 6.7 On 16 April 2014 the Respondent replied, stating that all papers were in his accountant's hands, as his year-end had been 31 March 2014. Whilst he would be abroad until 22 April 2014, he intended meeting with his accountant upon his return, to round off the remaining issues. This was acknowledged on 22 April 2014 by the FCD.
- 6.8 The FCD emailed the Respondent on 6 May 2014, advising that they had tried and failed to contact him by telephone. They advised that they urgently required his response in connection with schedules 1, 2 and 4 to conclude these matters and cautioned him that, unless he replied by return, they might require to refer the matter back to the GFSC.
- 6.9 On 20 May 2014 the Respondent replied stating that having provided his accountant with a clear note of the outstanding issues and all relevant paperwork on 11 April 2014, he had yet to receive a reply. He stated that he had sent reminders the previous week and again that day in the hope that they would address the issues that were still live.

- 6.10 On 26 May 2014 the FCD replied noting that the last substantive response received from the Respondent had been on 14 February 2014, which had been insufficient to conclude schedules 1, 2 and 4, and that no further progress had been made, despite several reminders. They now proposed to leave schedules 1, 2 and 4 for the Respondent to deal with and to check the progress made at the further inspection which would take place on 26 June 2014. The Respondent was advised that it was imperative that schedules 1, 2 and 4 were fully dealt with prior to the further inspection taking place and that where no action had been taken in relation to these schedules it may result in the firm's report being submitted to the GFSC for consideration.
- 6.11 The Respondent replied on 26 May 2014 stating that he had met with his accountants. He advised that he had now addressed most of the outstanding issues and he anticipated that he would have resolved the outstanding matters, well in advance of 26 June 2014.
- 6.12 On 26 and 27 June 2014 the FCD carried out a further inspection of the firm. The inspection report, and updated executive summaries following thereon, are referred to for their terms which are held to be incorporated herein *brevitatis causa*. The inspection report confirmed that matters remained outstanding from the 2013 inspection, and that there were failures to comply with Rules B6.13, B6.3.1, B6.7.1, B6.8.1 and B6.11, amongst other matters. The FCD considered that the risks and findings identified were of a serious nature, such as would merit the report's submission to the GFSC.
- 6.13 The findings detailed in the inspection report included, amongst other matters, the following.
- a. Rule 6.7.4 - true financial position (schedule 1)
- The inspectors had seen no 'month end' reports for the period ended 31 October 2013, during their previous inspection. Although the Respondent had now produced a client trial balance brought down to 31 October 2013, he had produced no firm trial balance brought down to that date. The Respondent was required to forward a trial balance as at 31 October 2013.
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Furthermore, the firm trial balances as at 31 December 2013 and 31 January 2014 disclosed that a £3,546.46 credit balance was held on a nominal ledger entitled “held postings”, which included the following - £150 from an unknown source, posted on 3 May 2013; £60, posted on 11 November 2013, which had been transferred to “Misc Exp”; £542.88, posted on 11 November 2013, being a “transfer posting to Lease Direct Finance”; £180, posted on 10 December 2013, relating to “Bank ledger errors re Registers of Scotland”; £112, posted on 10 December 2013, being a fee paid by the Scottish Legal Aid Board, which had been posted to “other creditors”, evidently due to a “bank error”; and £2,514.99, representing “difference in cheque re PAYE”, which had been posted on 10 December 2013. The held postings ledger also recorded a debit of £13.41, posted on 10 December 2013, relating to a “Balance adjustment”. Although the balance of £3,546.46 had been cleared down at the end of the firm’s financial year, £500 was credited to the ledger on 6 May 2014, relating to a cashback for clients. The report narrated that in terms of Rule B6.3.1 client funds cannot be held in a nominal ledger, and that holding funds there would result in a deficit, insofar as the moneys exceeded any surplus held by the firm. If the moneys involved were less than the surplus held, the firm would be in breach of Rule B6.7.1, as its records would be incorrect. The Respondent was required to confirm that any client funds held on this ledger had been transferred to a client ledger, forwarding a full and updated ledger for Held postings to verify this.

The report referred to findings during the 2013 inspection in relation to arrears of VAT payable to HMRC. It recorded that the Respondent had told them he had now paid a further £6,000 towards the arrears, and that he would pay a further £13,000, to bring payments up to date. The Respondent was required to forward documentary evidence to verify that this substantial payment had been made, to include documentation from HMRC to verify that the VAT was now paid to date.

b. Rule B6.13 - the solicitor’s responsibilities as Cashroom Manager (schedule 2)

The inspectors observed that they had identified many breaches of the Rules during their visit. The firm’s records were insufficient, and did not demonstrate compliance with the Accounts Rules requirements.

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These breaches involved: deficits which had arisen because the firm had posted funds before the moneys had been credited to the client bank account; the client account and firm account reconciliations being prepared at the incorrect month end date; the firm retaining client balances following conclusion of transactions; the firm failing to carry out formal reconciliation and/or verification of invested funds held at the quarter end dates; and failures in record keeping including mis-balance on each month end reconciliation.

The FCD advised that continued rule breaches were deemed to be a serious matter, and that failure to have adequate systems in place may be regarded as professional misconduct. The FCD advised that the matters identified would be considered by the GFSC.

The Respondent was required to implement adequate systems without delay in order to fully comply with the requirements of the Accounts Rules in future and to ensure that his obligations and responsibilities as Cashroom Manager were fulfilled.

c. Rule B6.7.1 - record keeping (schedule 4)

- i. Instances of inadequate record keeping which included the client bank reconciliation prepared on 4 March 2014 being out by £253.24; the one prepared on 1 May 2014 had a mis-balance of £-456.74; and the one prepared on 2 June 2014 showed a mis-balance of £-1,513.86. Moreover, further errors with postings continued to cause discrepancies on the client bank account. The client bank account could not be reconciled due to numerous discrepancies being brought forward prior to the month being reviewed. There were also erroneous postings to the records during the month of May which caused the misbalance to increase further. The Respondent was required to forward a breakdown of each of the mis-balances and bank reconciliation reports together with bank nominal ledgers and copies of client bank account statements for June and July 2014. It was recorded that whilst there were historic unknown discrepancies within the client bank account, the financial records could not be relied upon.

- ii. Several cheques were found to be out of date (that is, cheques outstanding on bank reconciliations that are six months old) as at the client bank reconciliation of 31 May 2014. The Respondent was required to cancel the cheques, re-credit the ledger and re-issue the cheque if still required.
- iii. Entries incorrectly posted on the client bank account ledger included the following:

SZUWA01-01, where a BACS payment of £38 was posted on 3 May 2014, but received to bank on 6 May 2014

WILDA01-04, where £240 was posted on 11 May 2014, but received to bank on 12 May 2014

CHALJ01-01, where an electronic transfer of £145,000 was posted on 22 May 2014, but received to bank on 23 May 2014, resulting in a deficit on the client bank account as £57,000 had been paid to another firm on 22 May 2014

CULLP01-01, where a BACS payment of £16,200 was posted on 24 May 2014, and received to bank on 27 May 2014

MATWI01-01, where a BACS payment of £5,244 was posted on 25 May 2014, and received to bank on 27 May 2014.

The Respondent was required to ensure that no entries were posted to the firm's records until the incoming funds were received into the client bank account.

- iv. Whereas all transactions through the bank accounts ought to be mirrored in the firm's records to maintain a full audit trail, the inspectors uncovered various inaccuracies, including the following:

ELLSD01-01, where £149,985 was posted on 8 May 2014, having been paid to bank on 7 May 2014

MCKAG01-01, where £211,970 was posted on 19 May 2014, having been paid to bank on 15 May 2014

In another matter, the transfer of £2,000 to the firm's bank account had been posted on 3 May 2014, whereas the funds were transferred on 6 May 2014

£500 representing a "cashback" due to clients, was posted on 6 May 2014; however no client matter was noted in the firm's records, and the money had been posted to a held postings nominal ledger

Two separate payments of £250 had taken place on 6 May 2014, one being a credit relating to matter MCLEA01-01, the other a debit relating to matter MAJXK01-01. The two separate payments were posted through the firm's records but were not through the actual bank account on 6 May 2014 and it was unclear whether the sum debited was to correct an earlier posting error.

STUAE01-01, the firm had issued two cheques to its clients of £1,000 each, whereas only one entry had been made for £2,000.

The Respondent was required to confirm that in future all transactions through bank statements will be posted to the firm's records. It was noted that this matter had been highlighted at the previous inspection.

- v. The inspectors identified a deficit of £1,913.31 as per the daybook of 29 May 2014 because the firm had paid its Mr P.S. £4,790 on 29 May 2014, which had been posted as a withdrawal from the client bank account, instead of the firm's account. This was explained to the Respondent, who advised that he had corrected the error. At the time of the inspection, the error had not been seen to be corrected.
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d. Rule B6.8.1 - client bank reconciliation (schedule 5)

It was noted that the Respondent was not carrying out the requisite reconciliations at the end of each month as required by the Accounts Rules. In particular, no reconciliation was seen for the month ending on 31 March 2014. However, reconciliations were produced dated 1 April 2014

It was noted also that the Respondent did not receive original bank statements from the bank and he did not always print out the online statements.

The Respondent was required to confirm that all bank accounts would be reconciled at each month end and to forward documentation from the bank to verify the matter.

e. Rule B6.11 - historic balances (schedule 6)

Having taken a further sample of balances during the inspection, the FCD found that the firm held various historic balances, including:

£610.14 held on behalf of S., which they had noted at the previous inspection

£300 held on behalf of Messrs. S.A. and C.A. since 10 December 2013, which they had noted at the previous inspection

£66 held on behalf of A.V.A. Limited since 22 February 2012, which they had noted at the previous inspection

£75 held on behalf of Mr. S.W.A. since 19 May 2011

£38 held on behalf of Ms. B.B. since a date in 2013

£30 held on behalf of Mr. D.D. and Ms. L.T. since 11 November 2013

£66 held on behalf of Messrs. J.B.S.G. since 19 December 2012

£60 held on behalf of Ms. A.O.'N. since 28 October 2013

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£60, held on behalf of Mr. B.P. and Mrs M.P. since 31 July 2013.

The Respondent was required to undertake a full review with a view to distributing all old balances which no longer required to be held.

f. Rule B6.9.1 - invested funds: reconciliation of balances (schedule 8)

The inspectors saw no formal reconciliation in respect of invested funds balances held. The pre-visit questionnaire which the Respondent had completed indicated that he did not prepare formal reconciliations as he checked that the balances were correct against the online banking system. The Respondent was required to carry out and retain reconciliations at each future quarter end. He was asked to forward reconciliations and bank statements for all invested funds held for the period to 30 June 2014 for further review.

g. Rule B6.7.4 - true financial position/firm trial balance: firm bank reconciliations (schedule 9)

The inspectors observed that the firm bank account was not being reconciled monthly as no reconciliation was seen for May 2014. The Respondent was required to confirm that all bank accounts would be reconciled monthly, and to forward the firm bank reconciliation, nominal ledger and bank statements for the full month of May 2014. Reconciliations were produced dated 1 June 2014.

Moreover the Respondent had failed to deal correctly with a number of loan accounts, in that they did not show accurately the amount outstanding, viz.:

- i. Lease Direct Finance - Whereas the trial balance stated that the sum outstanding as at 31 May 2013 was £7,230.84, and that the sum overpaid as at the same date was £2,636.2, the balance actually outstanding was £10,043.64.
- ii. PII Lombard - Whereas the trial balance stated that the sum overpaid as at 31 May 2014 amounted to £14,366.04, the sum actually due, as per the relative Agreement, was £7,813.70.

- iii. RBS Term loan - Whereas the trial balance stated that the sum outstanding as at 31 May 2014 was £14,262.78, the amount actually outstanding was £18,784.72, according to a bank statement.

Two other loans appeared on the trial balance, namely one in respect of £190.48 and one in respect of £866.70. During a discussion with the Respondent, he advised that he still awaited adjustments from his accountants to clear these loan ledgers down.

The inspectors observed that these points were highlighted at the previous inspection.

Also, the inspectors found that the drawings nominal ledger was not being cleared down at each financial year end.

The Respondent was required to obtain adjustments from his accountants. He was required also to correct the loans and reconcile on a monthly basis where possible in order to show a true reflection within the trial balance of all sums outstanding.

h. Rule B6.7.5 - Cheques to be obtained from the bank (schedule 12)

The inspectors observed that the Respondent was not obtaining cheques from the bank. This was noted at the previous inspection, however it was not ascertained if the bank provided the facility to return any cheques that may be requested for further review. It was noted that firm had an online facility with the bank, but it could not be ascertained if this facility allowed cheques to be printed.

- 6.14 The Respondent's full response in relation to schedules 1 – 15 of the inspection report was required by 16 July 2014.
- 6.15 On 2 July 2014 the FCD contacted the Respondent explaining that the purpose of the customary summing-up discussion was to ensure that the executive summary was discussed in as full detail as he would require and that he need not to take any action before the FCD contacted him. It was observed that, whilst there had been significant improvement in the firm's books, they were still

failing to comply with the Rules' requirements. Although no further deficit had occurred, the firm was still breaching Rule B6.7.1 as incorrect records were held. Concern was expressed that the firm trial balance as at 31 October 2013 had still not been produced although the matter had been brought to the firm's attention in December 2013 where it was confirmed that if the trial balance could not be reproduced from the Respondent's system then this would require to be manually prepared. An ongoing breach of Rule B6.1.1 was involved, which would require to be reported on the firm's Accounts Certificate. The FCD also sent the Respondent a copy of the fully updated executive summary from the November/December 2013 inspection.

- 6.16 On 3 July 2014 the Respondent emailed the FCD stating he had now read the report in detail and noted what was required of him and to an extent his colleagues.
- 6.17 In the Respondent's response on 25 July 2014:
- a. Schedule 1 – He sent to the FCD updated ledgers in relation to held postings and VAT.
  - b. Schedule 2 - He referred the FCD to replies previously given.
  - c. Schedule 4 – He advised that the firm's accounts were fully reconciled as at 30 June 2014. He explained work which had been done to resolve matters. He advised that the out of date cheques had been dealt with. The firm would ensure that all entries posted to client ledgers were consistent with the entries on the client bank account, subject to one caveat. He advised that there would always be a full narrative if there has been an error, and that the firm would ensure the client nominal bank ledger matches the client bank statement, subject to the caveat mentioned. In relation to Mr P.S., he advised that the posting error had been rectified prior to the inspection.
  - d. Schedule 5 – He advised that reconciliations were now taking place at the month end. He stated that month end reconciliations for 2014 had been
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provided at the inspection, including the month end for March 2014, although dated 1 April 2014. He advised that he could not retrospectively produce a reconciliation report for March 2014, stating that the inspectors had misplaced the only copy.

- e. Schedule 6 – He advised that this issue was being tackled. It was expected that by the month end all historic credit balances would be cleared.
- f. Schedule 8 – He advised that there were only three small SSDAs which the firm was not obliged to invest as they were relatively small amounts. They were reconciled. There had been an error when the firm had not ticked a box to confirm that invested sums were reconciled quarterly. Other funds listed for 30 June 2014 and bank statements were produced.
- g. Schedule 9 – He forwarded a reconciliation report for June 2014. He referred to the inspectors already having seen the statements for May. He sent also the nominal ledger and bank statements for June 2014. He advised that the firm did not receive monthly loan statements and so could not reconcile the nominal loan ledgers monthly. He advised that he would draw matters to the attention of the firm's accountants and that the adjustments required would be attended to by the accountants.
- h. Schedule 12 – He advised that the bank had been asked to confirm that copies of any cheques written from the client account could be made available on request.

6.18 On 7 August 2014 an updated executive summary was issued. The Respondent's further response in relation to schedules 1, 3, 4, 5, 6, 7, 9, 10, 11 and 15 of the inspection report was required by 20 August 2014. It was recorded:

- a. Schedule 1 - No comment had been made by the Respondent in relation to the 31 October 2013 firm trial balance. No proper held postings ledger was received. There appeared still to be VAT outstanding. The Respondent was required to forward a firm trial balance as at 31 October 2013, an updated
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held postings ledger and documentation from HMRC to verify that VAT was now paid up to date.

- b. Schedule 2 – The Respondent’s comments were noted. He was referred to each individual schedule for his detailed responses. He was invited to make any further comments on this matter.
  - c. Schedule 4 – The Respondent’s comments were noted. He was required, as requested previously, to provide a breakdown of each of the mis-balances together with client bank reconciliation reports, bank nominal ledger and copy client bank statements for July 2014.
  - d. Schedule 5 – The Respondent’s comments were noted. He was advised that no reconciliation had been seen for the month end of March 2014. The Respondent was required to enquire whether the firm’s system automatically saves all reports before printing. If it did, he was to forward the reconciliation for March 2014.
  - e. Schedule 6 – The Respondent was asked to forward an updated client trial balance as at 31 July 2014, highlighting any remaining historic balances and the status of each balance held.
  - f. Schedule 8 – The FCD advised that no further information was required regarding this matter at that time.
  - g. Schedule 9 – The Respondent was advised that no firm bank reconciliation had been seen for May 2014. The Respondent was again required to forward the firm bank reconciliation, nominal ledger and bank statements for the full month of May 2014. He was required also to confirm that he would carry out a reconciliation of the term loan where possible, and to ensure that he compared the bank statement and trial balances.
  - h. Schedule 12 – The FCD advised that no further information was required regarding this matter at that time.
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- 6.19 In the Respondent's response on 1 September 2014:
- a. Schedule 1 – He provided ledgers. He advised that he had yet to receive any further correspondence from HMRC to confirm the firm's current VAT liability. He was awaiting a further assessment from HMRC having completed a merger and having prepared revised VAT returns to bring the VAT account to order. The Respondent advised that he remained unable to produce a trial balance as at 31 October 2013 as the firm's software did not allow him to retrospectively produce such a report.
  - b. Schedule 4 – He advised that as the firm no longer had a mis-balance, there was no breakdown to produce. The month end report for August was produced, with bank statements and nominal bank ledgers for 1 June 2014 to 31 August 2014.
  - c. Schedule 5 – He advised that the March 2014 reconciliation report had not been saved.
  - d. Schedule 6 – He sent the client trial balance for 31 August 2014. He stated that all debit and credit balances on client ledgers had been dealt with.
  - e. Schedule 9 – He advised that he could not produce the reconciliation report for May 2014. He stated that he did not receive statements for the term loan. The firm's accountants would deal with all other issues in due course.
- 6.20 On 3 September 2014 an updated executive summary was issued. The Respondent's further response in relation to schedules 1, 4, 5, 6, 7, 9, 11 and 15 of the inspection report was required by 15 September 2014. It was recorded:
- a. Schedule 1 – The held postings ledger disclosed that funds received where the client was unknown were still being posted to this nominal ledger. No evidence had been produced to verify that client funds included within the balance of £3,296.46 had been transferred to a client
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ledger. The Respondent was required to provide a detailed explanation as to why funds received where the client was unknown were still being posted to the held postings ledger; provide an updated held postings ledger to verify that all sums posted relating to client funds had been transferred to client ledgers; and forward surplus statements in order to verify whether any deficits had occurred. In relation to the firm trial balance, the Respondent was required to produce a manual trial balance. In relation to the VAT arrears, whilst it was noted that £14,500 had been paid towards the arrears in respect of VAT from 27 June to 31 July 2014, the Respondent was required to produce documentation from HMRC to verify the current VAT liability.

- b. Schedule 4 - The Respondent was advised that firms must investigate where there is a mis-balance on the reconciliation and retain details of what the mis-balance consisted of. He was required, as previously requested, to provide a breakdown of the misbalances shown in the reconciliations prepared to 4 March 2014, 1 May 2014 and 2 June 2014.
- c. Schedule 5 - The Respondent was required to produce a manual bank reconciliation as at 31 March 2014 and forward this in order to verify compliance with the Accounts Rules.
- d. Schedule 6 – The Respondent was advised that the firm still held two historic client balances. He was required to explain why these balances were still held and forward updated ledger cards.
- e. Schedule 9 – The Respondent was required to produce a manual firm bank reconciliation for the month end of May 2014 and to forward this with the previously requested nominal ledger and bank statements.

6.21 At its meeting on 4 September 2014 the GFSC was concerned that breaches of the Accounts Rules had not been addressed. The GFSC decided to invite the Respondent for interview to give him the opportunity to explain the steps he was taking to achieve full compliance.

- 6.22 In the Respondent's response on 15 September 2014:
- a. Schedule 1 – He sent the held postings ledger and surplus statements. He advised that he had no recent correspondence to produce from HMRC but had provided a ledger confirming regular and significant payments had been made. In relation to the manual firm trial balance, the Respondent advised that he would require to instruct the firm's accountant to manually produce one at 31 October 2013.
  - b. Schedule 4 – He stated that the mis-balances were historic in nature. He pointed out that mis-balances had gradually been decreasing. The firm's accountants had carried out a full inspection and in June 2014 all historic errors had been rectified on the accountant's instructions to ensure the firm had fully reconciled books of accounts and records.
  - c. Schedule 5 – He advised that his accountants would be instructed to prepare a manual reconciliation for the client account as at 31 March 2014. He considered its value questionable, as it would simply confirm that the client bank account did not reconcile at that time.
  - d. Schedule 6 – He explained the action taken on the two remaining historic balances.
  - e. Schedule 9 – He advised that the firm's accountants had been asked to produce a firm bank reconciliation as at 31 May 2014 amongst other tasks. The Respondent repeated his view that the report would serve a limited purpose as all errors in book keeping had been rectified after 31 May 2014.
- 6.23 On 16 September 2014 an updated executive summary was issued. The Respondent's further response in relation to schedules 1, 4, 5, 9, 11 and 15 of the inspection report was required by 23 September 2014. It was recorded:
- a. Schedule 1 - The 6 May 2014 cashback entry in the held postings ledger was not dealt with until 15 July 2014. Further, the held postings ledger
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still had a credit balance of £78.36. Although no deficit had occurred, the firm held incorrect records. The Respondent was required to confirm and produce documentary evidence that the remaining credit balance had been posted to a client ledger. He was asked also to confirm that sums from unknown clients would not be posted to a firm nominal ledger. He was asked to produce a firm trial balance as at 31 October 2013 without further delay. In relation to the VAT arrears, the Respondent was required to confirm the extent of the VAT liability and his proposals on paying this.

- b. Schedule 4 – It would have been expected that the firm would have received written adjustments from the accountants which would show what the mis-balance represented. The Respondent was required to confirm whether written adjustments were received from the accountants and if so, to forward them for verification purposes.
- c. Schedule 5 – The Respondent was again required to forward the client bank account reconciliation as at 31 March 2014.
- d. Schedule 6 – The FCD advised that no further information was required regarding this matter at that time.
- e. Schedule 9 – The Respondent was again asked to forward the firm bank reconciliation for the month end of May 2014, with the nominal ledger and bank statements.

6.24 On 17 September 2014 the Solicitor to the Guarantee Fund wrote to the Respondent, enclosing a copy of the approved GFSC Minute Extract in relation to the meeting on 4 September 2014. On the same day the FCD emailed the Respondent, attaching the same Minute Extract. The FCD advised that, following his interview, the panel would make a recommendation to the GFSC which would consider all of the information and documentation he had provided. The Respondent was asked to respond by 23 September 2014 but was informed that a response received by 12 noon on 30 September 2014 would be placed before the GFSC.

- 6.25 The Respondent attended a panel interview on 18 September 2014. In its report the panel recommended that a further inspection should take place in May/June 2015, at the firm's expense. Meantime, the matter was continued to the November meeting to monitor the completion of the firm trial balance to 31 October 2013, the bank reconciliation of the client account to 31 March 2014 and the reconciliation report to 31 May 2014. A copy of the Minute is incorporated and repeated within this complaint for brevity.
- 6.26 On 24 September 2014 the Acting Solicitor to the Guarantee Fund e-mailed the Respondent, attaching the note of his interview and the panel report.
- 6.27 On 29 September 2014 the FCD emailed the Respondent, noting that they awaited a response to schedules 1, 4, 5, 9, 11 and 15. The Respondent was asked to provide his full and detailed response by return. He was advised that documentation ought to be received prior to 12 noon on 30 September 2014 in order to be placed before the GFSC at its meeting on 2 October 2014.
- 6.28 In the Respondent's response on 29 September 2014:
- a. Schedule 1 – He produced a ledger to confirm that he had moved the £78.36 from a nominal ledger to a client ledger although he was still trying to identify the source of these funds. He advised that the firm still owed HMRC £22,000, which he anticipated would be up to date by the calendar year end. The Respondent sent a letter from his accountant about the firm trial balance.
  - b. Schedule 4 – He sent a letter from the firm's accountants. He advised that all adjustments were made at the request of the accountants.
  - c. Schedule 5 – He sent a letter from the firm's accountants.
  - d. Schedule 9 – He sent a letter from the firm's accountants.

The letter from the accountants, which was dated 29 September 2014, confirmed that they had been instructed to reconcile discrepancies identified in the accounting records for the client and firm bank accounts; that extensive work was done to identify errors which resulted in corrections being posted to ledgers between November 2013 and June 2014; that it was not possible to completely identify some historical errors; and that they had been instructed to prepare a reconciliation for the client account as at 31 March 2014, reconciliations for the client and firm accounts as at 31 May 2014, and a trial balance, as at 31 October 2013.

6.29 On 30 September 2014 an updated executive summary was issued. The Respondent's further response in relation to schedules 1, 4, 5, 9, 11 and 15 of the inspection report was required by 10 October 2014. It was recorded:

- a. Schedule 1 - The held postings ledger still required the entry on 3 May 2014 in the sum of £150 to be transferred. The Respondent was again required to produce a firm trial balance as at 31 October 2013, without further delay. He was required to confirm that the £150 entry on the nominal ledger had been transferred to the client ledger, and to produce a copy of the client ledger held postings to verify this. He was required also to provide a copy of the nominal ledger held postings to verify that it now had a nil balance. In relation to the VAT arrears, the Respondent was advised that this matter would be reviewed at the next inspection, at which time documentation would be requested to verify that payments to HMRC were up to date.
  - b. Schedule 4 – Adjustments could not be made in order that books and records reconciled. The Respondent was required to further investigate the adjustments made and ensure that these were correctly posted to the books and records. He was again required to provide a full breakdown of the misbalances as at 4 March 2014, 1 May 2014 and 2 June 2014. He was asked to forward the documentation that the accountants provided in order to post the corrections to the books and records. He was required to confirm that he would investigate the adjustments made by the
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accountants, confirm that these had been dealt with correctly and forward documentary evidence to verify the matter.

- c. Schedule 5 – The accountants’ letter was noted. The Respondent was again required to forward the client bank reconciliation as at 31 March 2014.
- d. Schedule 9 – The accountants’ letter was noted. The Respondent was again required to forward the firm bank reconciliation for month end May 2014, with the nominal ledger and bank statements.

6.30 At its meeting on 2 October 2014 the GFSC agreed with the panel’s recommendation that the matter be continued, to give the Respondent sufficient time to address all outstanding matters. Whilst the GFSC took comfort from the Respondent’s reassurance that he would engage a cashier, it acknowledged that a re-inspection was highly likely. Whilst the inspection should take place far enough into the future to allow the FCD to see how the new systems and cashier were working, it was noted that that may need to change if the firm did not deliver what had been promised by November 2014.

6.31 In the Respondent’s response on 10 October 2014:

- a. Schedule 1 – He advised that the outstanding firm trial balance would be available by 31 October 2014. He sent the nominal ledger for held postings. He advised that the firm had now paid a further £11,000 to HMRC. With regard to the nominal ledger, the Respondent had advised that only the sum of £78.36 had to be dealt with.
  - b. Schedule 4 – He stated that the firm had repeatedly advised that the misbalances were historic in nature; adjustments had been made at the request of the firm’s accountants to achieve reconciled accounts; the remaining small balances were ones which the accountants had not been able to pinpoint; other than those small historic balances, the records were in proper order; the firm had received no complaints with regard to these matters from clients or lenders; and he had provided an undertaking
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to the panel that the remaining issues contained within the executive summary would be satisfied as soon as possible, and in particular as soon as the firm's accountants could produce the records required.

- c. Schedule 5 – He referred to his previous response, and that the firm's accountants had been instructed.
- d. Schedule 9 – He referred to his previous response, and that the firm's accountants had been instructed. He advised that he would forward the documents sought when the reconciliation report was available.

6.32 On 21 October 2014 an updated executive summary was issued. The Respondent was advised that if he had any further information which he wished the GFSC to consider in relation to schedules 1, 4, 5, 9, 11 and 15 of the inspection report, he was to ensure that it was provided by 12 noon on 4 November 2014. It was recorded:

- a. Schedule 1 – It appeared to the FCD that the £150 held postings entry still required to be dealt with. The Respondent was reminded that client funds could not be held within a firm nominal ledger.
- b. Schedule 4 – The Respondent had been asked on five occasions since the inspection commenced on 26 June 2014 to provide full information regarding the mis-balances, but despite responses had not done so. He was advised that the FCD would recommend to the GFSC that a further inspection was carried out in December 2014 at the firm's expense, and that the Respondent's conduct in failing to deal with his regulator and with inspection matters be referred to the Scottish Legal Complaints Commission (SLCC) for a complaint under Rule B6.18.7.
- c. Schedule 5 – The Respondent was referred to the FCD's response under schedule 4.
- d. Schedule 9 - The Respondent was referred to the FCD's response under schedule 4.

- 6.33 On 23 October 2014 the FCD emailed the Respondent. The FCD advised that any further information for consideration by the GFSC at its meeting on 6 November 2014 should be provided prior to 12 noon on 4 November 2014.
- 6.34 The email also attached a further executive summary and required a response to schedules 1, 4, 5, 9, 11 and 15 prior to 12 noon on Tuesday 4 November 2014. It noted that a further inspection had been scheduled, and drew attention to the GFSC's decision to refer the Respondent's continuing conduct in failing to deal with his regulator and with inspection matters to the SLCC for a complaint. It was observed in the updated executive summary, that the Respondent had failed to provide information regarding the mis-balances having been asked to do so on five occasions since the inspection commenced, and that the FCD had now recommended that the GFSC should authorise that a further inspection be carried out, and that the solicitor's continuing conduct should be referred to the SLCC.
- 6.35 In the Respondent's response on 2 November 2014:
- a. Schedule 1 – He informed the FCD that the firm's VAT returns were up to date. He anticipated that all arrears would be cleared by the calendar year ended. The Respondent attached a firm trial balance as at 31 October 2013. In relation to held postings, the Respondent advised that the firm had corrected the entry for 3 May 2013, moved the sum of £150 to their held postings client nominal ledger and would remit that sum to the QLTR.
  - b. Schedule 4 - He advised that the remaining reconciliation reports (client bank reconciliation for 31 March 2014 and the firm and client bank reconciliations for 31 May 2014) were produced having been prepared by the firm's accountants, as was the manual firm trial balance for 31 October 2013. The Respondent considered the FCD's recommendation that a referral was required was without foundation. He reiterated that information required by the FCD was simply not available and that the historic misbalances had been made known in advance of the interview and were discussed there.

- c. Schedule 5 – He produced bank reconciliations and referred to his reply to schedule 4.
- d. Schedule 9 – He produced bank reconciliation reports with nominal ledgers and bank statements and referred to his reply to schedule 4.

- 6.36 At its meeting on 6 November 2014 the GFSC noted that the Respondent had been asked on five occasions since the inspection on 26 June 2014 to provide full information regarding misbalances; however, despite five responses, he had not done so. The GFSC agreed that the Respondent's conduct, in respect of his breaches of Rules B6.7 and B6.18.7 should be referred to the SLCC. It determined that it would be both proportionate and reasonable for a further inspection to be carried out at the firm's expense in January 2015, given the Respondent had indicated at his interview, that he was considering operating a firm with five solicitors, over several branch offices, who would carry out conveyancing without access to a cashier.
- 6.37 On 10 November 2014 an updated executive summary was issued. The FCD e-mailed the Respondent that day attaching a copy of the executive summary. The Respondent was advised that no further response was required in relation to schedules 1, 4, 5, 9, 11 and 15 at that time however the matters highlighted within the executive summary would be reviewed at the next inspection.
- 6.38 On 19 December 2014 the FCD emailed the Respondent in connection with the re-inspection scheduled for 8 and 9 January 2015. The FCD advised that all matters outstanding from the previous inspections would require to be concluded at the re-inspection. The FCD advised also that they would be carrying out a full inspection of the books and records as at the end of November 2014.
- 6.39 A further inspection took place on 8, 9 and 16 January 2015. The FCD concluded that the submission of the report to the GFSC was not merited at that time.

6.40 A follow up visit took place on 23 April 2015. On 2 July 2015 the FCD advised the Respondent that following information having been provided by the Respondent no further information was required regarding matters at that time.

6.41 In acting as he did in respect of the 2014 inspection, the Respondent breached several parts of the Accounts Rules.

7. After considering the amended Complaint and the submissions made by both parties, the Tribunal did not consider that the Respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. The test for professional misconduct was not met. However, the Tribunal considered that the Respondent's actions may amount to unsatisfactory professional conduct and accordingly remitted the matter under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society of Scotland.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 August 2017. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against John Henry Adam, Adam LLP, 2 Marishal Street, Peterhead; Find the Respondent not guilty of professional misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

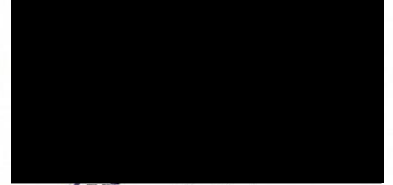
**Kenneth Paterson**

**Vice Chairman**

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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 **8 SEPTEMBER 2017**.

**IN THE NAME OF THE TRIBUNAL**



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

**NOTE**

On the morning of the Tribunal hearing the original Complaint was substituted by agreement of the parties for an amended Complaint which was admitted into Process. The Respondent confirmed that he pleaded guilty to the amended Complaint. He accepted that the admitted conduct was sufficient to constitute professional misconduct. It was clarified that by way of the amendments to the Complaint, the Complainers no longer averred that the Respondent had been dishonest. The Tribunal granted the Fiscal's motion to delete the averment of duty which related to dishonesty contained at paragraph 3.43(h) of the amended Complaint. The Chairman reminded parties that it is always a matter for the Tribunal whether the conduct in the circumstances of the case is sufficiently serious and reprehensible to meet the *Sharp* test for professional misconduct.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal highlighted the amendments made to the original Complaint. She briefly described the inspections and Guarantee Fund Sub Committee meetings. She referred to documents 4, 12, 16, 20 and 31 for the Complainers. She noted that although deficits were identified, these had arisen as a result of administrative processes and not as a consequence of deliberate acts. The Fiscal recognised the Respondent's engagement with the Law Society and the substantial improvements he made to his accounting practices. However, a "sticking point" arose during the inspection process with regard to the various misbalances detailed in the amended Complaint. The Respondent was unable to provide the information sought by the Financial Compliance Department. The Fiscal highlighted the importance of resolving the issue of historical misbalances and complying with the accounts rules. She submitted that the breach of rules was proved and it was for the Tribunal to consider whether that amounted to professional misconduct. She noted that the Complainers' Financial Compliance Department had no current issues with the Respondent's practice.

**SUBMISSIONS FOR THE RESPONDENT**

The Respondent indicated that he did not have anything to add to the terms of the amended Complaint and that he would save any submissions in mitigation once the Tribunal had made its decision on professional misconduct.

The Tribunal asked the Fiscal to indicate which averment of fact supported the averment of misconduct contained at paragraph 3.45(j) of the amended Complaint. In response, the Fiscal moved to amend the amended Complaint by deleting paragraph 3.45(j). Of consent, the Tribunal granted her motion.

## DECISION

The Tribunal considered the test for professional misconduct contained within Sharp v Council of the Law Society of Scotland 1984 SLT 313, namely that:

*“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...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.”*

Although failure to comply with a rule may be treated as professional misconduct, much is dependent upon the gravity of the failure in the context of the facts and circumstances of each case.

The Respondent was the designated cashroom manager of the firm. He admitted he had breached the Accounts Rules. Breach of the Accounts Rules is generally a serious matter and will often constitute professional misconduct even in the absence of dishonesty. The Accounts Rules provide important protections for the public and solicitors. Careful regard to the rules sustains public trust in the profession.

However, the Complainers made substantial concessions in their amended Complaint which was subject to a further deletion on the morning of the hearing. The remaining admitted breaches of the rules were serious but not so grave that they could be described as reprehensible particularly when considered in the context of all the circumstances of the case. There was no dishonest aspect to the Respondent's conduct. The breaches were administrative, technical and historical. It was noted that a particular issue arose due to the Respondent's failure to provide information five times regarding historic misbalances. The misbalances should have been promptly investigated and remedied. However, the Respondent's inability to provide an explanation for these a significant period after they occurred was not reprehensible. He demonstrated that despite investigation by himself and his accountants, he could not provide the information required by the Complainers. It was notable that the Respondent engaged with the Law Society and its Financial Compliance Department. He provided written responses and attended

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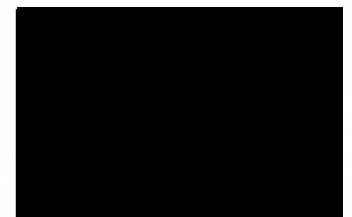
meetings. There was a significant improvement in his books and records and at the time of the Tribunal hearing, there were no issues outstanding. The breaches of the rules had been effectively tackled by the Complainers' inspection process and the Respondent's cooperation. Therefore, having regard to all the circumstances and the degree of the Respondent's culpability, the Tribunal found him not guilty of professional misconduct.

The Tribunal had regard to the guidance on unsatisfactory professional conduct provided in Hood v Law Society of Scotland 2017 [CSIH] 21. In that case Lord Drummond Young said:

*“Unsatisfactory professional conduct is measured against the standard of the competent and reputable solicitor...Unsatisfactory professional conduct lies on a spectrum that runs from professional misconduct at the more serious end to inadequate professional services at the lesser end, and determining where the conduct complained of lies on that spectrum is a question for evaluation by the relevant disciplinary tribunal, either the Council of the respondents or the Scottish Solicitors' Discipline Tribunal.”*

The Tribunal considered that although the Respondent's conduct in breaching the Accounts Rules was not serious and reprehensible, it was unacceptable and did not meet the standards expected of competent and reputable solicitors. Therefore, his conduct may amount to unsatisfactory professional conduct. The Tribunal accordingly remitted the complaint under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society of Scotland for consideration.

In accordance with the submissions made by the Complainers and the Respondent, the Tribunal ordered that the case should be given publicity in the usual manner and that no expenses should be due to or by either party.



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