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

F I N D I N G S

in Complaint

by

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

Complainers

against

CHRISTOPHER JAMES FORREST, formerly of 10 Albert Place, Stirling, and now at Trinity, 16 Marchmont Avenue, Polmont

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Christopher James Forrest, formerly of 10 Albert Place, Stirling, and now at Trinity, 16 Marchmont Avenue, Polmont (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.

4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 27 March 2019 and notice thereof was duly served upon the Respondent.

5. At the hearing on 27 March 2019, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was not present but was represented by Douglas Mill.

6. A Joint Minute was lodged admitting the facts and averments in the Complaint as amended. No evidence was led.

7. Having given careful consideration to the terms of the Complaint, Joint Minute and Productions, the Tribunal found the following facts established:

7.1 The Respondent is a solicitor enrolled in the Registers of Scotland. He was enrolled as a solicitor on 13 November 1973 and his date of birth is 4 April 1948. From 1 September 1974 until 3 May 2016 he was a partner in the firm of Gibson & Kennedy, Solicitors, Benview, Wellside Place, Falkirk (hereinafter referred to as "the firm"). On 1 June 2000, he was appointed as Cashroom Partner and subsequently became the Cashroom Manager. On 24 August 2005 he was appointed the Client Relations Partner. On 1 November 2010 he was appointed the Anti-Money Laundering and Risk Management Partner. He retained all of these positions and roles until 3 May 2016. On said date, the firm merged with Kerr Stirling LLP and the Respondent was appointed as a Consultant in that firm. He subsequently retired from practice on 31 May 2018.

7.2 The Financial Compliance Department of the Complainers conducted an inspection of the financial records, books, accounts and documentation of the firm on 15 and 16 February 2012. This inspection identified a number of concerns highlighted in an Executive Summary produced by the said Department. The matters highlighted included inadequate recording of compliance with money laundering procedures, inadequate record keeping, a failure to review client balances, and invested funds balances, and disburse those which no longer required to be sold, and a failure by the designated Cashroom Partner/Manager to undertake the duties and responsibilities of that position. All of these matters were to be addressed by the Respondent and to be reconsidered at any subsequent inspection and the Respondent was given guidance and advice on the 2011 Practice Rules.

7.3 The Respondent prepared Accounts Certificates for the firm for the periods ending on 30 September 2012, 31 March 2013, 30 September 2013, 31 March 2014, 30 September 2014 and 31 March 2015. Said Certificates were delivered

to the Complainers by the Respondent in accordance with Rule B6.15.1 of the Law Society of Scotland Practice Rules 2011 (hereinafter "the 2011 Rules").

7.4 The Financial Compliance Department of the Complainers conducted a further inspection of the financial records, books, accounts and documentation of the firm on 22-24 September 2015. This inspection again identified a number of matters which were highlighted by the said Department in an Inspection Report and Executive Summary. The matters highlighted included a failure to review in excess of 350 client balances and disburse historic balances held, a failure to issue Terms of Business letters, a failure to adequately record compliance with money laundering procedures, and the firm's records and Accounts Certificates as submitted to the Complainers failing to show the true financial position of the practice and disclose any breaches of the 2011 Rules.

7.5 The Complainers Financial Compliance Panel met on 18 February 2016 to consider the matters raised during the course of the inspection by the said Financial Compliance Department in September 2015. They also considered the terms of the Accounts Certificates submitted by the Respondent hereinbefore condescended upon. The Respondent was invited to, and attended, the said meeting. The said Panel observed that the Respondent had not fully and adequately addressed the concerns raised by the said Financial Compliance Department. The Respondent had attempted to address the issue of historic client balances and had made a payment of £94,905 to the QLTR following the said inspection in September 2015. The said Panel further observed, following representations made by the Respondent, that he had failed to substantively and adequately address all of the concerns raised by the said Financial Compliance Department. In light of those observations, the Complainers' Client Protection Sub-Committee thereafter determined to make a formal referral to the Scottish Legal Complaints Commission and further that the said firm be re-inspected in September 2016.

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

8.1 The Respondent failed or at least delayed unduly dispersing in excess of 350 client balances held by the said firm after there was no longer any reason to retain them and that in breach of Rule B6.11.1 of the said Practice Rules 2011;

8.2 The Respondent failed to (a) retain any records of staff training in anti-money laundering procedures; (b) undertake or retain evidence of having undertaken risk assessments of clients transactions, random file sample checks by Money Laundering Regulation Officer, regular reviews of anti-money laundering procedures by the Money Laundering Regulation Officer and sources of funds, and all in breach of Rules B6.7.1(c) and B6.23 of the said Practice Rules 2011;

8.3 The Respondent failed to undertake or retain evidence of having undertaken due diligence in respect of establishing client identities in terms of the Money Laundering Regulations and thereby was in breach of Rules B6.7.1(c) and B6.23 of the said Practice Rules 2011;

8.4 The Respondent submitted accounts certificates to the Complainers dated 30 September 2012, 31 March 2013, 30 September 2013, 31 March 2014, 30 September 2014 and 31 March 2015, all of which he knew were inaccurate and thereby the true financial position of the firm was not evident to the Complainers and was thereby in breach of Rules B1.2, B6.7.4, B6.15.1 and B6.15.2 of the said Practice Rules 2011; and

8.5 The Respondent in respect of the failures referred to in paragraphs 8.1 to 8.4 failed in his duties as cashroom partner or cashroom manager and that in breach of Rule B6.13 of the said Practice Rules 2011.

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

Edinburgh 27 March 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Christopher James Forrest, formerly of 10 Albert Place, Stirling, and now at Trinity, 16 Marchmont Avenue, Polmont; Find the Respondent guilty of professional misconduct in respect of his breaches of Rules B6.11.1, B6.7.1(c), B6.23, B1.2, B6.7.4, B6.15.1, B6.15.2 and

B6.13 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Alan McDonald

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 23 APRIL 2019.

IN THE NAME OF THE TRIBUNAL

[redacted]

Alan McDonald

Vice Chairman

NOTE

At the hearing on 27 March 2019, the Tribunal had before it a Complaint and a Joint Minute admitting the averments of fact, duty and professional misconduct in the Complaint. No evidence was led. Submissions were made on behalf of both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Complaint was presented to the Tribunal in late December 2018. A plea was agreed on 21 January 2019. The Joint Minute was signed on 1 February 2019. Mr Knight thanked Mr Mill for his cooperation.

The Fiscal noted that there had been an inspection of the Respondent's firm in February 2012. Two main issues were highlighted: historic client balances and compliance with the Money Laundering Regulations. The same issues were raised at the inspection which took place in September 2015. The Complainers also had concerns that six accounts certificates signed by the Respondent were inaccurate due to the breaches discovered at said inspections, namely that client balances were held after the conclusion of matters and there was no compliance with the Money Laundering Regulations. He submitted that the true financial position could not be established due to the breaches of the rules. The Fiscal highlighted that the relevant rules were contained in paragraphs 3.1 to 3.10 of the Complaint. The Fiscal noted that at the time of the 2015 inspection, the rule regarding disclosing the true financial position and keeping proper books and records was numbered B6.7.4. A re-numbering exercise took place early in 2016 and that rule is now contained at B6.7.3 although the wording remains the same.

The Fiscal submitted that the 2011 Rules are there for a purpose and ignorance of them is no excuse. Adhering to the rules maintains public confidence and trust in the profession. It also allows solicitors to show that they can account for all money. The rules are onerous but they exist to provide the maximum protection to the public.

The Fiscal noted that he had included Rule B1.2 in the duties section of the Complaint. This provides that a solicitor must be trustworthy and act honestly at all times so that their personal integrity is beyond question. The Fiscal clarified that the Complainers relied upon this rule because the Respondent submitted inaccurate certificates knowing that they were inaccurate. However, he indicated that he considered this breach to be at the lowest end of the scale. He invited the Tribunal to

find that professional misconduct was established and moved for the usual orders regarding publicity and expenses.

The Chairman asked for clarification regarding the misstatement alleged to have been made in the certificates. He noted that credit balances would not affect the figures in the accounts certificates. The Fiscal referred the Tribunal to the accounts certificate for the period ending 30 September 2012 contained at Production 3 for the Complainers. He said that the Respondent's answers in response to questions 1.4, 1.9 and 2.3 contained on page 3/2 were incorrect. Client account books and accounts had not been properly written up in accordance with Rule 6.7, the practice unit's processes had not resulted in client monies being returned to clients as soon as there was no longer any proper reason to retain the money, and the practice unit had not complied with the requirements of Rule 6.23 with regard to money laundering and the Proceeds of Crime Act during the period. However, the Fiscal clarified that there was nothing to suggest any improper dealing with client money.

The Chair noted that there had been 350 outstanding credit balances. He also noted that just short of £95,000 had been dealt with following the inspection in September 2015. He asked the Fiscal how many balances were left after that. The Fiscal indicated that he did not know the answer to that question. However, he thought that everything had been resolved by the Respondent's retirement.

SUBMISSIONS FOR THE RESPONDENT

Mr Mill explained that he had been involved in the Respondent's "exit strategy" from his firm. In his last years of work he was not coping with the regulatory responsibilities of practising. The Respondent is now almost 71. He was not present before the Tribunal today because he could not face having to appear in relation to this matter. The firm has now been taken over. All balances have been dealt with. He submitted that although 350 credit balances seemed like a huge sum, there had been a practice in the past of retaining sums in conveyancing transactions and in the context of the Respondent's long years in practice, the number was not particularly high.

Mr Mill noted that there was no loss to any clients and no threat to the integrity of client funds. Mr Mill said that this matter was the only thing that troubled the Respondent during his career. It was unfortunate that he did not seek help a couple of years earlier. He suggested that this was, in the words of Henry McLeish, "a muddle not a fiddle". Mr Mill made reference to the "Sharp" test and suggested that the factual basis of this Complaint did not come near a serious and reprehensible departure from the standards of conduct of competent and reputable solicitors. He referred the Tribunal to the Law

Society-v-John Henry Adam and reminded the Tribunal that not all breaches of the Accounts Rules amounted to misconduct. However, his client needed closure. He was retired and the conduct was at the lower end of the scale. This was a technical breach. There was no "*mens rea*". Mr Mill did not think that solicitors would regard his breaches as serious and reprehensible, but the Respondent was "falling on his sword" and pleading guilty to professional misconduct. The Adam case made it clear that the assessment was for the Tribunal.

The Chairman asked parties why it had taken so long for this case to come before the Tribunal. The Fiscal said he was unable to comment on this. The matter had come before the Professional Conduct Sub Committee in February 2018. He presented the Complaint at the end of 2018 having sought further information from the Complainers. Mr Mill noted that the time taken to bring these matters to a conclusion is of major concern to the profession.

DECISION

Although the Respondent admitted professional misconduct, it was for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. In that case it was emphasised that a serious and reprehensible departure from standards of conduct to be expected of competent and reputable solicitors may properly be 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 is made.

The Respondent was both cashroom manager and anti-money laundering and risk management partner for his firm. He was therefore responsible for the historic client balances and compliance with money laundering procedures. The Respondent was given certain advice in 2012 by the Complainers' Financial Compliance Department. By the time of their next inspection in September 2015, he had failed to take effective remedial action despite the problems having been drawn to his attention in 2012. He had also submitted accounts certificates which were inaccurate to the extent that he had not described the problems with historic client balances and compliance with the Money Laundering Regulations.

A solicitor in the Respondent's position as cashroom manager and money laundering and risk management partner, must retain responsibility for the books and records and compliance with anti-money laundering procedures including documenting compliance. It is essential that the public can have confidence that the profession can be trusted to comply with the Accounts Rules. Dishonesty was

not alleged, and it was accepted that there was no risk to client money. However, failure to return client balances is a serious matter. Similarly, the Money Laundering Regulations exist to protect society against criminal acts. Documentation of anti-money laundering procedures allows the solicitor to demonstrate compliance with the Rules.

The Tribunal had regard to previous decisions of the Tribunal where it was held that in holding funds for clients, a solicitor is in a privileged position of trust. In order to fully protect clients, a solicitor must comply with the Accounts Rules. If solicitors are to continue to enjoy the public trust in regard to their financial affairs, they must have careful regard to all the requirements and obligations encumbered on them as contained in the Accounts Rules.

The Tribunal distinguished the Adam case on the basis of the number of client balances held in this case which amounted to a very significant sum. There was a lengthy course of conduct. The Respondent was given advice regarding these matters in 2012 and had failed to take action by 2015.

The Tribunal concluded that the conduct was sufficient *in cumulo* to constitute professional misconduct. It was a serious and reprehensible departure from the standards of conduct to be expected of a competent and reputable solicitor. However, on the scale of professional misconduct, it fell at the lower end. The Respondent had sold his business and retired. The Tribunal did not consider that there was any risk to the public. The appropriate sanction in the circumstances was to Censure the Respondent.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.

[redacted]

Alan McDonald

Vice Chairman