

**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**

**Complainers**

**against**

**LOUISE ELIZABETH SUTHERLAND, The  
Cottage, Murtle Den Road, Milltimber**

**Respondent**

1. A Complaint dated 26 June 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Louise Elizabeth Sutherland, The Cottage, Murtle Den Road, Milltimber (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. The Respondent applied for an extension of time to lodge Answers, which was granted. No Answers were lodged.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard at a hearing on 11 October 2017. Service of the Notice by post was unsuccessful. In terms of Rule 56, the Chairman discharged the hearing administratively and fixed a new hearing for 29 January 2018. Notice was served upon the Respondent by Sheriff Officer.
5. By email dated 27 December 2017, the Respondent lodged with the Tribunal a motion to sist the proceedings, which was opposed by the Complainers. In terms of Rule 56 of the

2008 Tribunal Rules, the Chairman converted the hearing set down for 29 January 2018 to a procedural hearing.

6. At the procedural hearing on 29 January 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was absent but represented by David Burnside, Solicitor, Aberdeen. The Respondent made a motion to sist the Complaint pending the conclusion of connected criminal proceedings. The Respondent had been charged by the police, although no petition had as yet been served. This motion was opposed by the Fiscal. Given the nature of the motion to sist, and the content of the averments of fact within the Complaint, the Respondent made a motion for today's proceedings to be in private. This was not opposed by the Fiscal and granted by the Tribunal. The Tribunal heard detailed submissions from both parties. The Tribunal gave very careful consideration to the parties' submissions and the authorities referred to. In particular, the criminal proceedings referred to were at a very early stage and it was not certain that a prosecution would proceed. It was open to the Respondent to invite the Tribunal to hear any proceedings in private and to defer any publicity pending the conclusion of any such criminal proceedings. Additionally, the Court dealing with any prosecution would be under an obligation to ensure a fair trial. Having regard to the balance of the interests of the Respondent with the interests of the Complainers and of the public, the Tribunal concluded that it would be inappropriate to sist the proceedings and refused the motion. A full hearing was set down for 23 April 2018. The Respondent was allowed six weeks from 29 January 2018, if so advised, to lodge Answers.
7. At the hearing on 23 April 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and represented by David Burnside, Solicitor, Aberdeen. A Joint Minute between the parties agreeing amended averments of fact, duties and misconduct was lodged with the Tribunal. The Tribunal heard submissions from both parties, and evidence from the Respondent.
8. The Tribunal found the following facts established:-
  - 8.1 The Respondent was enrolled as a Solicitor on 8 October 1984. She became a partner with Graeme Murray & Co, 10-12 Chapel Street, Aberdeen AB10 1SP on 1 July 1993. She remained a partner until 16 August 2013 on which date her

Practising Certificate was suspended in terms of the Solicitors (Scotland) Act 1980 Section 40.

- 8.2 The Complainers' Financial Compliance Inspection Team inspected the records of Graeme Murray & Co on 2 and 3 July 2013. At this time the Respondent was the Cash Room Manager, a position which she held from 1 January 1997 to 16 August 2013.

The inspection identified concerns as a result of which the matter was reported to the Guarantee Fund Sub Committee. On 15 July 2013 that Committee instructed a further investigation.

- 8.3 Following further consideration by the Guarantee Fund Sub Committee the Respondent's Practising Certificate was suspended under the Solicitors (Scotland) Act 1980 Section 40.

- 8.4 As a result of the information obtained at the inspections several client files were sent to Taxation. Thereafter there were further inspections in November 2013 and February 2014.

- 8.5 Following the suspension of the Respondent's Certificate on 16 August 2013 the remaining partners in Graeme Murray & Co carried out an inspection of, inter alia, a further one hundred and seventy-two files.

- 8.6 As a consequence of the inspections carried out by the Complainers, the taxation of Accounts and the internal inspection of files by the remaining partners, it became apparent that the Respondent had been overcharging clients and separately, charging clients fees where there was no work done on the file to justify charging a fee.

- 8.7 The Respondent overcharged fees in respect of four clients. Following investigations and/or Taxations the remaining partners repaid the fees overcharged.

- (a) In respect of client AA there was an overcharge of approximately 80% amounting to £3,200.
- (b) In respect of client KP Executry there was an overcharge of approximately 60% to 66% amounting to £2,268
- (c) In respect of client RC there was an overcharge of approximately 80% amounting to £1,795.
- (d) In respect of client SB Executry there was an overcharge of approximately 16% amounting to £1,554.

8.8 The Respondent charged fees in respect of eighteen client files where, on inspection, there was no justifiable evidence for any fees to be charged.

Of the eighteen files, fourteen were not being handled by the Respondent but she had issued the fee-notes.

In consequence the remaining partners re-credited fees totalling £7,548.49.

8.9 In respect of seven client files the Respondent made entries where the narratives were misleading and deliberately masked the true position in the ledgers and in respect of the financial position of the firm.

The handwritten credit entry narrative was written by the Respondent.

In effect the firm ledger narrative noted that a payment had been received from the client to settle the fee with the narrative "by from you to account". The handwritten credit entry narratives were to the effect that the client had made the payment.

The entries were not true. Payment of the invoices had been made either by the Respondent from her own account or by her from the account of one of the other partners in the firm. In particular five of the cheques to settle the invoices were signed by the Respondent's husband, Graeme Murray.

8.10 Following the Respondent's suspension on 16 August 2013 the remaining partners in Graeme Murray & Co carried out an internal investigation.

They identified one hundred and twenty fee-notes where consideration of certain of the relevant files did not disclose work done to justify the fees.

The remaining partners required to recredit the clients' account the amount taken as fees whilst further investigations were undertaken. The total repaid was £20,091.31.

- 8.11 The Complainers investigated the Respondent's conduct and the matter was considered by the Complainers' Professional Conduct Sub Committee on 9 March 2017.

The Committee determined that the Respondent's conduct in respect of;

1. Inappropriately drawing fees from the client account which were not justified and therefore overcharging four clients, in breach of Rule B6.5 of the Practice Rules 2011, or the Solicitors (Scotland) Accounts Rules 2001 Rule 6. These withdrawals have also resulted in a breach of Rule B6.3 or equivalent 2001 Accounts Rule 4.
2. Rendering 18 invoices which were unjustified. All in breach of Rule B6.5 of the Practice Rules 2011 or equivalent 2001 Accounts Rule 6.
3. Furthermore, seven instances above at issue 2 contain a breach of Rule B6.,7 and Rule B6.12 or equivalent 2001 Accounts Rule 8 as the Respondent knowingly and intentionally made entries where the narratives were misleading and masked the true position, the financial position of the firm and audit trail.
4. Inappropriately rendering circa 172 fees notes where there was nothing on the respective files to demonstrate that work had been done to justify the fee. This being a breach of Practice Rule 2011 Rule B6.5, resulting in a breach of Rule B6.3 or equivalent 2001 Accounts Rules 6 & 4.

5. Breach of Rule 6.7 (or equivalent 2001 Accounts Rule 8) in that the Respondent did not keep properly written account records to reflect the true position with the Client Account.
6. Breach Rule 6.12 (or equivalent 2001 Accounts Rule 8) in that the Respondent dishonestly put through fees she knew she was not entitled to so that she could use client account money for other purposes.
7. Breach of Rule 6.13 (or equivalent 2001 Accounts Rule 12) in that the Respondent did not appropriately discharge her responsibilities as Cashroom Manager, or Designated Cashroom Partner, during her period of designation.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor that it appeared to be capable of being proved beyond a reasonable doubt and could therefore amount to professional misconduct.

The Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51.

9. Having considered the foregoing circumstances and given careful consideration to the submissions from both parties, including the parole evidence of the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-
  - (a) She failed to act in a trustworthy and honest manner where her actings were both fraudulent and deceitful and breached Rule 1 of the Accounts Rules 2001 and Rule B1.2 of the Practice Rules 2011.
  - (b) She inappropriately drew fees from the client account which were not justified and accordingly overcharged clients in breach of Rules 6.3 and 6.5 of the Practice Rules 2011 and Rules 4 and 6 of the Accounts Rules 2001.
  - (c) She rendered fees for which there was no justification in breach of Rule 6.5 of the Practice Rules 2011 and Rule 6 of the Accounts Rules 2001.

- (d) She knowingly and intentionally made entries where the narratives were misleading in respect of seven fee notes thus masking the true financial position of the clients account, the financial position of the firm and the audit trail in breach of Rule B6.12 of the Practice Rules 2011 and Rule 8 of the Accounts Rules 2001.
- (e) She rendered 120 fee notes where no work had been done to justify any fee in breach of Rules B6.3 and B6.5 of the Practice Rules 2011 and Rules 4 and 6 of the Accounts Rules 2001.
- (f) She did not keep properly written account records to reflect the true position with the client account in breach of Rule 6.7 of the Practice Rules 2011 and Rule 8 of the Accounts Rules 2001.
- (g) She dishonestly put through fees she knew she was not entitled to, in order to use the client account money for other purposes, in breach of Rule 6.12 of the Practice Rules 2011 and Rule 8 of the Accounts Rules 2001.
- (h) As cashroom manager or designated cashroom partner, She did not appropriately discharge her responsibilities in breach of Rule 6.13 of the Practice Rules 2011 and Rule 12 of the Accounts Rules 2001.
- (i) The Respondent breached Rule 6.2.3(b) of the Practice Rules 2011.

10. Having heard further submissions from both parties, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 April 2018. The Tribunal having considered the Complaint dated 26 June 2017 at the instance of the Council of the Law Society of Scotland against Louise Elizabeth Sutherland, The Cottage, Murtle Den Road, Milltimber; Find the Respondent guilty of professional misconduct singly and *in cumulo* in respect that she (a) failed to act in a trustworthy and honest manner where her actings were both fraudulent and deceitful, (b) inappropriately drew fees from the client account which were not justified and accordingly overcharged clients, (c) rendered fees for which there was no justification, (d) in respect of seven instances knowingly and intentionally made entries where the narratives were misleading and masked the true financial position of the clients account, the financial position of the firm and the audit trail, (e) rendered 120 fee notes where no

work had been done to justify any fee, (f) did not keep properly written account records to reflect the true position with the client account, (g) dishonestly put through fees she knew she was not entitled to, in order to use the client account money for other purposes, (h) as cashroom manager or designated cashroom partner, did not appropriately discharge her responsibilities and (i) caused or knowingly permitted the practice unit not to comply with the provisions of Rule 6 of the Practice Rules 2011; 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 and any party referred to within Paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 but that this publicity should be deferred until the conclusion of any associated criminal proceedings against the Respondent or intimation that none are to be brought.

**(signed)**

**Nicholas Whyte**

**Chairman**



11. 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 17 May 2018.

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**

**Chairman**

**NOTE**

At the hearing on 23 April 2018, parties lodged a Joint Minute agreeing amended averments of fact, duty and misconduct. The Fiscal moved to amend the Complaint as follows:-

1. To insert the figure "5.1" on page 4.
2. At paragraph 6.1(a) to amend reference to the 2008 Rules to 2001 Rules.
3. At paragraph 6.1(d) amend the figures 6 to the figure 7.

The Respondent indicated that there was no objection to this motion and the motion to amend was granted.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal confirmed that, in terms of the Joint Minute, the Respondent was admitting professional misconduct. He accepted that ultimately the question of misconduct was for the Tribunal although he submitted that the Sharp test was clearly met in these circumstances.

He indicated he would make only outline submissions as the averments of fact spoke fairly for themselves.

The Respondent was cashroom partner from 1 January 1997 until 16 August 2013. This whole matter was set off by an inspection by the Society's Financial Compliance Department. Ultimately the Respondent's practising certificate was suspended. Following the inspection, the firm sent client files for taxation and further inspections followed. The remaining partners in the firm inspected a further 172 files. Throughout all of this it became apparent that the Respondent was overcharging clients and charging fees where there was no work done to justify any fee.

In four cases there were very significant overcharges. In 18 files, there were fees charged where there was no evidence to justify the fees. 14 of these files were not actually handled by the Respondent but she did issue the fee notes. The firm reccredited just over £7,500 to clients.

There were seven files where there were misleading entries in the ledgers. Effectively the ledger said that the fees had been paid by the clients when that was not true. Payment was apparently made by the Respondent or out of the account of one of her partners.

Of the 172 files inspected by the remaining partners, 120 fee notes were discovered where there did not appear to be work to justify the fee charged. In this regard the firm reccredited just over £20,000 to clients.

The averments of duty were all set out in detail within the Complaint but were all summarised in the averments of professional misconduct, which were admitted in the Joint Minute.

The Fiscal submitted that this was a calculated course of conduct to give a false impression of the true position allowing client funds to be used elsewhere. There were significant overcharges and the charging of unjustified fees.

He submitted that this behaviour was not only serious and reprehensible but effectively blitzed the integrity of the Accounts Rules. It drove a coach and horses through them. The Respondent's behaviour represented an extreme end of the failure to observe the Accounts Rules.

#### **SUBMISSIONS FOR THE RESPONDENT**

Mr Burnside submitted that this was an unusual case displaying unusual features. It was accepted that this was a serious and sustained breach of the Rules but he emphasised that there was a lack of actual damage to any of the clients. No client had lost money with respect to this matter.

He indicated that when he had first met the Respondent and her husband they were partners in what appeared to be a flourishing Aberdeen firm. The work was largely legally aided with the Respondent's husband principally a criminal practitioner. The Respondent worked under her maiden name and worked on the civil side. The practice decided to move from Torry and open a branch at the west end of Aberdeen including a property shop. Their timing was bad and coincided with the decline in the property market resulting in them being overstretched. This together with the fact that there has been no increase in the fees paid under legal aid for 25 years, resulted in the firm suffering financially. There were only two equity partners within the firm, the Respondent and her husband. The other two partners were salaried. The Respondent and her husband injected their own funds into the firm. They had opened a ledger called "The Graeme and Louise Capital Injection Account". Money was paid into that and used to pay HMRC bills. Capital required to be introduced on an increasingly frequent basis as the firm's fortunes continued to decline.

Around this time, the Respondent lost both of her parents. She had inherited £200,000 from her parents and that was invested into the firm to keep it afloat. It became increasingly difficult to keep matters afloat. Putting in additional funds became the norm.

Matters came to a head on 7 May 2013 when the firm's monthly VAT payment was due. The payment that was due was just over £7,000. At that point the firm's cashier was on holiday. The Respondent was the cashroom manager. The bank had made it plain to the firm that there would be no question of the firm's overdraft being extended. There were insufficient funds in the firm account to enable the VAT payment. The firm were expecting to receive a payment from the Legal Aid Board in the region of £9,000 only a few days later. In desperation, the Respondent fabricated fee notes to allow her to transfer funds from the client account to the firm account in order to meet the VAT payment. The Respondent now sincerely regrets that action.

What was intended was effectively a subsidy for that period of time. Unfortunately, this was only the tip of the iceberg. The Law Society found that transaction and that led to further investigation. It became clear that this was not the only instance of money being juggled. The Law Society expressed concern and requested the audit of the 172 files referred to.

It was made plain to the Respondent and her husband that if they did not cooperate or repay any questionable sum of money, then the Law Society would consider the appointment of a Judicial Factor. The Respondent's husband and the other partners went through the files referred to and were told that if in doubt they were to err on the side of caution and ensure that any money was recredited. The practical effect of this procedure was that no client lost money and in fact some clients were happy to have money recredited to them.

If it appeared that money required to be recredited and a client could not be traced then money was refunded to the QLTR. The firm made sure that every penny was repaid.

Mr Burnside submitted that this was not the normal situation in cases such as these. Normally clients have suffered. That was certainly not the position here.

It also transpired through the investigation that the firm's longstanding cashier, who had a great deal of autonomy, had been in the habit of issuing fee notes if she saw a balance sitting on any client account. These fee notes would not always come across the Respondent's desk. It was not his submission that the Respondent was not responsible. It was his submission that some of these fees had nothing to do with

her but they were in her name. Ultimately the Respondent accepted that these things should not have happened and that she took her eye off the ball.

The Respondent accepted that the cashroom system for the firm was archaic, or as she put it "archane". Procedures were chaotic.

The cashier herself was distracted due to her husband suffering from terminal cancer. She was not dealing with debt recovery very well and matters were allowed to slide.

The consequences suffered by the Respondent have already been severe. The suspension of her practising certificate is approaching its fifth anniversary.

She and her husband had gone from doing very well financially with a significant income. Since all of this the Respondent has not worked and has had no income. Her husband attempted to continue to run the firm but the departure of the cashier, who took records home with her, caused him more problems. As a consequence, he is now employed by one of his former partners as a criminal practitioner with a lower salary. The office in Torry was sold and the proceeds were put into the firm to deal with outstanding matters. The couples home was sold, and the net free proceeds of £250,000, after the purchase of a smaller family home, were put into the firm. Two rented flats were also sold with the funds paid into the firm.

The Respondent herself knows the likely outcome of this case. She was a good local practitioner with a good reputation which has now come to an end.

Mr Burnside sought leave of the Tribunal to lead evidence from the Respondent in mitigation.

## **EVIDENCE OF THE RESPONDENT**

The Respondent indicated that she was extremely ashamed of what she had done and could not believe what she had brought herself to. She was extremely regretful of the effect on her partners.

The position of the firm had gradually worsened, and it seemed she could not see the wood for the trees. She had tried to soldier on to keep staff in work. She had been using client funds incorrectly. All funds were paid back. She expressed extreme regret. She had worked for some 30 years primarily in court work and had earned a good reputation that was now gone.

**DECISION**

Both parties had recognised that the question of professional misconduct was one for the Tribunal.

The Respondent had admitted a dishonest course of conduct which had included the firm using clients' funds in order to keep the firm afloat.

It has been made plain by this Tribunal on a number of occasions that solicitors are in a privileged position in holding clients' funds. The Accounts Rules are there to protect the interests of the client and ensure complete transparency, and security of these funds.

The Respondent had admitted deliberate overcharging, creation of fictitious fee notes, and creating narratives with the client ledger that were misleading.

This conduct could only be seen as serious and reprehensible to the extreme. The Tribunal had no hesitation in unanimously finding the Respondent guilty of professional misconduct.

**DISPOSAL**

The Tribunal invited further submissions from the parties.

The Fiscal indicated that there were no previous findings against the Respondent. He made a motion for expenses and asked the Tribunal to defer publicity pending the criminal proceedings.

Mr Burnside submitted that there had been significant financial and reputational loss on the part of the Respondent because of this conduct. She had a significant loss of income. He confirmed that the Respondent was aware of the likely disposal that would be in the mind of the Tribunal.

**DECISION ON DISPOSAL**

Both parties agreed that the conduct in this case was at the serious end of misconduct. The admitted conduct involved dishonesty. It was premeditated. It was a course of conduct which included attempts to conceal.

It was extremely disheartening to see a 30-year career come to this conclusion. However, the Tribunal had to have regard to protection of the public and the damage that this case would do to the reputation of the profession. This type of dishonest conduct clearly indicated that the Respondent was not fit to be a member of the profession. The only possible disposal that would reflect the seriousness of the Respondent's misconduct was to strike her name from the Roll of Solicitors in Scotland.

The Tribunal considered it appropriate to award expenses to the Complainers.

With regard to publicity, the Tribunal considered that it was appropriate that publicity be deferred until any criminal prosecution is completed or intimation is received that there will be no prosecution. That publicity will include the name of the Respondent and any party referred to within Paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 but will not include the names of any clients, having regard to the fact that they had no direct involvement in these matters and including their identities would not add anything to these findings.



**Nicholas Whyte**  
**Chairman**