

**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, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**ROSS ALEXANDER JONES, of  
Messrs Jones Whyte, Solicitors, 12  
Fitzroy Place, Glasgow**

1. A Complaint dated 29 August 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Ross Alexander Jones, of Messrs Jones Whyte, Solicitors, 12 Fitzroy Place, Glasgow (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 Complaint was sisted on the authority of the Chairman on 29 September 2014.
4. The Complaint then called for a procedural hearing on 3 February 2015 and was continued to a substantive hearing on 2 April 2015.
5. When the Complaint called on 2 April 2015 the Respondent was present and represented by William Macreath, Solicitor, Glasgow. The

Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow.

6. An amended Complaint was lodged with the Tribunal. The Respondent withdrew his Answers and pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint.
7. No Evidence was led.
8. The Tribunal found the following facts established:-

8.1 The Respondent is Ross Alexander Jones of Messrs Jones Whyte, Solicitors, 12 Fitzroy Place, Glasgow. The Respondent was born 26<sup>th</sup> September 1983. The Respondent was enrolled as a solicitor in the Register of Solicitors practising in Scotland on 10<sup>th</sup> November 2006. From on or about 30<sup>th</sup> November 2006 until 31<sup>st</sup> October 2009 the Respondent was employed with the firm Dallas McMillan, Solicitors, 70 West Regent Street, Glasgow G2 2QZ. From 25<sup>th</sup> June 2012 until 25<sup>th</sup> April 2013 the Respondent was employed with Optima Legal Services Limited, Hepworth House, Claypit Lane, Leeds, LS2 8AE. The Respondent is presently a Partner in the firm Jones Whyte. The records maintained by the Complainers identify that the Respondent established his own firm with another solicitor, Mr B. The Complainers' records reveal that from 4<sup>th</sup> April 2013 the firm was active and the Respondent acted as a partner from that date.

#### Waiver

8.2 The Respondent was a Scottish solicitor who was formerly employed in this country. In 2009 the Respondent travelled to New York where he subsequently qualified as an American

attorney. In or around 2011 or 2012 the Respondent returned to Scotland from New York.

8.3 On 18<sup>th</sup> January 2013 an employee of the Complainers, a Miss A attended a meeting with the now partner of the Respondent, Mr B. The meeting was held at the Complainer's offices in Edinburgh. Mr B provided details to Miss A of the proposed firm to be set up by the Respondent and Mr B. It was noted by Miss A that the firm was to be called Jones Whyte and the office address was to be The City Chambers, Glasgow. The document prepared by Miss A during that meeting recorded that there were to be two managers of the practice. Miss A during the course of the discussion noted the following: "Mr B attended however it is Mr Jones who will be mainly dealing with compliance issues. He may phone to go through the information given to Mr B". This meeting was an informal meeting with the Complainers to assist the Respondent and his partner in setting up the new firm. It was attended by the prospective partner of the Respondent who was provided with written guidance from the Complainers. It was a general informal meeting. At that stage neither the Respondent nor his prospective partner had advised those with whom they were working of their intentions. It was an information gathering exercise for them.

8.4 On 5<sup>th</sup> March 2013 the Respondent contacted the Professional Practice Unit of the Complainers by telephone to ascertain the procedures and requirements for applying for a waiver of the Restriction on Practice as provided for by Rule D2 of the Law Society of Scotland Practice Rules 2011. These Rules provide that the Respondent cannot practise as a manager unless he held an unrestricted practising certificate. Rule 2.1.3 provides that the Respondent could not practise as a manager unless he had been employed as a solicitor for a cumulative period of 3 years, 1 year of which shall immediately precede his commencing

practice as a manager. The employment history of the Respondent revealed that he had been employed as a solicitor for the required 3 years. However of the 12 month period immediately preceding the proposed commencement of his practice as a manager he had only been employed for a period of 9 months. In these circumstances he sought a waiver from the Complainers to allow him to commence practice as a manager. His telephone call of 5<sup>th</sup> March 2013 was to ascertain from the Complainers what was required in order to successfully apply for such a waiver. Amongst other requirements he was advised that he should forward a business plan in relation to the envisaged practice. On 6<sup>th</sup> March 2013, he submitted a business plan by way of e-mail communication to the Complainers. This stated explicitly “Jones Whyte is the trading name of Ross Jones as a sole practitioner” and “Office is being provided by a contact of RJ rent free for first 12 months”.

- 8.5 On 21<sup>st</sup> March 2013 in relation to his application for the waiver, the Respondent sent an e-mail to the Complainers outlining his legal career within the Scottish Jurisdiction between 2006 and 2009. He provided information regarding his break from the legal profession which was to manage a property development business between 2009 and 2011. That development business provided him with an opportunity to move to New York. There he furthered his legal education by taking the New York State Bar Association Exam. He passed and became a dual qualified solicitor and a New York Attorney. On his return to the Scottish Jurisdiction, he took up a position with Optima Solicitors for a period of 9 months before submitting his application for waiver to allow him to set up his new firm. In his communication he explained that although he had the 3 year post qualifying experience from 2006 through to 2009, he was a period of 3 months short on his practising certificate for the immediate year which was of relevance to the mandatory 1 year rule referred to.

In the last paragraph of his communication the Respondent wrote “As you know, I am sitting here outlaying rent, PI Insurance Premiums, Office Set Up Costs etc and in no position to make money”. A meeting of the waivers subcommittee took place on 4<sup>th</sup> April 2013. The subcommittee approved the grant of the waiver subject to two conditions. In addition in their deliberations the subcommittee identified a discrepancy in the information contained in the business plan submitted by the Respondent and in the information contained in the Respondent’s email of 21 March 2013 concerning the rent being paid by the Respondent for office accommodation. The information was contradictory. The Complainers advised the solicitor by telephone on 4<sup>th</sup> April 2013 of the findings of the subcommittee as narrated. Thereafter correspondence ensued between the Respondent and the Complainers to progress the waiver application. The firm commenced business on 4<sup>th</sup> April 2013 as a partnership comprising two partners namely the Respondent and a Mr B.

8.6 The application submitted by the Respondent was laid before the waiver subcommittee on 4<sup>th</sup> April 2013 and was granted subject to two conditions. These conditions were:-

- a. The Respondent attends and completes the Society’s practice management course on 17<sup>th</sup> May 2013.
- b. The Respondent meets with a member of the Society’s financial compliance team for a discussion on the accounts rules within a month of commencing his practice.

8.7 On 4<sup>th</sup> April 2013 an employee of the Complainers advised the Respondent by telephone of the subcommittee’s findings. Her note reveals that the Respondent advised that he had already met

with a member of the Complainers' financial compliance team. That the Respondent would check his email records to advise her of the name of the person whom he met and the date of the meeting. This was to enable the Complainers' employee to include this information in the formal letter which confirmed the grant of the waiver.

- 8.8 Having heard nothing from the Respondent the employee of the Complainers on 11<sup>th</sup> April 2013 emailed the Respondent and advised him that she was still waiting for the details of the information regarding the member of the finance compliance team whom he had met. The employee advised the Respondent that this information was necessary to allow her to notify the Complainers' Registrar's Department that the waiver had been granted and that one of the conditions had been fulfilled.
- 8.9 On 16<sup>th</sup> April 2013 the Respondent replied by email advising "the name of the woman was Miss A and was there on 18<sup>th</sup> January 2013. Can you check with Miss A and check it has been taken off as a waiver. Can you now confirm that Jones Whyte has now been registered with the Registrar Department of the Society".
- 8.10 On 17 April 2013, as the Complainers' said employee was on holiday, the matter was dealt with by another employee of the Complainers who advised the Respondent by email to the Respondent on that date that the information had been passed to Miss A for her to confirm the situation but that she was out of the office on an inspection that week. In reply the Respondent advised "we met back in January so obviously dates etc have changed. I trust the fact that having to wait until next week won't stop me now being registered??? I need to start doing work after all". In reply the employee of the Complainers asked the Respondent as to whether the meeting took place at the Society.

The Respondent replied “I can’t even remember. Can you just process my application just now with it being a condition that I meet with finance people within one month. This is after all what the Committee agreed. I just need to be registered asap. We can then deal with purification of that condition when Miss A returns”.

- 8.11 Enquiries by the Complainers revealed that the employee Miss A met with Mr B on 18 January 2013 and not the Respondent. It also revealed that Miss A documented that Mr B had no knowledge of the requirements of the practice rules and that he advised that the Respondent would be the solicitor dealing with compliance issues. The concerns of the Complainers were brought to the attention of the Respondent. By email dated 19 April 2013 the Respondent was advised by the Complainers that Miss A had never met with the Respondent at all. The Respondent was advised that this was a matter which raised considerable concerns on the part of the Complainers such that it would be brought to the attention of the waivers subcommittee at its next meeting. The Respondent replied on 19<sup>th</sup> April by email advising “re the second paragraph of ur email to say that I’m raging is an understatement. I set up the meeting with the finance department of The Law Society with who will soon be my business partner a Mr B (as seen on my form) and myself for compliance purposes in setting up the soon to be firm of Jones Whyte. This was back in January”. He went on to explain that his partner had travelled by train to Edinburgh but he had travelled by car. He had got a puncture and called ahead to say, that he was going to be delayed. When he attended at the offices of the Complainers the meeting had concluded. His partner provided him with a hand-out provided by the Complainers which he had read. His email went on “so to suggest that I am lying here is ridiculous. Do the Society really wish me to set another meeting to be read through the material I have already

read through?? Do you wish me to scan and email you the material to prove I have this? And as your comments regarding possibly putting in a complaint against me beggars belief. A representative of (soon to be firm of) Jones Whyte met with Miss A and another partner arrived at the end of the meeting and was given material and told to read through this. So to suggest I have not complied is ridiculous. I suppose it must be an eye for an eye in this instance”.

- 8.12 The matter was referred back to the waiver subcommittee on 24<sup>th</sup> May 2013. The committee noted that in a number of respects inaccurate and misleading information was provided by the Respondent. In particular the Respondent provided information which was misleading in relation to whether the new practice would require to meet an obligation in respect of rent and the repeated failure of the Respondent to be accurate in his assertions as to whether he had met with a member of the finance compliance team. It was also observed, from the information provided by the Respondent, that it was not clear whether the Respondent was setting up as a partnership or as a sole trader. Further, the subcommittee was concerned as to the terms of the email exchanges between the Solicitor and the Complainer’s employees. The waiver subcommittee therefore referred the Respondent’s conduct to the complaints subcommittee. At its meeting on 6 June 2013, the complaints subcommittee determined that there were aspects relating to the Respondent’s conduct that were worthy of investigation and therefore determined to refer a complaint to the Scottish Legal Complaints Commission. The Scottish Legal Complaints Commission accepted the complaint for investigation on 25 June 2013 and remitted it to the complainers to investigate.



8.13 The full waiver was granted to the Respondent. The Respondent attended a meeting with financial compliance team on 26<sup>th</sup> April 2013 and a practice management course on 17<sup>th</sup> May 2013.

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

9.1 His acting in a reckless, inaccurate and misleading fashion and allowing his integrity to be called into question by presenting inaccurate and misleading information to the Complainers who were at the material time exercising their duties as regulator whilst considering his application for a waiver and further the Respondent sought to mislead the Complainers by contending that he had met with a member of the financial compliance department in an effort to present compliance with a condition imposed by the Complainers when in actual fact, as the Respondent well knew, he had not.

10. Having heard the Respondent's Solicitor in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 2 April 2015. The Tribunal having considered the amended Complaint dated 1 April 2015 at the instance of the Council of the Law Society of Scotland against Ross Alexander Jones, of Messrs Jones Whyte, Solicitors, 12 Fitzroy Place, Glasgow; Find the Respondent guilty of professional misconduct in respect of his acting in a reckless inaccurate and misleading fashion and allowing his integrity to be called into question by presenting inaccurate and misleading information to the Law Society who were at the material time exercising their duties as regulator whilst considering his application for a waiver and his misleading the Law Society by pretending that he had met with a member of the financial compliance department when in actual fact, as he well knew, he had not. 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 and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

**Dorothy Boyd**  
**Vice 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

**IN THE NAME OF THE TRIBUNAL**

**Dorothy Boyd**  
**Vice Chairman**

**NOTE**

An amended Complaint was lodged with the Tribunal on the morning of the Tribunal hearing. There were minor adjustments made to the original Complaint. Mr Macreath confirmed that the Respondent withdrew his Answers which had previously been lodged and now pled guilty to the amended Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that the Respondent had been contemplating a new partnership and organised a meeting with the Law Society. His prospective partner, Mr B, attended a meeting at the Law Society on 18 January 2013 with Miss A. Mr Reid referred to Production 1 in this regard. On 5 March 2013 the Respondent contacted the Professional Practice Department in connection with obtaining a waiver in respect of the rule that he could not practise as a manager without having been employed as a solicitor for 1 year immediately prior to starting in business as a manager. The Respondent had only been employed for 9 months. He was told that he required a business plan and Mr Reid referred the Tribunal to Production 2, being the Respondent's business plan, where it is stated that he would be rent free for the first 12 months. Mr Reid also referred the Tribunal to Production 3, being an email of 21 March 2013, where the Respondent refers to having to outlay rent, which was inconsistent with his position as set out in his business plan. The Waiver Committee met on 4 April 2013 and approved the waiver subject to two conditions, one being that the Respondent must attend a practice management course in May and the other being that he must meet with a representative of the financial compliance department within one month. Mr Reid then referred the Tribunal to Production 4, where the Respondent indicates that he met with Miss A on 18 January 2013. Enquiries however revealed that he was not at the meeting on 18 January 2013.

Mr Reid submitted that on four occasions the Respondent provided inaccurate and misleading information to the Law Society in a reckless manner which called his integrity into question and amounted to professional misconduct. Mr Reid referred the Tribunal to Smith and Barton, Procedures and Decisions of the Discipline Tribunal at pages 57 and 64 and contended that cases 782/90 and 711/87 showed that

the Respondent's conduct did amount to professional misconduct. Mr Reid also referred the Tribunal to page 154 of Smith and Barton in respect of the duty to respond to the Law Society.

Mr Reid accepted that the Respondent had entered into a plea and confirmed that there was nothing pending or outstanding for the Respondent and he had no previous Findings.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath explained that he had been instructed late and had not become involved until August/September 2014. There were meetings and correspondence between himself and Mr Reid and the case was sisted for a period. Mr Macreath explained that the Professional Practice Waiver Rules Committee dealt with people who wished to be managers (formerly known as principals). It was only once solicitors were able to show competence that they could become managers. Mr Macreath explained that the Respondent did not appreciate that this Committee dealt with important issues and that the Committee required to be satisfied that a solicitor had a full understanding of the Accounts Rules etc. The Respondent had tried to deal with the complaint himself, which had led to lengthy and intemperate correspondence. Mr Reid explained that the Respondent had held a practising certificate since 2006 and had the necessary 3 years in practice but had not worked for a full year before his application. The Respondent did not appreciate the waiver requirement. He had been in New York and passed the very prestigious State Bar Exam. The Respondent had been running a large department within his previous firm and it had been decided that he and Mr B wished to set up in business together. The Respondent phoned the Law Society who arranged a meeting for 18 January 2013. The Respondent was not able to attend as he had a puncture on his way and by the time he got there the meeting was over. His partner however gave him the handout, which he read. It was in March 2013 that the Respondent was told that the waiver was granted subject to two conditions. At this time the Respondent was writing non stop to the Law Society to ask what he required to do. He produced a business plan which was not very detailed. Mr Macreath submitted that the Respondent started on the wrong foot and took the wrong steps. The Waiver Committee were under pressure from him to decide and he wanted a

meeting. They said they would decide on the basis of the documentation. Mr Macreath pointed out that the Respondent's father was a successful property manager and the Respondent had worked for him in the past and built up a nest egg which allowed him to go to the USA. Mr Macreath explained that the Respondent always intended that Mr B would join him as a partner in the new firm.

Mr Macreath further explained that the Respondent had pled guilty to professional misconduct because it was necessary for solicitors to act with absolute propriety when providing the information that their regulatory body required. The Respondent had submitted a business plan which indicated that he was a sole practitioner and he should have clarified the position. Mr Macreath stated that the inconsistent information provided by the Respondent went beyond carelessness and was reckless and accordingly amounted to professional misconduct. Mr Macreath emphasised that the Respondent had been very anxious to commence in practice. Mr Macreath explained that the plea would have been tendered earlier but he had only recently seen all the correspondence in the case. Mr Macreath advised that the Respondent was trading successfully and the firm had 8 staff and 2 trainees. The firm had had an accounts inspection and passed it. Mr Macreath stated that the Respondent had learned a salutary lesson and had had the expense and worry of the investigation process. In connection with the rent, there was no formal lease and no rent was due but the Respondent had to make a contribution to office costs in connection with desk, copier, heat and light and reception staff etc. He however should have made this information available to the Law Society. Mr Macreath submitted that the Respondent's conduct fell at the very lower end of the scale of professional misconduct. It would have been very simple for the Respondent to comply with the waiver conditions.

In response to a question from a Tribunal member in connection with why the Respondent had dealt with the matters in the way that he did, Mr Macreath stated that with hindsight the Respondent accepted that he had been arrogant and he had been driven perhaps by the US style.

## **DECISION**

The Tribunal considered this to be a very unfortunate case. The two waiver conditions would not have been difficult for the Respondent to meet. The Respondent committed an error of judgement in the way that he dealt with the enquiries made of him by the Law Society Professional Practice Waiver Committee. The Tribunal considered that the Respondent's conduct fell at the very lower end of the scale of professional misconduct and deliberated carefully as to whether or not the Respondent's conduct was sufficient to cross the line into professional misconduct. The Tribunal however was mindful that the Law Society has to have certain rules which regulate the profession and these rules are important in so far as maintaining the professional and ethical standards of the profession. It is imperative that solicitors cooperate with the Law Society in operating their statutory function and it cannot be acceptable for solicitors to provide the Law Society with inaccurate and misleading information. The Tribunal did not consider the examples referred to by Mr Reid in Smith and Barton to be particularly in point. The Tribunal considered the terms of paragraph 1.24 of Paterson and Ritchie's second edition of Law, Practice & Conduct for Solicitors. It is of utmost importance that the Law Society can be sure that solicitors setting up in practice on their own have sufficient knowledge with regard to the accounts rules and what is needed to manage a firm properly. Providing accurate information to the Law Society to help them carry out their regulatory functions efficiently cannot be treated lightly. The Respondent's conduct in this case was unfortunately reckless and therefore on balance the Tribunal consider that it does amount to professional misconduct.

The Tribunal consider in this case that the Respondent, who had a previously unblemished record and who is clearly a talented lawyer, made a stupid mistake and did not fully understand his responsibilities. It is perhaps unfortunate that so many matters were dealt with by email rather than phone calls or a face to face meeting which might have prevented things from reaching the stage they did. The Tribunal

considered that a Censure was sufficient penalty in this case. The Respondent has learned a salutary lesson and the Tribunal do not consider that there is any risk of repetition. The Tribunal made the usual order with regard to publicity and expenses.

**Dorothy Boyd**  
**Vice Chairman**