

**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

**LESLIE WILSON
SOMERVILLE, Solicitor, 7A
Mayne Avenue, Bridge of Allan**

1. A Complaint dated 29 December 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Leslie Wilson Somerville, Solicitor, 7A Mayne Avenue, Bridge of Allan (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 9 March 2015 and notice thereof was duly served on the Respondent.
5. The hearing took place on 9 March 2015. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented Mr Murphy, Solicitor, Stirling.

6. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. It was accordingly not necessary for any evidence to be led.
7. After hearing submissions, the Tribunal found the following facts established
 - 7.1 The Respondent's date of birth is 6 May 1961. He was enrolled on the 26 July 1983. He was a partner in Pollock, Stewart & Co., Solicitors, then Pollock, Ross & Co., from October 1988 to October 2011. He was a partner with Grant Brown Lindsay, Solicitors, Glasgow from 1 November 2011 to 4 May 2012. He commenced practice in Somerville & Co., Solicitors, on 7 May 2012. He ceased his business and closed his practice on 30 April 2013. He was suspended from practice between 2 May 2013 and 6 March 2014. He was then employed as an assistant with Maguire Solicitors (Scotland) Limited, Glasgow from 15 August 2014 until 5 September 2014.
 - 7.2 The Scottish Legal Complaints Commission ('SLCC;') considered a Complaint from the Complainers that the Respondent may be guilty of professional misconduct or unsatisfactory professional conduct in respect of breaches of Rule B6 of the Law Society of Scotland Practice Rules 2011 ("the Accounts Rules"), in particular, but not exclusively; and breaches of Rules B6.3.1, B6.7.4, B6.8.2, B6.9.1 and B6.13. All as more particularly described in a Complaint Synopsis dated 28 October 2013.
 - 7.3 The Respondent was a partner in Messrs. Pollock Ross & Co., Solicitors, until 14 October 2011. He had been Cashroom partner there from 7 February 2000, Risk Management partner from 11 February 2002 and Anti Money Laundering Partner

from 1 November 2006. He commenced business in his own right as Somerville & Co ('the Firm') on 7 May 2012. An early inspection was carried out by the Complainers' Financial Compliance Department on 7 August 2012 due to concerns intimated to the Complainers by his former firm and the failure of the new firm's bankers, Royal Bank of Scotland, to honour a cheque for £107,802 in a conveyancing transaction. The inspection revealed that the books and records of the practice were mostly non-existent or in a very poor state. He was offered and attended the Complainers' Manual Book-keeping course in September 2012. When he attended the course he arrived late, had insufficient records with him to enable him to participate fully and left early. He followed advice and employed a book-keeper in October 2012. The book-keeper had no experience of legal books and records in relation to the Accounts Rules for solicitors. Shortly afterwards the Respondent went on three weeks holiday leaving the bookkeeper unable to obtain important information.

7.4 The Complainers' Guarantee Fund Sub Committee was concerned that the Respondent was not competent in bookkeeping. A second inspection was carried out on 29 October 2012 to check his progress and compliance. Errors and deficiencies in the books and records were still found. After the October 2012 inspection he was required to submit accounting information at every month end and while this began to improve as the book-keeper learnt what was required the information contained errors, omissions and discrepancies. The Respondent and the book-keeper attended an interview at the Complainers' offices on 24 January 2013. The Respondent told the panel that his records were 100% accurate. His book-keeper contradicted him. He stated that his books were correct to the end of October 2012. She again contradicted him advising that information was still outstanding to complete matters up until

the end of October. The Respondent assured the panel that he would complete and correct the Firm's books and records and comply with the Accounts Rules in future and that his failures in the Accounts Rules would not occur again.

7.5 The Respondent was invited to attend an interview at the Complainers' offices on 21 February 2013 to explain why his practising certificate should not be withdrawn. He again made incorrect statements to the panel stating that his records were 100% compliant when there were five deficits on the client account, the trial balance did not balance and Client Account cheques were still to be produced by the Firm. The Respondent confirmed that he would complete and correct the Firm's books and records and comply with the Accounts Rules in future. Consideration of his position was continued to allow him to attend to the outstanding issues. A third inspection was carried out on 3 April 2013 when further errors and deficiencies in the books and records were found. At that inspection the Respondent told the Compliance Team that he was ceasing the business on 30 April 2013. The Guarantee Fund Sub Committee continued consideration for one month to allow him to do so.

7.6 On 30 April the Respondent advised the Complainers that his Client bank account was in deficit as a number of cheques required to be transferred from the Firm account to the Client account which were client funds but where he did not have funds available to make payments. A fourth and final inspection was carried out at his home on 1 May 2013. A number of errors and deficiencies in the books and records were found. There were deficiencies and errors in the books and records throughout the life of the Firm as hereinafter condescended upon. As a result each Executive Summary was weighted category 3. On 2 May 2013, the Guarantee Fund Sub

Committee withdrew the Respondent's Practising Certificate in terms of Section 40 of the Solicitors (Scotland) Act 1980 and recommended that his professional conduct should be referred to the SLCC for consideration. On 6 March 2014 the solicitor's Practising Certificate was reinstated on a restricted basis on proof of completion of an approved course.

Rule B6.3.1-deficit on client account.

7.7 At the inspection of 7 August 2012 it was noted that the Firm did not maintain a surplus or "float" on the Client account. Three issues caused deficits. Firstly, there were two debit balances noted for £120 and £140. Secondly, the Respondent had paid £900 in respect of his personal mortgage from the Client bank account at that date when it held insufficient funds and a sum in excess of £12,000 was held in the firm bank. Thirdly, VAT amounting to about £760 had been charged on fees and paid from client ledgers to the Firm bank although the firm was not registered for VAT. On 29 October 2012 the inspection revealed that there was a deficit on the Client account between 13 and 26 September 2012. A cheque for £19,080.43 was issued on 7 September 2012 and cashed on 11 September 2012. A further, duplicated payment in the sum of £19,100.43 was issued by Chaps transfer on 13 September 2012. The sum of £19,056.00 was received from the client on 26 September 2012 into the Client account. At the post-cessation inspection on 1 May 2013 it was established that the client account was in deficit between 28 March 2013 and 1 May 2013. The deficit position was £556.85. This was known to the Respondent during April 2013. He had written six cheques to clients dated 28 March 2013 drawn on the Firm bank account but had not signed or issued them. They were for sums due to the clients. The payments had been written through the firm's books resulting in client funds being held in the Firm account

incorrectly. The Respondent attended the bank and transferred funds of £556.65 from the Firm account to the Client account on 1 May. This reinstated a surplus of £46.46. He advised that he had not issued the cheques as his rent was due and he did not believe he had sufficient funds.

Rule B6.7.1 to .4- records to show true financial position.

7.8 At the inspection of 7 August 2012 there was no client cash book. Client ledgers were held but the entries rarely included dates, narratives were extremely bare and in some cases no narratives were included in the entries. The client names and handwritten entries were often illegible. No Firm Cashbook was produced. No Firm Trial Balances were produced. No Firm Bank Reconciliations or Trial Balances were produced. As a result it was not possible to ascertain the true financial position of the firm. On 29 October 2012 the necessary books and records were in place but were not being correctly maintained. The Client Cashbook provided did not record the date of the transactions, did not show any narrative relating to the transactions, and did not show a running balance in spite of previous guidance. The Client ledgers did not include dates of transactions, or ledger narratives, and no running ledger balances were recorded. The ledgers were not headed with the client names, and no description of the transaction was noted. The Client Trial Balances list produced to 30 September 2012 contained errors. The invested funds account balances for two clients were included as general credit ledger balances. The debit ledger balance in an Executry was £2,947.73 while the balance shown on the listing was £2,953.73 (debit). The Firm Trial Balance to 30 September 2012 did not square. The trial balance did not record all of the required information in order to reflect the full financial position of the firm, as the balance held on the Client bank account and the total client ledger balances

(both debit and credit control totals) were not recorded. The firm cashbook recorded no dates, narratives or running balances. It was not possible to verify the bank reconciliations to 30 September 2012 as correct. There were many outstanding/adjusted entries noted on the reconciliations which were not clearly detailed. The reconciliations did not balance and highlighted differences that were still to be investigated and identified. No dates were noted against any of the adjusting or outstanding entries, therefore it was not possible to determine how long these adjustments had been outstanding. The Client bank reconciliation contained outstanding lodgements, which had been posted to the records of the firm, but had not appeared or been accurately matched within the bank statements. At the inspections of 3 April and 1 May 2013 substantial improvements had been made through the work of the book-keeper. There were still incorrect client credit balances for three clients and debit balances for two clients had been omitted; ten debit balances from the firm account were not properly vouched or accounted for in the ledgers; and, the client invested funds reconciliation did not refer to the correct dates.

Rule B6.8.1 to .2- list of client balances/surplus statements

- 7.9 At the inspection of 7 August 2012 there was no monthly list of client balances or formal surplus statement and no bank reconciliations to compare them with. On 29 October 2012 the surplus statement produced to 30 September 2012 was incorrect. Invested funds balances were incorrectly included as general client credit balances. The total client debit balances had been off-set against the total client credit balances, which incorrectly reduced the total client credit balances used in the surplus calculation. The true position of the surplus could not be accurately ascertained but was recorded as £9,993.96 at 30/09/12 rather than £5,018.18 thereby overstated by £4,978.78.

As the Client bank reconciliation had not been completed the surplus figure did not take into account any adjustments and could not be accurately verified. At the inspections of 3 April and 1 May 2013 there were three incorrect client credit balances and two omitted client debit balances which meant that an accurate surplus statement could not be produced.

Rule B6.9.1-client invested funds

- 7.10 At the inspections of 7 August 2012 the firm's records were in such a poor state that no client invested funds could have been identified from them. At the inspection of 29 October 2012 client invested funds were held but no formal reconciliation was being carried out and the client ledgers did not record that any invested funds accounts had been opened. On the 1 May 2013 the invested funds reconciliation was incorrect. Two balances were dated 31 March 2013 instead of 30 April 2013 and the total invested funds balances on the reconciliation showed the date 28 February 2013 instead of 30 April 2013.

Rule B6.13- responsibilities of designated cashroom manager

- 7.11 On 7 August 2012 the Respondent's failure to comply with Rule 6 was clearly evident and he accepted that his attempts to prepare his accounts to that point had been "rubbish". His responsibilities were drawn to his attention then and repeatedly thereafter. He was provided with considerable advice and assistance. Throughout the existence of the Firm he failed to obtain the return of client account cheques from the bank or to obtain digital images.

8. The Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of his between 7 May 2012 and 30 April 2013

consistently failing to comply with the requirements of Rule B6 of the Law Society of Scotland's Practice Rules 2011 and in particular his repeated failure to maintain a surplus on his client account; to keep properly written up books to show the true financial position of the practice unit; to keep and maintain a proper list of client balances or to produce surplus statements; to maintain an accurate record of client invested funds or to carry out reconciliations; and to discharge his responsibilities as the cashroom manager of the practice unit throughout its existence.

9. Having noted a previous finding of professional misconduct against the Respondent and having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 9 March 2015. The Tribunal having considered the Complaint dated 29 December 2014 at the instance of the Council of the Law Society of Scotland against Leslie Wilson Somerville, Solicitor, 7A Mayne Avenue, Bridge of Allan; Find the Respondent guilty of Professional Misconduct *in cumulo* in respect of his breach of Rule B6 of the Law Society of Scotland's Practice Rules 2011 and in particular his repeated failure to maintain a surplus on his client account; to keep properly written up books to show the true financial position of the practice unit; to keep and maintain a proper list of client balances or to produce surplus statements; to maintain an accurate record of client invested funds or to carry out reconciliations; and to discharge his responsibilities as the cashroom manager of the practice unit throughout its existence; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and to being supervised by such employer or successive employers as maybe approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of

the Law Society of Scotland and that for an aggregate period of at least two years and thereafter until such time as he satisfies the Law Society that he is fit to hold a full practising certificate; 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)

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

IN THE NAME OF THE TRIBUNAL

Alan McDonald
Vice Chairman

NOTE

When the Complaint called on 9 March 2015 a Joint Minute was lodged admitting all the facts, averments of duty and averments of professional misconduct in the Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston advised that there had been discussion between herself and the Respondent's solicitor which had resulted in the lodging of the Joint Minute. She explained that the Respondent had been a partner in private practice and then had set up his own business in May 2012. There was an inspection in August 2012 which found that the Respondent's books were in a mess. He appointed a bookkeeper but she was not experienced in solicitors' bookkeeping. At the inspection on 29 October 2012 the Respondent had books in place but these were still deficient although there had been a gradual improvement with the bookkeeper. As a result of this the Law Society required the Respondent to submit monthly submissions.

There was an interview on 24 January 2013 where the Respondent attended with his bookkeeper. They disagreed with each other about how up to date the books were. There was a second interview on 21 February 2013 where there were still deficiencies in the books and the trial balances did not work. There was a third inspection on 3 April 2013. At this stage the Respondent realised that it was not working him being a sole practitioner and he indicated that he was to cease practice on 30 April 2013. At this stage there was a deficit on his client account.

Ms Johnston submitted that this showed a picture of someone who managed while in business with other partners but was drowning once he set up on his own. Initially he did not understand the full import of the situation but he then realised this. At the fourth inspection on 1 May 2013 there were still deficiencies.

SUBMISSIONS FOR THE RESPONDENT

Mr Murphy advised the Tribunal that until the Respondent commenced practice on his own he had been able to share the burden of management with his other partners and had not had any difficulties. It was once he set up on his own that he ended up in a difficult situation. At this time he was also involved in a long drawn out divorce action which did not help matters. Mr Murphy pointed out that after the Respondent appointed a bookkeeper there was some improvement. The important thing to note was that by the time of the inspection on 3 April 2013 the penny had dropped for the Respondent that this was not for him and he decided to wind up his practice.

On 2 May 2013 the Guarantee Fund Sub Committee suspended the Respondent's practising certificate but he had already stopped by this time. By July 2013 the Law Society were satisfied that the Respondent had settled all debts due to clients and cleared everything up. After 2 May 2013 the Respondent contacted the Law Society with a view to asking what he required to do to have his suspension lifted. He attended a SOLAS training course, sat an exam and passed on 6 March 2014. This meant he could obtain a practising certificate but there were restrictions imposed on this preventing him from being a principal and undertaking legal aid work and he was required to make payments in connection with a previous case.

Mr Murphy explained that the Respondent was looking for work at present as a qualified assistant and had a number of interviews coming up. There was little likelihood of him committing any further breaches under the Accounts Rules. The Respondent had applied to the Law Society to see what he would have to do to remove some of the restrictions on his practising certificate. He however had no intention of acting as a principal in the future. He had realised that this was not for him.

Mr Murphy advised that the Respondent had been unemployed since April 2013 and was presently on benefits. He was trying to sell the matrimonial home to pay

outstanding expenses from a previous appearance before the Tribunal and to pay the balance of the fine due.

In response to a question from the Chairman, Mr Murphy confirmed that the deficit in the Respondent's previous firm had been resolved and there was no shortfall to clients. The Respondent explained that he had to transfer money from the firm account to the client account which resulted in all the deficits being cleared. There were five executries where client balances had to be returned but the Respondent liaised with the Law Society to let them know when all the cheques had cleared.

In response to a question from one of the Tribunal members, the Respondent explained that he thought he would be subject to VAT but subsequently discovered that he did not require to register for VAT but he returned the VAT elements on the fee notes to his clients.

DECISION

The Tribunal accepted that the Respondent had not undertaken a deliberate course of action it was more a case of him not coping and getting himself into a mess. The Respondent however as an experienced solicitor should have realised this and should not have continued in practice in breach of the 2011 Rules. The Tribunal found it extremely concerning that the Respondent as an experienced solicitor would carry on in business not realising the difficulties he was getting himself into. It is imperative if the public are to have confidence in the legal profession that solicitors comply with the requirements of the rules. In this case the Respondent breached numerous Accounts Rules during the period of his sole practice. In the circumstances the Tribunal considered that the Respondent's conduct *in cumulo* amounted to professional misconduct.

Ms Johnston then provided the Tribunal with a copy of previous findings against the Respondent made by the Tribunal in March 2013. These related to a conflict of interest. The Tribunal had imposed a fine of £5,000 of which £3,000 is still outstanding. The expenses in respect of this matter were also outstanding.

Ms Johnston advised that in August 2014 the Respondent purchased a restricted practising certificate which expired on 31 October 2014. He had not renewed this certificate. The restrictions placed on his practising certificate by the Law Society were that he had to work as a qualified assistant for a period of 24 months from 6 March 2014 and was not entitled to do legal aid in his own name and there was a condition that he make regular payments agreed with the Law Society in connection with the outstanding debts connected with the previous appearance before the Tribunal. The Respondent wrote to the Law Society in February 2015 for permission to have an unrestricted practising certificate. This was considered on 6 March 2015 and was refused but he was still entitled to apply for a restricted practising certificate. Ms Johnston advised that the Respondent was going to be paying the expenses of the last Tribunal at the rate of £100 per month but she was not chasing this at the moment because he lost his job and he was waiting to sell his house. It was confirmed that the condition with regard to legal aid was a standard condition.

Mr Murphy explained that the Respondent did not currently have a certificate because he had no money and was not working. The Respondent accepted that he could not work as a principal and did not want to work other than under supervision. He however wished to get rid of the condition with regard to legal aid which restricted his employability.

PENALTY

The Tribunal noted the previous findings against the Respondent in connection with conflict of interest and further noted that the Respondent had been fined £5,000 of which £3,000 is still outstanding. Given the Respondent's current financial situation the Tribunal saw no point in imposing another fine. The Tribunal took account of the fact that the Respondent had cooperated with the Law Society Fiscal and entered into a Joint Minute. He had also attended the Tribunal in person and seemed genuinely remorseful about what had happened. The Tribunal also took account of the fact that the Respondent had eventually realised that he could not continue, closed his firm and had resolved all the previous deficits. The Tribunal however considered that in order to protect the public a restriction should be imposed on the Respondent's practising certificate. The Tribunal considered it important that the Respondent work under

supervision for a period of at least two years prior to being able to have a full practising certificate to ensure that he learns from his previous mistakes. The Tribunal made the usual order with regard to publicity and expenses.

Alan McDonald
Vice Chairman