

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

INTERLOCUTOR

in Application

by

**RICHARD THOMAS THORBURN,
31 Braemar Street, Glasgow**

For an Order Restoring his name to
the Roll of Solicitors in Scotland

Edinburgh 14 April 2014. The Tribunal, having considered the Application at the instance of Richard Thomas Thorburn, 31 Braemar Street, Glasgow and the objection to that Application on behalf of the Law Society of Scotland and having heard the Applicant, Refuse the said Application; Refuse the Law Society's motion for expenses to be awarded against Richard Thomas Thorburn and Direct that publicity to include the name of the Applicant be given to this decision.

**Alistair Cockburn
Chairman**

NOTE

This is an Application made under Section 10 of the Solicitors (Scotland) Act 1980 by Richard Thomas Thorburn, whose name was Struck Off the Roll of Solicitors in Scotland by order of this Tribunal dated 24 November 2009.

The Order striking Mr Thorburn's name from the Roll was made in respect of his being found guilty of professional misconduct either singly or in cumulo in respect of his failure to reply to reasonable requests of the Law Society for information, his breach of Rules 4, 6, 8, 9, 10, 11 and 24 of the Solicitors (Scotland) Accounts etc Fund Rules 2001, his repeated delay or failure altogether to stamp, record or register dispositions, standard securities and discharges, and his failure to comply with the Solicitors (Scotland) Professional Indemnity Rules 1995 by operating without professional indemnity insurance.

In accordance with the provisions of Rule 32 of the Scottish Solicitors Discipline Tribunal Procedure Rules 2008, this Application was intimated to the Council of the Law Society of Scotland ("the Law Society"). An objection dated 1 April 2014 was lodged on behalf of the Law Society.

A procedural hearing was fixed for 14 April 2014. At that hearing the Law Society was represented by its Fiscal, Valerie Johnston, Solicitor, Edinburgh. Mr Thorburn was present and represented himself. Both parties confirmed that they did not intend to lead any witnesses and were prepared to proceed directly to a substantive hearing.

MR THORBURN'S EVIDENCE

Mr Thorburn stated that although the decision of the Tribunal to strike his name from the Roll was made as recently as November 2009 and intimated in 2010, he last held a practising certificate in October 2004 so this year it will be 10 years since he last practised. He advised that he did not apply for a practising certificate during the course of the previous Tribunal proceedings and had intended to reapply after the Tribunal's decision and then as a result of that decision it was not possible for him to do so.

Mr Thorburn advised that whilst the Tribunal proceedings were ongoing, he was the subject of a judicial factory and that his practice closed in October 2004.

Mr Thorburn stated that the tribunal case which involved himself and Mr Atuahene, his former partner was the longest one which had ever taken place. He stated that the proceedings started in July 2005 and concluded in 2010. He stated that it was an extremely long and difficult tribunal case. In response to a question from the Chairman as to whether that case was lengthy because the matters in the Complaint were not agreed, Mr Thorburn answered in the affirmative. He explained that he was not a court lawyer nor a member of the LDU and so could not get representation as no legal aid was available and he was subject to a judicial factory so he could not pay for representation.

The Chairman explained that his question was not whether Mr Thorburn had appeared unrepresented but whether he had denied all of the averments and thus put the Law Society in the position of having to prove every single averment in the lengthy Complaint.

In response Mr Thorburn accepted that it was the case that nothing was agreed. He stated he had no experience of courts or tribunals. He stated that through the process he learned a great deal about the conduct of such proceedings and with the benefit of hindsight he would do things differently if anything of the sort were to happen again. Mr Thorburn stated that not all of the allegations were proved, in particular the allegation of an alleged deficit on his client account.

Mr Thorburn stated that the findings of the Tribunal were divided into three parts. Firstly, the findings against himself as an individual. Secondly, the findings against Mr Atuahene as an individual and thirdly, the findings against both himself and Mr Atuahene jointly.

Mr Thorburn stated that it was perhaps easier to explain about the failures in relation to the partnership first. He stated that the partnership was a complete disaster and that

he accepted that. He stated that he would however refer to matters in a chronological order as the partnership came at the end of the timeframe.

Mr Thorburn stated that he had been in practice as a qualified assistant from the early 90's until 1995. In 1995 he commenced practice on his account and for five years worked from home without a secretary. In January 2000 he established an office in Glasgow in the offices of another firm, Lyons Laing. Mr Thorburn stated that the name of that firm would be familiar to the some of the Tribunal members as it had had its own difficulties; however Mr Thorburn submitted that these problems came from the Greenock office rather than the Glasgow office where he was working.

Mr Thorburn stated that he had a good relationship with one partner in the Glasgow office, Mr A. Mr Thorburn stated that in relation to the transaction where the cheque was delivered and nothing was received in return, that transaction involved Mr A. Mr Thorburn accepted that both he and Mr A were a little lax on both sides of the transaction. Mr Thorburn stated that he was under pressure at the time and handed over the cheque but had mislaid the stamp duty application form and he concluded he must have received the cheque and had lost the stamp duty form and the cheque together.

In response to a question from the Chairman, Mr Thorburn confirmed that in the transaction his client was paying £320,000 to purchase commercial property.

The Chairman stated that he understood that the normal practice was to get the disposition and then pay the stamp duty and asked how Mr Thorburn could have lost the cheque before he got the disposition. Mr Thorburn replied that this happened before the new stamp duty land tax was brought in and that he had prepared the form beforehand and had lost it. Mr Thorburn stated that the mistake on his part was giving the cheque without a letter stating what conditions the cheque was delivered under. He stated that it was done on trust and that his failure was not recording the conditions on which it was handed over.

In response to a question from the Chairman as to what was said in the letter handed over with the cheque, Mr Thorburn stated that there was no letter. He advised that he

handed the cheque over to Mr A in the offices where he and Mr A both worked and that it was handed over on a verbal basis. Mr Thorburn stated that he and Mr A had done this before. Mr Thorburn said that he thought he had already received the disposition and the discharge and that he was under that misapprehension for a number of weeks until Mr A mentioned to him that he had not received these documents.

Mr Thorburn stated that it was a very strange situation and that there was an issue in the background which was that his client was involved in a fraudulent scheme. Mr Thorburn advised that it was initially suspected that he was involved in this scheme and that there was an investigation by the Law Society. Mr Thorburn stated that Mr A drew to his attention that he still had the disposition.

Mr Thorburn explained that this was before the Law Society got involved. He stated that he got a phone call from someone who was trying to locate his client. Mr Thorburn advised that the transaction involved a commercial loan from a bank. Mr Thorburn submitted that his own view was that as there were not any concluded missives that the purchase price should have been returned because there was no contract. However he advised that he was unable to pursue the matter because it was in the hands of the judicial factor.

In response to a question from the Chairman, Mr Thorburn stated that he never received the disposition despite it being drawn to his attention by Mr A because the sellers went into liquidation.

Mr Thorburn stated that prior to entering into the partnership with Mr Atuahene he was employing two secretaries and was not short of work. He was busy and confining himself to an area of work where he felt comfortable, a mixture of domestic and relatively small scale commercial conveyancing. He advised that he also undertook quite a bit of leasing work and enjoyed the challenge of that and got good feedback from other solicitors about his commercial leasing skills. He stated that he felt that he had a good degree of respect from his fellow professionals. He accepted though that he was struggling with the business side of the practice and stated that running a business was not his strong point.

Mr Thorburn advised that he was aware that he was imposing an enormous burden on himself by the way he was operating. He stated that he did not want to continue as a sole practitioner, he wanted to join up with another small firm so that he would have a partner to discuss matters with and to share services. He stated that this was his strategy before Mr Atuahene came along. He stated that the accountancy side of the business was a particular issue which needed to be resolved. Mr Thorburn stated that when he had started up his own business on his own he had set up a manual paper system. He stated that he was competent to do the manual reconciliations and did it reasonably well, but it was too much for him to do on top of running the business because as the business increased the amount of bookkeeping increased also.

In answer to a question from the Chairman, Mr Thorburn stated that he did the bookkeeping monthly but accepted that that was not within the timescales which the Law Society was looking for. He stated that he knew at that stage that he would have to move to a computerised system and that was another key reason why he wished to merge with another firm. He stated that the overhead costs of a fully computerised accounting system are quite a big burden and he thought it would be best to share that burden with another firm.

Mr Thorburn explained that merging with Mr Atuahene's firm was never part of his strategy. He stated that Mr Atuahene had been subject to an interim judicial factory because of problems with his accounts. He stated that Mr Atuahene had a computerised system and a member of staff who operated the system, but by the time he and Mr Atuahene joined forces the member of staff had left Mr Atuahene's employment.

Mr Thorburn stated that a firm of independent accountants sorted out Mr Atuahene's system within two to three months and Mr Atuahene had the opportunity of resuming practice which is unusual after a judicial factory.

Mr Thorburn stated that Mr Atuahene came to him to ask for advice as he was thinking about giving up his business. Mr Thorburn stated that he put various proposals to Mr Atuahene and accepted that Mr Atuahene may have thought that Mr

Thorburn was keen to join forces with him. Mr Thorburn stated that he was not. Mr Thorburn advised that he did think that Mr Atuahene had a good business and he agreed to go into partnership with him.

In response to a question from the Chairman as to who was the Designated Cashroom Partner, Mr Thorburn stated that latterly it was probably himself. Mr Thorburn stated that then a very unfortunate event took place which was that the firm from whom Mr Atuahene had bought the accounting system fairly recently had decided not to support the system any longer. Mr Thorburn stated that Mr Atuahene was not capable of keeping the system up to date and had relied on two very experienced secretaries who had left by the time Mr Atuahene and Mr Thorburn joined forces. Mr Thorburn stated that he had believed that Mr Atuahene was a workaholic as he would lock himself in his office for lengthy periods. Mr Thorburn advised that he was shocked when Mr Atuahene told the Tribunal of his various illnesses and stated that if he had known this information he would not have entered into a partnership with Mr Atuahene.

The Chairman then asked Mr Thorburn to tell the Tribunal what steps he took to comply with the Accounts Rules.

Mr Thorburn stated that the first step was to employ a cashier.

In response to a question from the Chairman, Mr Thorburn stated that they did not manage to employ a cashier.

The Chairman asked Mr Thorburn under what period he carried on in practice without complying with the Accounts Rules.

In response, Mr Thorburn stated throughout that period he was keeping his own accounts, all his transactions were recorded and the books balanced. He stated that he accepted that this did not fully comply with the Accounts Rules. He stated that there was nit-picking on both sides regarding the Rules.

The Chairman asked Mr Thorburn if he kept a firm account only for himself with only his transactions going through it.

In response, Mr Thorburn stated that was what he tried to do. He stated that for a short time Mr Atuahene said that he would keep his own side of the accounts. Mr Thorburn stated however that that was not possible and for a short time he tried to do Mr Atuahene's accounts too.

The Chairman asked how long this reprehensible situation was allowed to continue. In response, Mr Thorburn stated that it was from April 2004 until the business closed in October 2004.

Ms Johnston indicated to the Tribunal that the Findings of the original tribunal contained a finding in fact that the period was between 14 May and 18 July 2004.

Mr Thorburn stated that the partnership terminated when Mr Atuahene was made bankrupt.

Mr Thorburn stated that his practice had undergone a number of inspections and that he had quite good relationships with the inspectors in his day to day dealings with them. Mr Thorburn stated that on one occasion he was concerned about not being prepared for the inspection. He had returned from a short holiday and there was a backlog on the accounts for three months because of an error which would not balance. Mr Thorburn stated that the inspectors actually found the odd figure which was catching him out. He stated that the inspectors were there for a couple of days and after that he brought his books up almost up to date apart from the last month. Mr Thorburn advised that this was before the partnership commenced. Mr Thorburn accepted that things got out of control towards the end but submitted that things were not as bad as they looked.

Mr Thorburn stated that no deficit was found. It had appeared that there had been a deficit but this was because the bank had paid a standing order twice and he submitted that no finding regarding a deficit was made by the Tribunal. He stated that he accepted there was one deficit in breach of the Accounts Rules when he had issued a cheque and there was a two day delay before he got to the bank. He stated that the cheque was there to be presented and stated that it was not the case that there was no

cheque. He stated that the Tribunal had found no suggestion of his being dishonest with client's money.

Mr Thorburn stated that it might be appropriate at this stage to advise that he was not contemplating becoming a sole practitioner ever again. He stated that he would be comfortable with something less than a full time occupation and wished to be employed as a member of a team in a practice. Mr Thorburn stated that it is obvious he should avoid running a business in future. Mr Thorburn advised that if he was to return to practice he may well have some role where he would need to be aware of the Money Laundering Regulations and bookkeeping even though he was not taking ultimate responsibility for it.

Mr Thorburn submitted that he does not shy away from the responsibilities he had and stated that the partnership should never have happened. He stated that he was naïve to think it could have worked and that Mr Atuahene had influenced him to make the decision to enter into the partnership. He stated that he realised that he would have to undertake some refresher training in relation to financial matters.

In relation the insurance matter, Mr Thorburn stated that he and Mr Atuahene intended to enter into the partnership from 1 November 2003. He stated that there was a delay in physically moving into the offices and that he did not move into the offices until February 2004. He stated that at that time he and Mr Atuahene were largely doing their own thing up until then but had some element of cooperation prior to then.

Mr Thorburn stated that in October 2003 they applied for, paid for and were granted an indemnity insurance policy in the name of the new partnership. Mr Thorburn stated that there was a lot of legal argument at the Tribunal regarding the status of that policy. Mr Thorburn stated that the finding of the Tribunal was that policy did not cover himself and Mr Atuahene. He stated that his understanding was that he and Mr Atuahene as the partners were covered not just the partnership. He stated that there were discussions with Marsh, the insurers, but it was not possible at the time. He stated that they reasonably thought they had insurance.

Mr Thorburn referred the Tribunal to the comments of the Law Society in their objection to his Application regarding his lack of contrition. Mr Thorburn stated that the way that the hearing was concluded was slightly strange. He stated that he was obliged to make written submissions on the findings of fact as the Tribunal issued a partial judgement which contained just the findings of fact and guilt and he and Mr Atuahene were asked to make their pleas in mitigation on the basis of that. He stated that the Tribunal findings at that stage did not tell him and Mr Atuahene a lot about what was in the mind of the Tribunal as the reasoning was not contained within the partial findings. Mr Thorburn stated that at that stage he was a little in the dark and perhaps unrealistic. He thought that because there were a lot of averments which were found not proven that he was not likely to be struck off. He stated that in the course of the Tribunal the purpose was to establish the facts. Mr Thorburn stated that he never at any time suggested that there was no fault on his part. He stated that when the sanction was announced it came as a real shock although he now accepted that with hindsight it should not have been.

Mr Thorburn stated that law has always been a big part of his life. He stated that there are people who do value his help and advice on all sorts of things, even in relation to business. Mr Thorburn stated that it is frustrating that there are so many things that he cannot do in his current situation. He stated that his motive in making this Application was not because he seeks status nor was it a financial motive. He stated that his motive was to be able to help people in a proper environment. He stated that at present he has to explain to clients that he is not a solicitor, not regulated and carries no insurance. He stated that the areas he is currently involved in helping people with are debt, insolvency and dispute resolution. He stated that there is a huge untapped demand for dispute resolution which legal aid is not satisfying.

QUESTIONS TO MR THORBURN FROM MS JOHNSTON

Ms Johnston asked whether it was correct that Mr Thorburn had professional indemnity insurance paid for between 5 November 2003 to November 2004 in the name of the Practical Law Partnership. Mr Thorburn responded in the affirmative.

Ms Johnston stated that he had no run off cover for his and Mr Atuahene's previous firm when they merged to become the Practical Law Partnership and asked whether he had a meeting with Marsh, the insurers, to discuss this situation. Mr Thorburn replied in the affirmative.

Ms Johnston asked if Marsh provided him with a proposal for such run off cover. Mr Thorburn stated that he did receive a proposal, but that cover involved a substantial payment which he and Mr Atuahene could not afford at the time.

Ms Johnston asked if Mr Thorburn was involved in giving advice to Mr Atuahene when Mr Atuahene previously had difficulties with an interim judicial factor. Mr Thorburn responded that Mr Atuahene had instructed him in relation to the purchase of Ms B's former practice. Mr Thorburn explained that his role was limited to dealing with the purchase and that Mr Atuahene did not seek advice on business issues. He stated that Mr Atuahene had said that he had been advised by the judicial factor that he should close the business and that advice came as a shock to Mr Atuahene.

Ms Johnston asked Mr Thorburn whether Mr Atuahene spoke to him at all regarding the transfer of the financial side of Ms B's practice. Mr Thorburn responded in the affirmative stating that he was dealing with the missives.

Ms Johnston asked Mr Thorburn if it was fair to say that the financial side of Ms B's practice was a disaster. Mr Thorburn responded in the affirmative stating that he would not have advised Mr Atuahene to take over that business.

Ms Johnston asked Mr Thorburn why, having had that experience of Mr Atuahene, he would ever remotely have considered going into partnership with him. Mr Thorburn stated that that was a good point and that he did not know Mr Atuahene well at that time, and perhaps he should have known him better. He stated that he did get to know Mr Atuahene much better during the tribunal proceedings.

Ms Johnston asked Mr Thorburn whether he now accepts that he should have dealt with the Tribunal proceedings better. Mr Thorburn replied in the affirmative stating

that he did not really understand the procedure. He advised that he now understood that tactics in these matters are much more important than strict legal matters.

Ms Johnston asked Mr Thorburn why he was not prepared to come and meet with her at the start of the tribunal proceedings. Mr Thorburn stated that he remembered that there was a meeting at Ms Johnston's offices in Dunfermline. Ms Johnston stated that the meeting he was referring to was when he came to collect documents and advised that was much later in the proceedings. Mr Thorburn stated that he did not remember refusing to meet with Ms Johnston.

Ms Johnston asked Mr Thorburn whether it was true that he wanted to make a point against the Law Society in the proceedings. Mr Thorburn responded that there was a degree of his feeling bad about how he was being treated by the Law Society. He stated that Mr C from the Law Society had organised an inspection knowing that the letter giving notice of that inspection would not be received prior to the inspectors arriving. He stated that he had quite a heated discussion over the phone with Mr C regarding that. He stated that he had concerns regarding a lack of clarity in the Accounts Rules regarding what notice should be served in advance of the inspections and that this got him interested in the Accounts Rules. He stated that he took these issues up with the Law Society. He stated that he had previously written to the Law Society pointing out issues with the Accounts Rules and saying that things could be done a lot better. He stated that he thought as a lawyer it was right for him to question things, but that he was apologetic for not getting things right.

QUESTIONS TO MR THORBURN FROM THE TRIBUNAL

In response to a question from the Tribunal regarding whether he had undertaken any training since the Tribunal findings were issued Mr Thorburn responded that he had not but was conscious that the law has moved on since he was in practice. He stated that he knew that a lot has changed and clearly he has not been involved in attending CPD during that period. He stated that clearly he would have to address these issues. He submitted however that the things the Tribunal have in mind are not things that you can learn in a class. He stated that he has been reflecting on things and explained that having a judicial factor appointed is ten times worse than bankruptcy and that

everything you have is taken from you. He stated that he has had every opportunity of reflecting on his situation.

The Chairman drew Mr Thorburn's attention to the second paragraph of the Law Society's Note of Objection to Mr Thorburn's Application which states:

“he took unacceptable risks in his business in the face of clear warnings from his professional body. Between 25 July 2001 and 8 July 2004 he continuously failed to comply with the Solicitors (Scotland) Accounts etc Fund Rules 2001, to comply with the Money Laundering Regulations or to timeously stamp, record or register deeds. He operated without professional indemnity insurance from 5 November 2004 and 14 May 2004. Between 12 November 2003 and 14 February 2004 he did not reply to the reasonable requests of his professional body about the management of his clients' funds and firm accounts.”

The Chairman asked whether that paragraph was admitted.

Mr Thorburn stated that he would object to the word “continuously”. He stated that he did not want to split hairs and accepted that things got badly out of hand at the end. Mr Thorburn advised that that the word “continuously” should be replaced by “repeatedly”. Mr Thorburn stated that he accepted there were inspections and correspondence arising from them but submitted that he was responding to the correspondence. Mr Thorburn stated that he is very conscious of what the Findings say about his practice. He stated that his whole approach is that every day is an opportunity for learning and stated that he could do a whole lot better than his record shows.

DECISION

The Tribunal considered the evidence from Mr Thorburn, the letters of support from the two solicitors which were attached to his Application and the Note of Objection from the Law Society. The Tribunal accepts that it is open to a person who has been struck off of the Roll of Solicitors in Scotland to apply for restoration. The Tribunal has to decide whether or not the Applicant has discharged the onus on him to displace

the original conclusion reached at the time of the striking off that he was not a fit and proper person to be a solicitor.

The Tribunal noted that Mr Thorburn's Application was to restore him to the profession where the qualities of openness, honesty and trustworthiness are sacrosanct. The Tribunal considered that Mr Thorburn was reckless regarding the transaction involving the purchase of the property for £320,000 and find it very difficult to understand how he would have come to pay that money over without getting the usual settlement documents in exchange. From the evidence given by Mr Thorburn the Tribunal also noted that that transaction was not the first occasion on which he had exhibited such recklessness. The Tribunal noted with concern that Mr Thorburn appeared to show no understanding of the serious nature of this particular failure to comply with his professional duties which exist for the purpose of the protection of clients.

The Tribunal considered that in proceedings before this and the previous Tribunal Mr Thorburn had demonstrated a complete disregard for the Accounts Rules and a lack of and understanding of the responsibility of solicitors for compliance with these Rules and other professional requirements. The Tribunal considered that Mr Thorburn's conduct before the Tribunal in this Application for Restoration demonstrated a continuing lack of insight into his failures. The Tribunal were concerned that Mr Thorburn had referred to the Tribunal which resulted in his striking off as being the longest Tribunal ever held without appreciating that a significant amount of time in that process resulted from his own unwillingness to accept responsibility for his repeated failures.

The Tribunal noted that 10 years had passed since the Applicant was last in practice and despite assurances from Mr Thorburn that he has had time to reflect on the events which led to his being removed from the Roll of Solicitors that he has done nothing to educate himself regarding the Accounts Rules and considered that this in itself would be sufficient for the Tribunal to refuse the Application. Far from showing insight into his failures and attempting to address the underlying causes of these the Tribunal noted that the main thrust of the Applicant's submissions involved a reconsideration of the issues of culpability decided by the Tribunal in 2009.

The decision of the Tribunal was to refuse the Application.

Ms Johnston made a motion for the expenses of the hearing to be awarded against Mr Thorburn. This motion was refused by the Tribunal as Ms Johnston was unable to direct the Tribunal to any statutory basis for the awarding of expenses for such Applications.

The Tribunal made the usual order for publicity.

Alistair Cockburn
Chairman