

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(SSDT RULES 2024)**

FINDINGS

in Complaint

by

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

Complainers

against

**MARTINE GERMAINE BISIAUX, 15 MacCallum
Drive, Cambuslang**

Respondent

1. A Complaint dated 7 January 2025 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Martine Germaine Bisiaux, 15 MacCallum Drive, Cambuslang (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules, the Tribunal set down a virtual Hearing on 3 April 2025 and notice thereof was duly served on the Respondent.
4. At the virtual Hearing on 3 April 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. A Joint Minute between the parties was lodged with the Tribunal. The Tribunal granted the unopposed motion of the Fiscal to amend the Complaint. No evidence was led and the Tribunal proceeded to hear submissions from both parties.
5. The Tribunal found the following facts established:-

- 5.1 The Respondent is Martine Germaine Bisiaux, she resides at 15 MacCallum Drive Cambuslang, Glasgow. Her date of birth is 18 June 1969. She was admitted as solicitor on the 18 September 1992. She was employed by Buchan Burton, East Kilbride between the 21 October 1992 and 29 March 1996. She was employed by Golds, Glasgow between 1 April 1996 and 27 May 1999. She was employed by Ross Harper Glasgow between 28 May 1999 and 8 December 2000. She was employed by DLA (Scotland) Glasgow between 19 February 2001 and 30 November 2001. She was employed by Pacitti Jones Glasgow between 3 December 2001 and 30 January 2004. She then became an employee with Conveyancing Direct in Glasgow on the 9 February 2004 becoming a Partner with that firm on the 1 July 2004. She became the Cashroom Partner, Client Relations Manager, Money Laundering Reporting Officer and Risk Management Partner on the 1 November 2018. She was sequestrated and suspended from practice on the 23 November 2021. She does not hold a practising certificate.
- 5.2 The Respondent assumed the responsibilities of Cashroom Partner on the 1 November 2018 having been a partner with Conveyancing Direct (the firm) for 14 years. She was at that time in partnership with one other. That person resigned on the 10 November 2021. The partnership relationship had irretrievably broken down leading to his resignation.
- 5.3 An inspection of the firm was authorised by Law Society's Director of Financial Compliance and took place between the 22- 24 July 2019.
- 5.4 The inspection in July 2019 found that the firm held a significant amount of historic client and Invested funds. The inspectors noted -
- a. A sample of approximately 54 Client balances totalling (approximately) £4,356.14 dating back to 2003.
 - b. A sample of approximately 16 Invested Funds balances totalling (approximately) £23,425.75 dating back to 2012.
- 5.5 In response the Respondent explained *"the vast majority of balances were incorrectly held, and certainly any such significant balanced (sic) are historic relating to the period prior to me taking over as cashroom manager. A full review of all client ledger cards is underway and balances are being dealt with appropriately."*

"For the more historic cases many of the fee earners are no longer with the firm. While we will endeavour to complete the work as quickly as possible, given the historic nature of many of the

cases this may take a little time, but I would hope to have the vast majority dealt with by end November and certainly by the end of this year. ”

- 5.6 The inspectors observed significant concerns with Respondent’s capabilities as cashroom manager. The inspectors highlighted concerns with the implementation of Rules B6.4.1, B6.11, B6.15, B6.7.3 and B6.5.1. No conduct action was taken. The Respondent undertook to carry out remedial action.
- 5.7 A further inspection was to take place in October 2021, some of the relevant accounting records were received by the Society from the firm on 1 October 2021.
- 5.8 On receipt the Society’s inspectors concluded that all client balances held required investigation to determine what work remained outstanding. Nothing had been produced to suggest any of the work referred to in the 2019 inspection had been done and it was noted the retention of these sums is a long standing and significant Accounts Rule breach.
- 5.9 The records received on 1 October 2021 were further considered by the Client Protection Sub Committee on the 12 November 2021, the Sub Committee noted a Client Account surplus close to £15,000. Further it was noted at the Client Protection Sub Committee meeting on the 22 November 2021 that the Client Trial Balance was 53 pages long and listed 690 Client balances the majority of which were credits. Some dated back to 2016. The Respondent had not fully remedied the surplus following the inspection report in 2019.
- 5.10 The Society was alerted to significant concerns about the firm specifically the resignation of the Respondent’s partner, locking of the firm’s premises, removal of files and a conflict with the firm’s landlord in November 2021. The Client Protection Sub Committee on the 12 November 2021 instructed an intervention in terms of S46(1) of the Solicitors (Scotland) Act 1980. As a result, on Monday 15th November 2021 Society staff attended the offices of the (former) practice of Conveyancing Direct to secure the deeds etc... Work began to catalogue the client and other information present there on the Sub Committee’s order. The Society in effect took control of the practice on that date.
- 5.11 Following intervention, the Society staff observed that there were 593 client credit balances. The client credit balances totalled £829,547.50. There were client debit balances totalling £11,419.99. Since intervening the Society has spent more than 990 staff hours on the

intervention. As of 1 February 2025, there remained £44,702.19 in client credit balances for which the intervention team continues to seek a home.

6. Having considered the foregoing circumstances, the Tribunal found the Respondent Not Guilty of Professional Misconduct. The Tribunal declined to remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980.
7. Having heard both parties in relation to the issues of expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 3 April 2025. The Tribunal having considered the Complaint dated 7 January 2025 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Martine Germaine Bisiaux, 15 MacCallum Drive, Cambuslang; Finds the Respondent Not Guilty of Professional Misconduct; Finds the Complainers liable in the expenses of the Respondent chargeable as the same may be taxed by the Auditor of the Court of Session on a party and party basis in terms of Schedule 1 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 as amended with a unit rate of £18.00; and Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Beverley Atkinson

Vice Chair

8. 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 8 MAY 2025.

IN THE NAME OF THE TRIBUNAL



Beverley Atkinson

Vice Chair

NOTE

At the virtual Hearing on 3 April 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal had before it the Complaint and a Joint Minute between the parties. The Joint Minute agreed (a) all of the averments of fact; (b) an additional statement of fact; (c) the averments of duty; and (d) that the “Respondent admits professional misconduct on the basis of the Complaint”.

Following some discussion, the Fiscal made a motion to formally amend the Complaint to incorporate the additional statement of fact noted in the second paragraph of the Joint Minute. Mr Macreath had no objection to that motion and it was granted by the Tribunal. No evidence was led and both parties made submissions.

SUBMISSIONS FOR THE COMPLAINERS

Mr Stewart took the Tribunal through the averments of fact in the Complaint. He emphasised that the Respondent became the cashroom partner in November 2018 and that it was the inspection in July 2019 by the Financial Compliance Department of the Law Society that identified significant failings with regard to client credit balances. In answer to a question from the Tribunal, he confirmed that the invested funds referred to at what is now finding in fact 5.4(b) were client credit balances held as invested funds, rather than just in the client account and were in addition to the figure of 54 referred to in paragraph 5.4(a). He explained that the Financial Compliance team decided to give the Respondent an opportunity to carry out a full review of these balances and the Respondent undertook to address them.

He stated that a further inspection was due to take place in October 2021 and, in advance of that, some records had been provided to the Financial Compliance team. He stated that the inspectors concluded from these records that all client balances would require to be investigated. As matters transpired, a full inspection did not take place as the Law Society intervened in terms of Section 46(1) of the Solicitors (Scotland) Act 1980 (“the 1980 Act”). In response to a question from the Tribunal, Mr Stewart conceded that the Financial Compliance team had not carried out an analysis of the 690 client balances, to estimate what percentage were inappropriately held, before the matter was considered by the Client Protection Sub Committee on 12 November 2021 and he explained that the Interventions team were concentrating on finding homes for the credit balances. He submitted to the Tribunal that it was implicit that the balances had been held too long and that there was too much held in the client account.

The Tribunal drew Mr Stewart’s attention to, what is now, paragraph 5.9 which states that some credit balances dated back to 2016. He conceded that it was reasonable to deduce from this that some credit balances had been

dealt with, as the inspection of 2017 had referred to balances dating from 2003, but he could not provide any information to clarify that. The Tribunal asked Mr Stewart if he was inviting the Tribunal to hold that the number of credit balances in themselves was enough for the Tribunal to find that there had been a breach of Rule B6.11 of the Practice Rules 2011. Mr Stewart responded that he considered it a “step too far” to require specifics for each credit balance. He drew the Tribunal’s attention to the number of credit balances described in paragraph 5.8 and submitted that he would return to the matter of professional misconduct later in his submissions.

He explained to the Tribunal that following intervention, 593 client credit balances were identified, but he conceded that this figure would have included live transactions, that were transferred to another firm for completion following the intervention. He emphasised that there remained over £40,000 of credit balances for which the Law Society could not find a home.

Mr Stewart reminded the Tribunal of the test for professional misconduct set out in the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313. He referred to the case of The Council of the Law Society of Scotland v Matthew Cohen [July 2022], which had held that a breach of Rule 6.11 was professional misconduct.

The Tribunal drew the Fiscal’s attention to the specific details provided in relation to the client credit balances provided in Cohen. The Fiscal submitted that it was sufficient for his averments to show that there was a large number of credit balances in 2019, which dated back to 2016, and that it was admitted that there were still client balances dating back to 2016 in 2021.

The Tribunal drew the Fiscal’s attention to the lack of information in the present Complaint regarding the duration of any of the client credit balances, the individual sums involved and whether there had been a reason for the funds to be held, all set against the background of no information describing the turnover of the firm or the number of clients/transactions dealt with on a normal basis. Mr Stewart submitted that it was not necessary for the Complainers to provide the Tribunal with any information in relation to the reasons why the funds were held by the firm and pointed to the case of Cohen which he said supports this proposition. He stated that he recognised that there was a lack of information in relation to the duration of any of these credit balances but submitted that the sheer number of credit balances was sufficient in itself to establish a breach of Rule B6.11. He stated that the lack of rectification, together with an increase in the number of credit balances by 2021, demonstrated that the Respondent was not dealing with credit balances appropriately.

Mr Stewart explained that the second element of professional misconduct averred against the Respondent was a failure to acquire and maintain the required skills of a cashroom manager. He submitted that the continued

volume of credit balances, noting that that Respondent became cashroom partner one year before the first inspection, and the cessation of the firm was sufficient for the Tribunal to hold that the Respondent had not maintained the required skills of a cashroom manager. The Tribunal drew the Fiscal's attention to the averments of fact that the Law Society intervened in terms of Section 46(1) of the 1980 Act, which relates to the ill-health of a sole practitioner. Mr Stewart explained that there was a background to the intervention which included a breakdown in the relationship between the Respondent and a former partner of the firm; staff and the Respondent being unable to get access to the office; and the eventual ill-health of the Respondent which resulted in her being unable to continue as a sole practitioner. In answer to a question from the Tribunal, Mr Macreath confirmed that it was the Respondent who drew some of this information to the Law Society's attention and it was the Respondent who invited the Law Society to intervene.

The Tribunal drew the Fiscal's attention to inconsistency in his submission that no action had been taken to remedy the credit balances noted in 2019, when the inspection of 2019 noted 54 balances dating back to 2003 and the Subcommittee noted credit balances dating back to 2016. The Fiscal explained that his submission was based on information related to him by the Financial Compliance Team but he conceded that this did not fit well with other averments.

The Tribunal asked the Fiscal if there was a distinction between acquiring/maintaining skills and actually exercising these skills. The Fiscal invited the Tribunal to draw an inference from the number of credit client balances that the Respondent was in breach of Rule B6.13.2.

The Tribunal drew the Fiscal's attention to the Joint Minute and asked him if the admissions therein assisted with the points being raised relating to the factual content of the averments of misconduct at Part A of the Complaint. The Fiscal responded that he did not consider that his averments at Part A were something to be admitted. He emphasised that these paragraphs were not to be treated as averments of fact covered by the Joint Minute and that he would not rely upon anything admitted in the Joint Minute as putting "handcuffs" on the Tribunal in relation to the averments at Part A of the Complaint. He conceded that he was inviting the Tribunal to draw an inference from the large number of credit balances that the conduct was a breach of Rule B6.13.2.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath submitted that the terms of Section 53(1)(a) of the 1980 Act required that the Tribunal be satisfied that the Respondent was guilty of professional misconduct.

He explained that he had been involved in this matter on behalf of the Respondent since late 2019 or 2020. He had expected the Law Society to lodge the Financial Compliance inspection report and an extract minute of the Committee meeting where the Respondent was interviewed.

He explained that the Respondent had purchased the business from her former partner on terms which made it impossible for her to run the business as a sole practitioner. The Respondent invited the intervention by the Law Society.

Mr Macreath explained that this was a volume conveyancing business, with many instructions being online. At the time of the intervention, there were substantial credit balances but many of those would have related to current transactions.

He stated that the landlord of the premises was the former partner and his wife. Not only was the Respondent prevented from gaining access to the office, but the IT system was disabled by 9 or 10 November 2021, ultimately leading to the invitation to the Law Society to intervene.

Mr Macreath stated that he became aware of the Respondent's issues relating to historic credit balances in approximately February 2020. The Respondent gave an undertaking that these would be addressed, and two members of staff were employed for that purpose. This was a busy conveyancing practice, completing 120 transactions per month. It was easy to understand how credit balances could build up quickly.

Mr Macreath recognised that the Fiscal was having difficulty, as it appeared he had not been given the relevant information. He explained that there had been an interview of the Respondent in February 2020 where the issues of credit balances were raised and the Respondent had conceded that balances were outstanding.

The Tribunal asked if there was material available to the Complainers, not produced, that would have specifically set out those matters and whether the Fiscal had any motion to make. Mr Macreath stated that there was an interview of the Respondent in 2020, and a client trial balance of October 2021 which disclosed credit balances, mostly of a small amount. Mr Macreath emphasised that by October 2021, the business was no longer within the Respondent's control.

In answer to a question from the Tribunal, the Fiscal explained that the concession by the Respondent noted at paragraph 5.5 above was in response to matters arising from the inspection in 2019.

Mr Macreath explained that an interview of the Respondent took place in February 2020 and that there existed a minute of the Sub Committee meeting dated 2 April 2020. The Fiscal stated that that minute was not within

his papers. The Fiscal explained that he had not lodged the Financial Compliance Team inspection report as all of the factual averments were agreed, although he recognised the difficulties the Tribunal was now having.

Mr Macreath submitted that the issue of professional misconduct was something for the Tribunal to assess and the onus of establishing professional misconduct remained with the Fiscal.

DECISION

The Joint Minute between the parties agreed all of the facts which were now repeated at paragraph 5 above.

The Complainers set out at Part A of the Complaint, what the Tribunal will refer to as averments of misconduct, the following:-

- A1. The Respondent failed, or, at least unduly delayed in the period between October 2019 and 12 November 2021 in ensuring that all money held for or on account of the practice unit's clients was returned to those clients as soon as there was no longer any reason to retain that money, in breach of Rule B6.11.1 of the Law Society of Scotland Practice Rules 2011.*
- A2. The Respondent in the period 1 November 2018 and 12 November 2021, failed to use reasonable endeavours to acquire and maintain the skills necessary to discharge her responsibilities as the practice unit's designated Cashroom Manager, as illustrated by the large client balance and her failure to rectify the same in breach of Rule B6.13.2 of the said Practice Rules.*

In his submissions, the Fiscal invited the Tribunal not to treat anything in these paragraphs as averments of fact to be seen as agreed by the content of the Joint Minute.

The essential facts that were agreed by the parties were that an inspection took place in July 2019 that found that the firm held a significant number of historic client balances. A sample indicated 54 dating back to 2003 and 16 dating back to 2012. The Respondent conceded that "*the vast majority*" were incorrectly held.

Documents were provided to the Law Society on 1 October 2021 in advance of a planned inspection. It is said that "*nothing had been produced to suggest any of the work referred to in the 2019 inspection had been done*". At a subsequent Client Protection Sub Committee meeting, it was noted that the client trial balance disclosed 690 client balances "*the majority of which were credits*". Some dated back to 2016. It was said that the Respondent had not fully remedied the surplus following the inspection report in 2019. Following the intervention in November 2021, it was noted that there were 593 client credit balances.

There was an obvious and significant contradiction in the submission put forward by the Fiscal. It was suggested there was a failure on the part of the Respondent to rectify issues with the historic credit balances identified in the 2019 inspection. That had identified at least 72 balances that pre-dated 2016. However, in 2020, it is said that “*some*” of the client balances noted then dated back to 2016. On the face of the facts before the Tribunal, these 72 credit balances must have been dealt with.

The Tribunal was dependent upon drawing inferences from the number of credit balances held. However, the Tribunal was told that this was a volume conveyancing practice, settling around 120 transactions per month. Such a firm was likely to have hundreds of live transactions, at one stage or another, at any given time. Conveyancing practices often hold large sums of client funds which can include deposits and purchase funds. The Tribunal had little information, if any, from which it could infer that funds were inappropriately held. The case of Cohen was of little assistance to the Tribunal. In that case there was specific information given relating to a list of credit balances, the Complainers produced the Financial Compliance Team’s inspection report and the Respondent admitted “all the breaches of rules”. In the present case, the Tribunal may have been in a stronger position to draw appropriate inferences from the averments of fact, if the averments of misconduct at Part A had been admitted. However, the Fiscal submitted that these averments were not to be treated as agreed by the Joint Minute.

In relation to the allegation at paragraph A2, the Tribunal considered that the “acquiring and maintaining” of skills was quite different to putting those skills into practice. Whilst it may be possible to draw inferences from the extent or character of the breaches of the Accounts Rules that the practitioner lacked the appropriate skills, it was not possible here.

The Tribunal was not satisfied that the Complainers had established breaches of the Rules. Even if the Tribunal had been in a position to hold that there had been a breach of the Rules, there was no information upon which the Tribunal could even begin to assess the standard of conduct.

The Tribunal found the Respondent not guilty of Professional Misconduct and, on the basis of the information before it, declined to remit the Complaint in terms of section 53ZA of the 1980 Act.

EXPENSES AND PUBLICITY

Neither party had any submissions on publicity. Mr Macreath moved for expenses to be awarded to the Respondent. The Fiscal invited the Tribunal to make a finding of no expenses due to or by either party. He emphasised the lengthy involvement of the Professional Conduct Subcommittee.

The Tribunal carefully considered all of the information before it. Although the Fiscal had not referred to it, the Tribunal noted that these are disciplinary proceedings and that the Complainers were acting as the regulator of the profession in raising this Complaint. The Respondent had entered into a Joint Minute and, on the face of it, cooperated fully with the Complainers. The Respondent was found not guilty and no order was made in relation to section 53ZA. The Tribunal concluded that the fair and appropriate order was to award expenses to the Respondent.

The Tribunal made the usual order for publicity.



Beverley Atkinson
Vice Chair