

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL  
(PROCEDURE RULES 2008)**

**FINDINGS**

**in Complaint**

**by**

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

**Complainers**

**against**

**RUBEN VALAYDON MURDANAIGUM, c/o  
Rubens, 77 Argyll Street, Lochgilphead**

**Respondent**

1. A Complaint dated 27 August 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Ruben Valaydon Murdanaigum, c/o Rubens, 77 Argyll Street, Lochgilphead (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. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 26 November 2018 and notice thereof was duly served upon the Respondent.
5. At the hearing on 26 November 2018, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Lewis Kennedy, Advocate. The Tribunal granted the Respondent's motion to receive amended Answers. The Tribunal granted the Respondent's motion to receive the First Inventory of Productions for the Respondent which had been lodged late. Of consent, the Tribunal

granted the Complainer's motion to adjourn the hearing. The Tribunal fixed a hearing for 19 February 2019 and notice thereof was duly served upon the Respondent.

6. At the hearing on 19 February 2019, the Complainers were represented by their Fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Lewis Kennedy, Advocate. Of consent, the Tribunal received an amended Complaint dated 19 February 2019. Of consent, the Tribunal allowed the Fiscal to amend the amended Complaint. In paragraph 5(d)(ii) the word "January" was deleted and "February" substituted. In paragraph 5(d)(v) "Article 5(b)(iv)" was deleted and "Article 5(b)(vi)" substituted. Mr Kennedy confirmed that there was no Production 13 lodged although it was listed in the Respondent's First Inventory of Productions. Of consent, the Tribunal granted the Respondent's motion to receive late a Supplementary Inventory of Productions for the Respondent, including Production 8, a Cashroom Solutions Report dated 13 February 2019. Mr Kennedy indicated that the Respondent accepted professional misconduct in relation to charges (i), (ii) as amended, (iii), (v) and (vi). The Fiscal indicated that this plea was acceptable to the Complainers. The Tribunal allowed the Respondent to withdraw his Answers and amended Answers. Both parties made submissions.
  
7. Having given careful consideration to the terms of the Complaint, The Tribunal found the following facts established
  - 7.1 The Respondent's date of birth is 6 November 1950. He was enrolled as a solicitor on 11 December 1980. Between 11 December 1980 and 31 July 1990, the Respondent was employed by the Procurator Fiscal Service. From 3 August 1990 until current date the Respondent has been the sole principal of Rubens, 77 Argyll Street, Lochgilphead.
  
  - 7.2 At all material times the Respondent was a sole principal and was the cash room manager and anti-money laundering reporting officer for his practice.
    - a) An inspection of the Respondent's practice was scheduled to take place on 3 March 2016. On Tuesday 16 February 2016, a consultant to the Respondent's practice advised the compliance department of the Complainers that the Respondent's cashier was off sick and was likely to be so for some time. The consultant explained that the cashier was the person who would principally

provide access to the books and records and assist with the inspection process. In the circumstances it was agreed that the inspection would be postponed. It was rescheduled to take place on 16 May 2016. On 26 April 2016 the compliance department for the Complainers was contacted by Cashroom Solutions in Kirkcaldy. They advised that they had been contacted by the Respondent to resolve various record keeping matters and to bring the books and records of the Respondent's practice fully and correctly up to date. By an email dated 28 April 2016 Cashroom Solutions advised the Complainers that the books and records of the Respondent's practice were not compliant for a number of reasons and that no firm or client bank reconciliations has been prepared since August 2014 when a new LawWare system had been implemented. They also confirmed that no postings had been carried out in relation to the firm's records since January 2016 when the Respondent's cashier had gone off sick. The cashier had not returned. Cashroom Solutions also advised that further differences and discrepancies had been noted that could not readily be identified and would not be able to be identified and corrected until all of the entries and records of the Respondent's practice had been completely reposted on to a new LawWare platform. The reposting of all entries including the reconciling of the firm and client bank accounts would be the only way to establish the true financial position of the Respondent's practice from August 2014 to date and to ensure that there were no ongoing differences. To allow this to happen the inspection was further postponed. On 10 June 2016 Cashroom Solutions confirmed that the postings had been carried out from 2014 onwards and that the records were now up to date. They also stated that a number of deficits on the client account had been identified during the reposting exercise.

- b) The inspection commenced on Tuesday 2 and Wednesday 3 August 2016 at the offices of Cashroom Solutions in Kirkcaldy and continued to its conclusion on Tuesday 9 and Wednesday 10 August 2016 at the Respondent's premises in Lochgilphead. Either as a result of reports made by Cashroom Solutions, or from matters discovered during the inspection, the following was established:-
  - i. Between November 2014 and January 2015 the Respondent's client account went in and out of surplus. Between February 2015 and December

2015 the client account was continually in deficit with a surplus position noted on only a few occasions. This continued into 2016. The client account did not finally return to a surplus position until June 2016. The deficit as at the end of February 2015 was approximately £3,000. As at the end of May 2015 it was £7,200. As at 12 April 2016 it was £5,149.35. As at 30 May 2016 it was £8,706.86. During these periods the Respondent's firm also held client funds in respect of unpaid Scottish Legal Aid Board client outlays in the firm account the effect of which would be to reduce any surplus and further increase any deficit. Since 3 September 2014 an additional £980 of client funds had been held on an unallocated nominal ledger on the firm's account, further increasing the deficit position.

- ii. During the months of February, March and April 2016, no postings at all were made in respect of the Respondent's books and records. This was the position from the date on which the cashier went off sick until Cashroom Solutions became involved.
- iii. From 1 August 2014, when the Respondent started to use a Sage system, until the end of April 2016 when Cashroom Solutions were instructed, no firm account, client account or invested funds reconciliations were carried out in relation to the Respondent's practice. As at 31 July 2016 there was a difference on the firm's bank account of £2,073.03 which had yet to be identified or corrected. The Respondent's explanation was that he had assumed that after the Sage system went live, all reconciliations had been carried out as was required. He said that he did not check this and took his cashier on trust when she advised him that she had done the necessary reconciliations. By 16 September 2016 the Respondent was able to advise that the difference (which was now stated to be £3,073) had been identified and rectified but in fact what had been done was that the net amount of the difference had been transferred from the Respondent's drawings account to the firm bank account. As at 27 October 2016 the Respondent conceded that he was unable to explain the discrepancy of £2,073.03, the sum of £1,000 being explained by the movement of fees from the clients account to the firm's account.

- iv. The Respondent submitted accounts certificates to the Complainers dated 31 July 2014, 31 January 2015, 31 July 2015 and 31 January 2016 which confirmed, contrary to the true position as outlined above, that all bank reconciliations had been prepared monthly as required that all books and records were held in compliance with the rules. The figures contained in the certificate dated 31 January 2016 indicated a surplus in the client account whereas the true position was that there was a deficit.
- v. During the period covered by the inspection the Respondent carried out but failed to maintain a record of random sample files checks by the money laundering reporting officer, failed to maintain any record of regular reviews of anti-money laundering procedures, nor staff training records in connection with anti-money laundering compliance save insofar as required by the Scottish Legal Aid Board.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct individually in respect that he maintained his client account in deficit; he failed between February 2016 and April 2016 to carry out any postings on his practice's books and records; he failed between 1 August 2014 and 30 April 2016 to carry out any firm account, client account or invested funds reconciliations; and submitted an accounts certificate which he knew or ought to have known was materially inaccurate. The Tribunal found the Respondent guilty of professional misconduct in respect that he failed to comply with the money laundering regulations *in cumulo* with the individual findings of professional misconduct.
9. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 February 2019. The Tribunal having considered the Complaint dated 27 August 2018 at the instance of the Council of the Law Society of Scotland against Ruben Valaydon Murdanaigum, c/o Rubens, 77 Argyll Street, Lochgilphead; Find the Respondent guilty of professional misconduct individually in respect that he maintained his client account in deficit; he failed between February 2016 and April 2016 to carry out

any postings on his practice's books and records; he failed between 1 August 2014 and 30 April 2016 to carry out any firm account, client account or invested funds reconciliations; and submitted an accounts certificate which he knew or ought to have known was materially inaccurate; and *in cumulo* that he failed to comply with the money laundering regulations; Censure the Respondent; Fine him in the sum of £2,500 to be forfeit to Her Majesty; 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.

**(signed)**

**Nicholas Whyte**

**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 26 MARCH 2019.

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**

**Chairman**

**NOTE**

At the hearing on 19 February 2019, the Tribunal had before it an amended Complaint, an Inventory of Productions for the Complainers, an Inventory of Productions for the Respondent, and a Supplementary Inventory of Productions for the Respondent.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch referred to the amended Complaint which set out the background to the admitted misconduct. At the beginning of 2014, the Respondent's cashroom used a simple computer system and it worked satisfactorily. However, in 2014 the firm started to do some civil litigation work. On the advice of his accountant, the Respondent switched to a Sage system. Although recommended by an accountant, it was not suitable for a legal firm and compliance responsibilities. Therefore, the Respondent decided to install a LawWare system in October 2015.

The Respondent's cashier worked for him for over 20 years. She had attended previous Law Society inspections and produced the books and records. In January 2016, she became unwell. She was absent from work from January until her resignation in July 2016. Not long after her absence on sick leave, the firm, with the assistance of their accountant, identified that there was an issue regarding payment of VAT.

An inspection of the books and records of the firm by the Law Society was scheduled for 3 March 2016. On 16 February 2016, the firm's consultant advised the Law Society that the cashier was off sick and likely to be so for a long time. It was agreed that the inspection would be postponed and rescheduled for 16 May 2016. The Respondent engaged Cashroom Solutions in Kirkcaldy to deal with the books and records. On 26 April 2016, Cashroom Solutions contacted the Financial Compliance Department of the Complainers and informed them that they had been engaged to bring the books and records up to date. On 28 April 2016, Cashroom Solutions advised the Financial Compliance Department that the books and records were not compliant with the Accounts Rules. No firm or client bank reconciliations had been carried out. No postings at all had been carried out since February 2016. There were various differences and discrepancies in the records and Cashroom Solutions recommended a reposting exercise from 2014 onwards. The Law Society's inspection was therefore further postponed. On 10 June 2016, Cashroom Solutions confirmed that the records of the firm were now up to date. Deficits had been identified.



The Complainers' inspection took place in August 2016 at the Cashroom Solutions premises in Fife and at Lochgilphead. It was established that between November 2014 and January 2015 deficits occurred on the client account and this position continued until June 2016. The deficit at the end of February 2015 was £3,000. At the end of May 2015, it was £7,200. At 12 April 2016, it was £5,149.35. As at 30 May 2016, it was £8,706.86. The Respondent had also allowed legal aid money to be paid into the firm account which had further implications under the Accounts Rules. During the months of February, March and April 2016, no postings at all were made in respect of the Respondent's books and records. No reconciliations were carried out over a period of 20 months. The shortage on the firm's bank account was resolved by the Respondent transferring money from his drawings account to the firm's bank account. The Respondent had submitted an accounts certificate on 31 January 2016 confirming that there was a surplus in the client account. However, in fact, there was a deficit.

During the period covered by the inspection, the Respondent had carried out but failed to maintain a record of random sample file checks by the money laundering reporting officer, failed to maintain any record of regular reviews of anti-money laundering procedures, nor staff training in connection with anti-money laundering compliance save in so far as required by the Scottish Legal Aid Board. The Fiscal noted that the Complainers accepted on the basis of the information that they had received that random file checks had been done but no records had been kept of reviews or training.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Kennedy referred to a letter from Cashroom Solutions dated 13 February 2019 which had been slipped inside the cover of the Second Inventory of Productions for the Respondent. The Chair indicated that the Tribunal would receive this letter and would refer to it as Production 8 of the Second Inventory of Productions for the Respondent.

Mr Kennedy noted that there was no dishonesty, misappropriation or loss or risk to client funds. The up to date report from Cashroom Solutions confirms that the firm is now compliant with the operation of the Accounts Rules. Systems are now in place to ensure that there is no repetition of the failings outlined in the Complaint. He noted that the Respondent had not previously appeared before the Tribunal in his thirty eight years of practice.

Mr Kennedy submitted that at the material time the firm operated with the Respondent as its principal. The practice also had an assistant solicitor and a part time consultant solicitor along with three unqualified members of staff. The firm's longstanding cashier was absent on sick leave from about 15

January 2016. She ultimately resigned on 7 July 2016. The proposed inspection of the practice could not go ahead because she was not present. She would normally have provided the inspectors with access to the books and records and assisted with the inspection process. After the agreed postponement of the first inspection, around February 2016, a VAT issue arose. The firm's accountant advised the practice that the accounting records were not properly up to date. In a *bona fide* effort to rectify these discrepancies and deficiencies, which had arisen as a consequence of the cashier's absences and her failure to adapt to the new accounting system, the practice instructed Cashroom Solutions in mid-April 2016. Cashroom Solutions with the full authority of the practice contacted the Complainers to advise of their involvement and gave full information regarding the entries and the rectification of the client and practice's bank accounts. Cashroom Solutions confirmed that all postings had now been carried out from 2014 onwards and that the records were up to date.

Mr Kennedy noted that the Respondent had placed a great deal of faith in his experienced cashier who had worked for him for many years. In addition, the Respondent had engaged an external accountant to review the accounts. That accountant had identified no anomalies at any time during his regular inspections. He had indicated that the systems were satisfactorily reconciled. The Respondent had relied on this information as sufficient to consider that the accounts were in good order. The Respondent accepted a lapse of judgment in this regard but explicitly denied any derogation from his high standards of honesty and good faith. The Respondent implemented in good faith what he considered to be robust financial systems with regular oversight by experienced accountants to regulate financial matters.

Mr Kennedy dealt with each averment of professional misconduct in turn. Firstly, he admitted that the client account was in deficit. It was accepted that this constituted professional misconduct on the basis that the level of cashroom supervision had been inadequate. There had been a failure to exercise control in circumstances in which there was a system in place, but it was operated negligently by the cashier. There was no dishonest intent or bad faith. It was not unreasonable for the Respondent to have placed a considerable degree of trust in a longstanding and experienced member of staff and the firm's external accountant. The Respondent was never warned by either of those individuals that the client account was in deficit. He deferred to their expertise and professionalism. New procedures have been put in place involving Cashroom Solutions so there is no risk of repetition.

Secondly, Mr Kennedy said that the Respondent admitted that the Respondent had failed to carry out any postings on the practice's books and records. However, he had been unaware of this, relying on and deferring to the advice of the cashier and accountant.

Thirdly, Mr Kennedy said that the Respondent admitted that there were reconciliation failures during the time of the cashier's sickness and the adaptation to LawWare.

Fourthly, the Respondent had submitted an accounts certificate which was inaccurate. However, the Respondent had implemented a system and relied upon staff and it was reasonable for him to consider that the matters were being managed satisfactorily.

Mr Kennedy highlighted again the report from Cashroom Solutions dated 18 October 2018 which confirmed that the practice's books and records are now always kept up to date. Cashroom Solutions check their bank account daily and carry out all postings. No cheques leave the practice until Cashroom Solutions have confirmed that sufficient funds are held to cover them. Subsequent inspections were carried out by the Law Society in September 2016 and May 2017 and no irregularities were found. The new corrective procedures are operating successfully.

Mr Kennedy noted that the cashier said she had explained her problems with the accounting system to the Respondent's wife but these concerns were not passed on to the Respondent despite their daily contact and long working relationship. Mr Kennedy clarified that the plea in relation to the accounts certificate is on the basis that the Respondent "ought to have known" that the accounts certificate was materially inaccurate. Mr Kennedy confirmed that the next Law Society inspection is due to take place on 6 March 2019. Mr Kennedy noted that this was not a case where the Respondent was attempting to cut corners. He had a full-time cashier and an additional external accountant. However, he accepted that this was an issue of strict liability or "command responsibility".

The Chair noted that the basis of the plea regarding the accounts certificate was that the Fiscal accepted that this was a situation where the Respondent ought to have known that there were material inaccuracies contained therein. The Chair asked what checks the Respondent carried out before signing the certificates. Mr Kennedy indicated that the Respondent discussed the certificate with the accountant. The Fiscal queried whether the accountant was engaged by the firm at the time of the last accounts certificate on 31 January 2016. Mr Kennedy confirmed that the accountant is still the firm's external accountant. His involvement with the firm continues despite Cashroom Solutions' engagement. Mr Kennedy said that the accountant obviously relied on the information given to him by the cashier. However, regardless of this, it was the Respondent's responsibility to manage the cashroom.

A Tribunal member queried the number of times the accountant had audited the books before suddenly indicating that there was a big problem. Mr Kennedy indicated that the issue crystallised when a member

of staff identified the VAT issue. This precipitated the involvement of the accountant. With reference to Production 14 in the First Inventory of Productions for the Respondent, the Chair asked a series of questions about whether the external accountant was in fact involved with the firm in January 2016. Despite the suggestion in Production 14 that he was not involved with the firm after January 2015, Mr Kennedy said that the accountant has been involved in the preparation of the accounts certificates since the inception of the firm. He continues to do so and now works with Cashroom Solutions. The Chair asked whether the accountant deals with the firm's books only. Mr Kennedy said that the accountant used to do payroll but Cashroom Solutions do this now.

## DECISION

The Tribunal considered carefully the admitted facts contained in the Complaint. The Tribunal was satisfied beyond reasonable doubt that the Respondent had conducted himself in the manner set out in the Complaint.

Solicitors must comply with the Accounts Rules. The client account should never be in deficit. Books and records must be properly kept. Client bank accounts, firm accounts and invested funds accounts must be regularly reconciled. Cashroom managers are responsible for the cashroom. They are responsible for the supervision of the staff and systems employed by the firm to implement the Accounts Rules. Cashroom managers must use reasonable endeavours to advance and maintain the competence of all employees. They must adequately supervise the staff and adequately train them. Solicitors must comply with the Money Laundering Regulations. In addition, practice units must deliver to the Law Society accounts certificates when required. The Law Society is entitled to rely upon these and the information contained therein must be accurate. Solicitors must take care to ensure that the terms of the accounts certificates are accurate.

The Respondent failed in these duties. Having considered the whole circumstances and the Respondent's degree of culpability, the Tribunal was of the view that the Respondent's conduct represented a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors. This was sufficient to satisfy the test for professional misconduct as defined in Sharp-v-The Law Society of Scotland 1984 SLT 313.

The Respondent maintained his client account in deficit for 19 months to the extent at one stage of £8,706.86. He failed for three months between February and April 2016 to carry out any postings on the practice's books and records. For a period of 20 months he failed to carry out any firm, client or invested

funds reconciliations. These failings inevitably led to his inability to submit an accurate accounts certificate. The Tribunal accepted that the Respondent had not knowingly, deliberately or dishonestly submitted a false accounts certificate. However, as cashroom manager, he ought to have known that the certificates were not accurate and therefore should not have been submitted to the Complainers. Each of these failings individually was sufficient to constitute professional misconduct on its own.

The Tribunal noted that the Respondent had also failed to comply with the Money Laundering Regulations by failing to maintain records of his actions. The Tribunal noted the parties agreed position that the work had been carried out but records had not been kept. The Tribunal considered that on its own, this failure did not constitute professional misconduct. However, *in cumulo* with the matters referred to above, this matter did constitute professional misconduct.

### **SUBMISSIONS IN MITIGATION**

Mr Kennedy submitted that the Respondent had a strong and reliable relationship with his support staff. He had placed a considerable degree of trust in the staff working with the accountant. Perhaps he had been too trusting. He regrets this unfortunate lapse of judgement. The Respondent has not appeared before the Tribunal before. The process had been stressful and humiliating for him.

Mr Kennedy noted that if the Respondent was restricted, it would result in the immediate closure of the firm and the redundancy of the assistants and secretary. The Respondent's firm is the only permanently manned firm in the area. Absent this firm, the area would be a "Legal Aid advice desert". There would be no access to the rule of law and extensive collateral damage.

Mr Kennedy submitted that the Respondent as a responsible principal had fully rectified the situation and that the matter could be appropriately dealt with by way of Censure and Fine. Cashroom Solutions are now the cashiers of the firm. They are in contact with the firm several times a day. They deal with the LawWare input and conduct the firm's bank records. Cheques must be approved by the Respondent and Cashroom Solutions. Any bank transfer must be approved by Cashroom Solutions.


### **DECISION ON SANCTION**

The Respondent's conduct demonstrated a series of failures over a prolonged period. The accounts certificates breaches were of concern. However, the Tribunal had regard to the circumstances. An employee had not fulfilled her duties properly and the Respondent relied on the assurances of an external

accountant. The Tribunal also noted that the Respondent had now implemented proper systems. It was pleased to note that he had involved a company to assist with the cashroom functions. Their continuing involvement demonstrated that the Respondent had insight into his misconduct and had taken steps to ensure that there was no repetition. The Tribunal considered the conduct in the present Complaint to be the lesser end of the scale of professional misconduct.

The Tribunal considered the appropriate sanction. It considered that a Censure alone would be insufficient to reflect the seriousness of the conduct in this case, especially the submission of inaccurate accounts certificates. It considered that the appropriate sanction was to Censure the Respondent and impose a fine. The Tribunal considered whether a restriction of the Respondent's practising certificate was necessary in this case for the protection of the public. However, it concluded that the Respondent had to some extent been a victim of circumstances. His insight into the problems by engaging and retaining Cashroom Solutions since 2016 demonstrated that a restriction was not necessary as the public was not at risk.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.



**Nicholas Whyte**  
**Chairman**