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

F I N D I N G S

in Complaint

by

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

Complainers

against

EDWARD THORNTON, E Thornton & Co. Solicitors, 17-19 Lochside Street, Oban

Respondent

1. A Complaint dated 29 November 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Edward Thornton, E Thornton & Co. Solicitors, 17-19 Lochside Street, Oban (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 fixed a procedural hearing for 20 March 2019 and notice thereof was duly served on the Respondent.

5. At the procedural hearing on 20 March 2019, the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was not present but was represented by Christopher Kelly, Advocate. The Tribunal fixed a hearing for 18 June 2019. Notice thereof was duly served upon the Respondent.

6. At the hearing on 18 June 2019, the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented by Christopher Kelly, Advocate, instructed by Andrew Vennard, Solicitor, Oban. Of consent, an amended Complaint dated 7 June 2019 was lodged with the Tribunal. The Respondent pleaded guilty to the amended Complaint dated 7 June 2019. No evidence was led. Following submissions, the Tribunal granted the Fiscal's motion to amend the amended Complaint by deleting paragraph 4.0(d).

7. The Tribunal found the following facts established:-

7.1 The Respondent is Edward Thornton. He is designed as care of E Thornton & Co, 17-19 Lochside Street, Oban, Argyll. He was born 18th March 1954. He was admitted as a solicitor and enrolled on the Roll of Solicitors practising in Scotland on 8th September 1977. Between on or about 10th November 1978 to 31st January 1994 the Respondent was a partner in the firm Anderson Banks & Co, Solicitors. Between 1st November 1987 until 31st January 1994 the Respondent was a partner in the firm Elspeth C Black & Co, Solicitors. Since 1st February 1994 the Respondent has been a partner in the firm of E Thornton & Co, Solicitors, Oban. Since 1st June 2000 until 1st May 2017 the Respondent was the cashroom partner to the firm E Thornton & Co.

7.2 Acting in accordance with their obligations in terms of the accounts rules the Financial Compliance Team of the Complainer carried out inspections of the financial records, books and documentation maintained by the Respondent during 2010, 2011, 2012 and June 2016. The inspections revealed a number of matters of concern to the Complainers. These concerns were identified in correspondence with the Respondent. The Respondent did not take cognisance of the issues raised and on a number of occasions the concerns identified were repeated in subsequent inspections.

7.3 The 2010 inspection disclosed a number of outstanding credit balances, some of which had been in existence for a period in excess of six years. By the time of the follow-up visit certain of these balances had been dealt with. The Respondent was warned by the inspectors that he must continue to review any remaining balances on an ongoing basis. Despite this warning a number of such

balances were found again at the time of the 2012 inspection. When the inspectors examined the solicitor's accounts in 2016 further outstanding balances were found. The report produced by the inspectors mentioned some 24 balances. These however comprised a sample of balances which amounted to four figures or more. One of the balances amounted to £14,000. It appeared that some of the balances had in fact existed since 2005.

7.4 The 2010 inspection disclosed significant issues in relation to the practices and procedures employed by the cashroom of the Respondent's firm. A failure to record the solicitors' drawings properly and to show the true position with regard to the Registers of Scotland client bank account. A failure to invest client funds in accordance with what was then Rule 11(2) of the Accounts Rules and a failure to verify invested funds properly.

7.5 The 2010 inspection identified that the practice and procedure adopted by the Respondent in compliance with the relevant Money Laundering Regulations then applicable did not demonstrate compliance on his part. In that the Respondent held no documentation to show that his staff received training in respect of the regulations. There was no evidence of risk assessments being undertaken by the Respondent. A number of files did not demonstrate compliance with the requirements of the regulations in terms of client identification. In one particular transaction, a conveyancing purchase by the client SW, no enquiries were made by the Respondent as to the source of funds or source of wealth of the client.

7.6 The 2010 inspection also revealed that the Respondent employed a manual book-keeping system. The Cashier advised the inspectors of her intention to retire in June 2011. The inspectors noted the trial balance as at 30th September 2010 included a balancing figure of £1,674.56 which would differ each month. The inspection revealed the trial balance had not squared for a considerable time. The Cashier reported that she inserted the balancing figure every month in order to achieve this. Figures from the cash ledger as at 30th September 2010 differed markedly from the figures identified in the trial balance as representing these figures. The inspection revealed the Respondent did not maintain nominal ledgers for either the firm or the client bank accounts. The cash book was not

balanced on the basis of the entries written up. Instead it would appear the bank statement balance was adjusted for outstanding cheques and the resultant balance was used to balance the cash book. The inspection revealed numerous balances over £500 which had not been invested on behalf of the client by the Respondent in particular the inspection identified a balance of £24,087.60 which the Respondent had held on behalf of an executry since 8th January 2009 which had not been invested. The inspection also revealed the Respondent had failed to issue terms of business letters in a number of matters in respect of conveyancing transactions.

7.7 The Financial Compliance Team carried out a follow up visit on 29th June 2011. The inspection revealed that matters had not improved. The trial balance prepared by the Respondent was still in an incorrect format with an absence of relevant information being recorded. Discrepancies occurred monthly resulting in the trial balance not squaring and being correctly prepared. The firm and client bank nominate ledgers in the cash book were still not being totalled or revealing a running balance. The inspectors required to obtain an assurance from the Respondent that all record keeping systems and procedures would be accurately maintained in the future. The inspection revealed the Respondent had failed to issue terms of business letters to clients. The inspection revealed no records to show that any of the staff had received proper training in respect of AML matters. The Respondent was warned that he must address the concerns which were identified to him in particular the concerns regarding AML practices and procedures.

7.8 An inspection was carried out in 2012. It was a limited inspection with a view to ascertaining how successful or otherwise the introduction of a new electronic book keeping system had been. In the course of the inspection it was revealed there had been a failure to identify certain of the firms' clients as well as a party who had introduced funds. It was obvious as a result of the inspection there continued to be a failure on the part of the solicitor to deal with the necessary compliance with the money laundering regulations then in force.

7.9 The 2012 inspection was arranged for 26th and 27th November 2012. The inspectors were aware that the Respondent had installed a computerised system. They identified this date for inspection to allow the computerised system to be implemented and to be up and running for a period of time prior to their inspection. A number of issues arose. The inspection revealed a number of ledgers had been created showing differences and unexplained balances being brought forward from the previous manual system thus allowing the trial balance to square. The figures employed were inaccurate. Certain credit balances were being written off to another nominal ledger. The invested funds figure in the trial balance did not agree with the invested funds total where the client list of balances or invested funds listing a number of transactions occurred within a suspense/errors/imbalancing ledgers account which required explanation. Bank statements received from the bank were issued at various times of the month. This made reconciliation of the account more difficult. The bank reconciliation identified a number of outstanding cheques where the Respondent had failed to investigate these cheques, in particular whether they were out of date or required to be cancelled and re-issued. A number of client ledgers were designed incorrectly.

7.10 Despite the findings in the earlier inspections the 2016 inspection disclosed many rule breaches, some of which had been brought to the attention of the Respondent previously and/or went back to at least to a time when he had introduced the electronic bookkeeping system. It was noted at the 2016 inspection that the inspectors were to discuss a number of matters regarding compliance with the cashier who was unfamiliar with record keeping requirements. The inspectors were so concerned in 2016 that they instructed Respondent to implement adequate systems immediately. It was noted that the explanation advanced by the Respondent was in part due to the firm's former cashier and her subsequent demise. It was noted however that the inspection team had been told by the casher in 2010 that she wished to retire and that the new accounts system would be introduced.

7.11 When a further inspection took place in 2016 this revealed that matters were no better than they had been in 2010. In particular with regard to the firm's policies and procedures in relation to compliance with the money laundering regulations

and in relation to staff training. By the date of this inspection a Money Laundering Reporting Officer had been appointed. This was an individual who was not a qualified solicitor. The Respondent advised that the Money Laundering Reporting Officer had now undertaken full money laundering training. The Reporting Officer had provided training to all staff. This training had been provided to all staff on 11th November 2016. A Policy and Procedure Statement was being amended following upon feedback from discussions which occurred as a result of the training. It was noted however that the Policy and Procedure Statement produced was neither compliant nor relevant to the organisation. In a number of respects it was seriously deficient. This was of concern to the Complainers as it revealed that even after the 2016 inspection the firm run by the Respondent was still not compliant with the regulations. This inspection revealed that the Respondent had been non-compliant with the regulations for a period of at least six years and that there was an absence of understanding on the part of the Respondent of his responsibilities in ensuring that both he and his staff complied with the regulations.

7.12 The 2016 inspection revealed a failure on the part of the Respondent as Cashroom Manager to rectify breaches of the Accounts Rules. The inspection revealed three firm nominal ledgers with balances held brought forward from the manual book system that required to be investigated and adjusted. The inspection revealed a suspense account in which there was a debit of £6.02 as at the date of the inspection which had never reverted to a zero balance. Ledgers which had been highlighted at previous inspections had not been addressed by the Respondent. The firm's books made reference to client balances which did not exist as the bank accounts had been closed. No documentation was produced to show evidence that the firm had designed and implemented risk sensitive policies and procedures in terms of the AML Regulations. There was no evidence that staff had been trained on the issue of the AML Regulations. The inspection revealed out of date cheques.

7.13 During this period of repeated inspections, the Respondent repeatedly completed accounts certificates and delivered them to the complainers advising there were no outstanding problems. The presentation of accounts certificates are an

important tool in allowing the Complainers to assess whether the accounts of a firm are in order. They require to be accurate in terms of their representation.

8. Having considered the foregoing circumstances, and having heard submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his breaches Rules B6.7.1(c), B6.7.3, B6.8.1, B6.11, B6.13 and B6.23.1 of the Law Society of Scotland Practice Rules 2011.

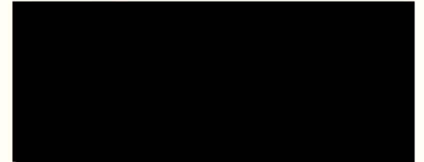
9. Having heard Mr Kelly in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 June 2019. The Tribunal having considered the Complaint dated 7 June 2019 at the instance of the Council of the Law Society of Scotland against Edward Thornton, E Thornton & Co. Solicitors, 17-19 Lochside Street, Oban; Find the Respondent guilty of professional misconduct in respect of his breaches of Rules B6.7.1(c), B6.7.3, B6.8.1, B6.11, B6.13 and B6.23.1 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine him in the sum of £1,000 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 but need not identify any other person.

(signed)
Colin Bell
Vice Chair

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 19 July 2019.

IN THE NAME OF THE TRIBUNAL



Colin Bell

Vice Chair

NOTE

At the hearing on 18 June 2019, the Tribunal had before it the amended Complaint dated 7 June 2019 and two Inventories of Productions for the Complainers.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal told the Tribunal that the Respondent was 65 years old. He has been a member of the Law Society of Scotland for 42 years. There are no disciplinary matters pending or outstanding. His employment history was set out in the Complaint.

There were four inspections of the Respondent's firm between 2010 and 2014. He failed to address matters of concern brought to his attention and these issues reappeared in subsequent inspections. These involved his record keeping, retention of client credit balances, the records relating to his drawings and the investments of client funds. Of concern to the Society was the lack of compliance with the Money Laundering Regulations. There was no evidence of staff training. Source of funds documents and client identification were not always present. The Money Laundering Reporting Officer was not a solicitor and the Money Laundering Policy Statement was not appropriate for the firm. The Respondent failed to improve his practice and the trial balance remained inaccurate for a significant period, even after he started using a computerised accounting records system.

The Fiscal recorded his thanks to the Respondent and his agent. Time and expense had been saved by negotiating an agreed position. Client funds were never at risk albeit the anti-money laundering failures put the Respondent at risk of unscrupulous clients. The firm has been inspected again and all matters were in order.

SUBMISSIONS FOR THE RESPONDENT

Mr Kelly gave a chronological outline of the facts referring to the various Law Society reports. He noted that the same issues arose at repeated inspections. However, the Respondent had tried to address matters not least by introducing a computerised accounting system in August 2012. The inspection in 2016 showed some issues were still outstanding and other problems had arisen. However, the inspection in 2017 showed a much-improved picture. The "balancing figures" which had been used in the firm's trial balance were resolved after a lot of work by the Respondent, his staff and his accountant.

Mr Kelly noted that the firm's cashier retired in 2012 and offered to make herself available to the firm following the transition to the computerised system but unfortunately she died in early 2013 after a period of illness. The cashier's system was "cumbersome and idiosyncratic". The Respondent had great difficulty tracing records back through the manual system. However, he dealt with the suspense accounts. The matter involving the invested funds account was traced to an issue with the transition to the computerised records. The problems created by the date of bank statements was resolved. Client ledgers were renamed correctly. Mr Kelly explained the circumstances behind some of the retention of historic client balances. One of these had been retained at the request of the client. In another case, funds had been retained and then used in part-payment of a later fee. In another, the firm had been factoring a property for a client. There were no complaints from any clients about these balances.

In relation to the AML position, Mr Kelly said the Respondent carried out risk assessments but did not keep adequate records of these. He had been slow to recognise his anti-money laundering obligations when the emphasis of his business changed from criminal work to conveyancing. However, after the 2010 and 2011 inspections, efforts were made to improve. Formal staff training was instigated in 2016. Styles were circulated. A Money Laundering Reporting Officer was appointed.

DECISION

The Respondent pleaded guilty to the Complaint as amended. Nevertheless, as is its practice, the Tribunal considered the question of professional misconduct independently. On the basis of the admitted facts in the amended Complaint, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the Complaint. According to the test set out within Sharp v The Law Society of Scotland 1984 SLT 313, there are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.

Over a six-year period and despite matters having been drawn repeatedly to his attention, the Respondent failed to keep accounting records necessary to demonstrate compliance with the Money Laundering Regulations (B6.7.1(c)). He failed to keep adequate accounting records to show the true financial position of the practice unit and to ensure the practice unit balance its books monthly and on the last date of each accounting period (B6.7.3). He failed to reconcile the clients accounts and ledgers (B6.8.1). He failed to deal properly with historic client balances (B6.11). As cashroom manager he failed to use reasonable endeavours to acquire and maintain the required skills and to maintain the competent,

supervision and training of his employees (B6.13). He failed to comply with the Money Laundering Regulations (B6.23.1).

The Tribunal had regard to its previous decisions where it was held that in holding funds for clients, a solicitor is in a privileged position of trust. To protect their clients and themselves, solicitors must comply with the Accounts Rules and Money Laundering Regulations. If solicitors are to continue to enjoy the public trust in regard to their financial affairs, they must have careful regard to all the requirements and obligations incumbent upon them as contained in the Accounts Rules. A solicitor in the Respondent's position as a sole practitioner and cashroom manager has responsibility for the books and records and compliance with the money laundering procedures including documenting compliance. Dishonesty was not a feature of this case and there was no risk to client money. However, failure to comply with the Accounts Rules and Money Laundering Regulations is a serious matter. Professional misconduct was established.

SUBMISSIONS IN MITIGATION

Mr Kelly told the Tribunal that the Respondent was 65 years old. Mr Kelly detailed the Respondent's lengthy engagement with community groups. He was Dean of the Oban Faculty between 2012 and 2015. At 65, the Respondent is likely to retire soon but has not yet fixed a date. The Respondent has an unblemished record and it is a matter of great regret to him to appear before the Tribunal. He faced up to his shortcomings and made many admissions from the beginning.

The Respondent has taken steps to prevent reoccurrence. The 2017 report showed improvements. After the 2016 inspection, the Respondent upgraded his computerised system to help ensure compliance with the rules. A SOLAS law accountant is assigned to the firm and makes the posts on a daily basis from the daybooks. This person does the bank reconciliations, checks on uncashed cheques, and deals with the month-end reports, petty cash, backups and the quarterly VAT reports. Mr Vennard is now the cashroom manager. He has an accountancy degree. A qualified assistant acts as the Money Laundering Reporting Officer and ensures training and compliance with the money laundering regulations.

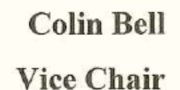
Mr Kelly urged the Tribunal to impose only a Censure. The Respondent recognised the seriousness of the situation. He pleaded guilty. There was no dishonesty or loss to clients. No client complained. New systems, upgraded technology and different personnel are in place. The risk of repetition is low. It was not therefore necessary to remove or restrict the Respondent's practising certificate.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal had regard to the Respondent's plea of guilt, his cooperation with the Fiscal and his remorse. It was impressed by the steps taken to modernise and improve the practice and the practical decision to appoint Mr Vennard as cashroom manager. The risk of repetition was low. The Tribunal noted that the Respondent had an unblemished record and that the most recent inspection was positive.

However, the Complaint revealed an ongoing course of conduct which continued for a significant period. The Respondent was given many opportunities to improve and failed to take advantage of these. Change was slow. It was clear that the Respondent had relied heavily on his cashier who wanted to retire. However, it was his responsibility as cashroom manager to ensure Accounts Rules compliance. Given the length of the course of conduct and the catalogue of errors, the Tribunal considered that the appropriate sanction was Censure with a Fine of £1,000 to mark the seriousness of the offending.

Following submissions on expenses, the Tribunal decided that the appropriate award was one in favour of the Complainers. Mr Kelly moved the Tribunal to avoid giving the case publicity. However, the Tribunal considered that it was obliged in terms of Paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 to publish its decision in full and to name the Respondent. It therefore ordered that publicity should be given to the decision, but it need not name anyone other than the Respondent and his partner. There was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.



Colin Bell
Vice Chair