

**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**

against

**DEEPAK BALI, a sole practitioner formerly
carrying on business as DRB Solicitors, 25/27
Warroch Street, Warroch Business Centre,
Glasgow and now of Moorfoot Investments,
25/27 Warroch Street, Warroch Business
Centre, Glasgow**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Deepak Bali, a sole practitioner formerly carrying on business as DRB Solicitors, 25/27 Warroch Street, Warroch Business Centre, Glasgow and now of Moorfoot Investments, 25/27 Warroch Street, Warroch Business Centre, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were no Secondary Complainers.
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 13 December 2017 and notice thereof was duly served upon the Respondent.
5. The hearing took place on 13 December 2017. The Complainers were represented by their Fiscal Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal allowed the Fiscal to

delete paragraphs 3.17 and 3.20(d) from the Complaint. Mr Macreath formally withdrew the Respondent's Answers. A Joint Minute was lodged admitting the averments of fact, duty and professional misconduct in the Complaint as amended. Of consent, the Tribunal allowed Mr Macreath's motion that the third inventory of productions and the copy of an insurance schedule be received late. No evidence was led. Submissions were made on behalf of both parties.

6. The Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled on 1 July 2004. He practised as a trainee and then an employee at Maxwell MacLaurin, Glasgow and then a partner in Steen Bali until the death of Mr Steen at which point he set up as a sole practitioner under the company name of DRB Solicitors, 25/27 Warroch Street, Warroch Business Centre, Glasgow (DRB). That was on 1 June 2009. That business closed on 8 May 2015. As a sole practitioner he was not only the sole partner but the cashroom partner. He was then a consultant employed by Charles Simmons Immigration Solicitors, Ilford that employment commencing 29 January 2016 and thereafter he was employed by Moorfoot Investments, formerly of Tay House, 2nd floor, 300 Bath Street, Charing Cross, Glasgow and now of 25/27 Warroch Street, Glasgow. That employment commenced 20 March 2017.

LAW SOCIETY FINANCIAL COMPLIANCE – BREACH OF ACCOUNTS RULES

6.2 On 28 January 2015 DRB was inspected by a team of inspectors from the Complainer's Financial Compliance Department (FCD) (the 2015 inspection). The 2015 inspection covered a period from 20 April 2014 to 31 December 2014. That inspection identified a number of breaches of the Accounts Rules, in particular:-

- (i) B6.7.3 and B6.7.4 – true financial position;
- (ii) B6.7.4 and B6.7.5 – properly written up books/retention of accounting records/accounts required to be in books of the practice unit;

(iii) B6.13 – cashroom manager’s responsibilities.

This inspection followed on from Inspections of:-

- (i) 7 August 2009 - when the Respondent assured the Complainers the required books and records to comply with the Accounts Rules would be implemented;
- (ii) 9 July 2010 - when it was identified the books and records had not been written up since 30 April 2010 and monthly reconciliations were not being prepared;
- (iii) 5 September 2011 - when only a partially completed Pre-Inspection Questionnaire was provided and the relevant bank reconciliations, nominal ledgers and trial balances were not available and had not been maintained. No cashbook was kept;
- (iv) 5 April 2013 - when numerous Accounts Rules breaches were identified including B6.7.4 relating to lack of trial balances and cashbook and B6.13 with insufficient records and were in such a condition that it was not reasonably practicable to ascertain definitely the true position; and
- (iv) 24 March 2014 - when again numerous Accounts Rules breaches were identified including identical issues regarding B6.7.4 and B6.13 and in summary indicated the records were in serious arrears back to the date of the April 2013 inspection.

6.3 The Respondent was given notice of the inspection in December 2014 and required to have DRB’s accounting records available for the inspection. He completed a Pre-Visit Inspection Questionnaire. In that document the Respondent indicated he supervised:

- (a) bank lodgements/withdrawals and whilst checking reconciliations he looked out for unusual entries;
- (b) Cashbooks/Daybooks and checked for anything that looks unusual or obvious mistakes;

- (c) Trial balances and checked they did balance, all relate to the current year, all balances were true and correct and that bank reconciliations were carried out for all client and firm account, the latter on a weekly basis.

The reality, as identified in the 2015 Inspection, was that no Cashbook was seen from May 2014; no trial balances were seen and the bank reconciliations seen were incorrect.

- 6.4 Following on from the inspection there was a period of correspondence between the Respondent and FCD when the Respondent was asked to address/resolve concerns raised. The matter was referred to the Complainer's Guarantee Fund Sub-Committee (GFSC) due to a perceived lack of progress by the Respondent and at their meeting of 7 May 2015 it invited the Respondent to interview to discuss matters arising from the inspection.
- 6.5 The interview took place on 18 June 2015. On 2 July 2015 following on from the interview the GFSC determined to refer a complaint to the SLCC in relation to the above issues set out in 3.2 and in addition a complaint in relation to B6.18, namely a failure to co-operate with the conduct of the inspection.

B 6.7.1 to B6.7.4 – TRUE FINANCIAL POSITION

- 6.6 The inspection identified a failure from May 2014 to:-
- (i) Maintain a cash book which recorded all transactions through the firm bank;
 - (ii) Prepare monthly trial balances;
 - (iii) Prepare correct monthly bank reconciliation of the practice unit's records to the bank statements; and that as a generality the practice unit's financial records were not up-to-date.
- 6.7 As a result the FCD could not establish DRB's true financial position. In particular:-

- (i) No firm cash book was seen during the inspection to provide a record of receipts and payments through the firm's bank;
- (ii) No monthly trial balances were seen during the inspection;
- (iii) Bank reconciliations were not prepared correctly as seen during the inspection, in particular outstanding cheques which had been written but not cashed were not reflected on the reconciliations;
- (iv) The necessary books and records of DRB were not up-to-date. This had been raised at previous inspections in 2009, 2010, 2011, 2013 and 2014, where the books and records required had either not been kept or had been in arrears;
- (v) As there had been movement in the client bank account, the client cash book and ledgers were required to be maintained. These were not available for inspection.

6.8 Following on from the inspection there was an immediate request in the inspection report to provide sight of the specific accounting records from May 2014 with confirmation that the specific requirements of the Complainers Practice Rules 2011, including Accounts Rules, (the Rules) were being complied with.

6.9 By 13 March 2015 full records had still not been provided. The firm cash book had still not been provided. A trial balance had been provided to 31 January 2015 but not earlier records which had been requested. Bank reconciliations had been prepared retrospectively but only based on the firm's cheque book. Given the cash book had not been provided, the reconciliation was viewed as inaccurate. Client cash books and ledgers had still not been provided. After that further information was sought by letters of 14 March, 2 April, 21 April, 5 May, 14 May and 29 May, all 2015. In particular, on 1 April further information was sought and some provided. On 21 April 2015 the Respondent was advised by the Complainers that merely renaming his office's petty cash book as "cash book" did not solve the accounting problem he faced. It was noted that he had now instructed other Accountants to prepare a cash book retrospectively. In relation to his trial balance this had been recreated from 20 April 2014 to 28 February 2015 but a trial balance

to 31 March 2015 was still required. The position regarding the bank reconciliation was the same as the trial balance. In addition a reconciliation from 28 February 2015 to 31 March 2015 was still required. Client bank reconciliations from 20 April 2015 until the account had been closed had now been provided. By 5 May 2015 the issues were largely resolved, although the Respondent was asked to correct his bank reconciliation to 30 April 2015 as there was an error. Final accounting records to 8 May 2015 were requested given that the Respondent had applied for a cessation certificate.

- 6.10 It was not until 8 June that the present Complainers were satisfied that the relevant information had been provided from the Respondent's new accountants, over 4 months after the inspection and 1 month after DRB had ceased trading.

**B6.7.4 and 6.7.5 – PROPERLY WRITTEN UP BOOKS/ACCOUNTS
REQUIRED TO BE IN BOOKS OF DRB/RETENTION OF RECORDS**

- 6.11 The inspection also identified a failure to have complete records of the DRB in that the following records were not seen to be held:-

- (i) The month end reports
- (ii) The cash book and
- (iii) Nominal ledger prints

- 6.12 Again attempts were made to have sight of said records during the inspection but this was unsuccessful. The information was ultimately provided.
- 6.13 Following on from the inspection there was again an immediate request in the inspection report to provide sight of the specific accounting records from May 2014 with confirmation that the specific requirements of the Rules were being complied with. The Respondent was given from 31 January 2015 until 27 February 2015 to respond to the Schedules in the Inspection Report. Only a partial response was received.
- 6.14 Accordingly further requests were made on 14 March, 2 April, 21 April and 5 May, all 2015. On 14 March it was made clear that the full accounting records had not

been provided and it was emphasised that the failure to provide a satisfactory response was viewed as a serious matter. On 2 April the Respondent was advised that all the records had still not been provided and it had not yet been shown that DRB's accounting records were complete as required by the Rules. He was advised that the matter would be considered by the GFSC. On 9 April the Respondent provided a limited response but this was not considered correct and by letter of 21 April 2015 the Complainers made this clear and identified the accounting records that still remained outstanding. Despite a further response it was made clear by letter of 5 May 2015 from the Complainers that no evidence of accounting records suggested as being held by the Respondent had been produced. Accordingly, whilst the Respondent provided responses he had not provided the required information and responses and the present Complainers emphasized throughout the correspondence that the onus lay with the Respondent as the cash room manager to do so. As at 5 May 2015 not all the information requested had been provided.

B6.13 - CASHROOM MANAGER RESPONSIBILITIES

6.15 There had been previous concerns raised at prior inspections in relation to the required books and records held by DRB as set out above, namely in 2009, 2010, 2011, 2013 and 2014. The Respondent was the cash room manager at all material times and during the relevant periods.

6.16 In addition the Respondent attended the GFSC interview on 18 June 2015. This followed on from intimation by him to the Registrars Department of the Complainers on 13 May 2015 that DRB had ceased trading. In that interview the Respondent accepted that he did not fully appreciate the extent or level of his obligations but accepted that it was his responsibility to ensure the Accounts Rules were complied with.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect that:

- (a) He failed to keep properly written up accounting records or to hold and maintain such adequate records to show the true financial of DRB in breach of Rules B6.7.1 and B6.7.2 to B6.7.4 of the Law Society of Scotland's Practice Rules 2011, despite

similar issues having been raised at prior inspections in 2009, 2010, 2011, 2013 and 2014.

- (b) He failed to retain for the requisite retention period all accounting records and in particular failed to provide, at the inspection and thereafter, until 5 May 2015, sight of the specific accounting records required in compliance with the Rules despite correspondence of 13 March, 1 April, 20 April and 5 May all 2015 in breach of Rule B6.7.4 and B6.7.5 of the Law Society of Scotland's Practice Rules 2011, despite similar issues having been raised at prior inspections in 2009, 2010, 2011, 2013 and 2014
- (c) In light of the Rule breaches and the nature of them he failed to properly attend to his cash room manager responsibilities in breach of Rule B6.13 of the Law Society of Scotland's Practice Rules 2011 despite similar issues having been raised at prior inspections in 2009, 2010, 2011, 2013 and 2014.

8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 13 December 2017. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Deepak Bali, a sole practitioner formerly carrying on business as DRB Solicitors, 25/27 Warroch Street, Warroch Business Centre, Glasgow and now of Moorfoot Investments, 25/27 Warroch Street, Warroch Business Centre, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect that (a) He failed to keep properly written up accounting records or to hold and maintain such adequate records to show the true financial of DRB in breach of Rules B6.7.1 and B6.7.2 to B6.7.4 of the Law Society of Scotland's Practice Rules 2011, despite similar issues having been raised at prior inspections in 2009, 2010, 2011, 2013 and 2014, (b) He failed to retain for the requisite retention period all accounting records and in particular failed to provide, at the inspection and thereafter, until 5 May 2015, sight of the specific accounting records required in compliance with the Rules despite correspondence of 13 March, 1 April, 20 April and 5 May all 2015 in breach of Rule B6.7.4 and B6.7.5 of the Law Society of Scotland's Practice Rules 2011, despite similar issues having been raised at prior inspections in 2009, 2010, 2011, 2013 and 2014 and (c) In light of the Rule breaches

and the nature of them he failed to properly attend to his cash room manager responsibilities in breach of Rule B6.13 of the Law Society of Scotland's Practice Rules 2011 despite similar issues having been raised at prior inspections in 2009, 2010, 2011, 2013 and 2014; Censure the Respondent; 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 name any other person.

(signed)

Nicholas Whyte
Chairman

9. 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 18 JANUARY 2018 .

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte
Chairman

NOTE

At the Hearing on 13 December 2017, the Tribunal allowed the Fiscal to delete paragraphs 3.17 and 3.20(d) from the Complaint. Mr Macreath formally withdrew the Respondent's Answers. A Joint Minute was lodged admitting the averments of fact, duty and professional misconduct in the Complaint as amended. Of consent, the Tribunal allowed Mr Macreath's motion that the Third Inventory of Productions and the copy of an insurance schedule be received late. No evidence was led. Submissions were made on behalf of both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal highlighted that the Respondent admitted the Complaint as amended. She encouraged the Tribunal to have regard to the Complainers' Productions, particularly the reports produced by the Financial Compliance Department of the Law Society of Scotland. She explained that these were relevant as they showed that the issues discovered in 2015 were not a "one-off" but had been on-going for some time.

The Fiscal submitted that the Respondent did not retain oversight of his books and records. He delegated his responsibilities to in-house or external accountants. He did not ensure, as he should have done, that the records were properly maintained and available for inspection. He was warned of his failings in this regard but chose not to take control of the situation.

The Fiscal made reference to the cashroom manager's responsibilities and how the Respondent had failed fulfil these. She noted that the Respondent had signed accounts certificates even although the 2015 inspection show that the documents which would have allowed him to do that properly were not completed or available.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred the Tribunal to its own decision in the case of The Council of the Law Society of Scotland v Ghazala Ahmed from 2005. He submitted that the circumstances of that case were like the present case in that they both involved technical breaches of the accounts rules. He noted that both firms had originally used the same firm of accountants and had experienced similar difficulties.

Mr Macreath said that the Respondent recognised that cashroom responsibilities are not delegable and he should have kept greater control of the records of his business. He had entrusted his records to accountants who had not done their job properly. However, there was never any risk to the Client Protection Fund or to clients. Once he engaged an accountant experienced in dealing with solicitors' firms, that professional was able to sort out the records quickly and demonstrate the true financial position of the firm. That accountant had found nothing improper in the records. They had not been kept up to date and they did not show the true financial position of the firm. However, there was no loss to anyone. In accordance with his accountant's advice, the Respondent wound up his practice in mid-May 2015. He has no desire to operate as a sole practitioner again.

Mr Macreath drew the Tribunal's attention to the way in which the Respondent had conducted himself when dealing with the Law Society. He highlighted the Guarantee Fund Note of Interview which thanked the Respondent for his forthright responses. The Respondent also provided written submissions to the Committee.

Mr Macreath acknowledged that the Respondent experienced some difficulties resolving the tax situation for a former member of staff. However, he reminded the Tribunal that it can take some time to sort out issues regarding PAYE with HMRC. It can take up to 35 days to get the required code.

Mr Macreath asked the Tribunal to consider the medical report lodged with the Tribunal explaining that both the Respondent and his father experienced poor health during the period in question.

In conclusion, Mr Macreath noted that the Respondent conceded that the behaviour amounted to professional misconduct. He has insight into the problems which occurred and will not repeat them. He is unlikely to appear before the Tribunal again.

DECISION ON MISCONDUCT

Although the Respondent pleaded guilty to professional misconduct, the Tribunal considered carefully the admitted averments of fact in the Complaint and had regard to the relevant test as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In that case it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential

to consider the whole circumstances and the degree of culpability of the individual against whom the complaint it made.

The Respondent had practised as a sole practitioner in a situation where it was impossible to assess the financial position of the firm or the client account from the available records. The Respondent had failed to take effective remedial action despite the problems having been repeatedly drawn to his attention by the Law Society over several years. It is not a defence to blame the bookkeeper or accountant. A solicitor must retain responsibility for the books and records of his/her firm. It is not acceptable to operate as a sole practitioner and be unaware that a cash book is not being maintained or that bank reconciliations are not being carried out. It is essential that books and records are kept properly and that the Law Society can ascertain the true financial position of the firm at any time. It is important that the public can have confidence that the profession can be trusted to comply with the Accounts Rules. Dishonesty was not alleged, and it was accepted that in the circumstances of this case there was no risk to client money or the Client Protection Fund. However, the way the Respondent had failed to keep proper records could have led to very great difficulties. If a problem had arisen, he would not have been able to identify it at an early stage. The Tribunal concluded that the conduct was sufficient *in cumulo* to constitute professional misconduct. It was a serious and reprehensible departure from the standards of conduct to be expected of a competent and reputable solicitor.

The Tribunal noted the Fiscal's submission regarding the signing of the accounts certificate but determined that in fairness to the Respondent, it should have no regard to this aspect of the Complainers' submissions in the absence of specific averments of fact in this regard, since he had not had sufficient notice that the Complainers intended to rely on this conduct.

MITIGATION

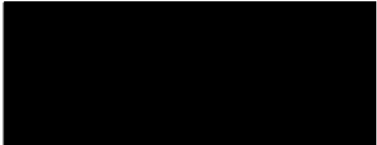
In mitigation, Mr Macreath noted that the Respondent had found it very difficult being a sole practitioner. He had previously been in partnership with another solicitor. However, that solicitor had died suddenly leaving the Respondent to operate the firm on his own. Mr Macreath submitted that the Respondent had been candid and had gone beyond what was required of him when dealing with the Law Society Sub Committee. There was no risk to the Guarantee Fund or clients. There was nothing improper in the records. The Respondent had demonstrated that he had insight into his conduct. He engaged Mr Macreath to advise him regarding the best way to run his business. He recognised that it was appropriate only for him to do a particular type of work which did not involve a client account. However, he required a practising certificate for that work. The Respondent works in a specialised area of public worth. He

had no intention to do any other legal work. There was no risk to him keeping a practising certificate. In a case where no dishonesty or lack of integrity arose, Mr Macreath noted that the primary purpose for the Tribunal was to protect the public.

DECISION ON SANCTION

The Tribunal considered The Council of the Law Society of Scotland v Ghazala Ahmed and noted that it involved similar but not identical issues. That case involved a series of failures to comply with the detail of the Accounts Rules. The Tribunal had regard to the damage to the reputation of the profession caused by this kind of professional misconduct. The Tribunal also noted the fact that the Respondent had not previously appeared before the Tribunal. The Respondent rightly recognised that his conduct had fallen short of the standards expected of him. The Tribunal accepted that the issues regarding the client account were explained by the lack of proper accounting rather than misuse of client funds. It proceeded on the basis that no one had sustained any loss. The misconduct was not at the most serious end of the scale. The fact the Respondent had closed his business within five months of the last inspection showed a level of self-awareness which supported his assertions regarding his future plans as a practising solicitor. The Tribunal did not consider that there was any risk to the public in allowing the Respondent to continue to practise unrestricted. The appropriate sanction in the circumstances was to censure the Respondent. The Tribunal considered whether it was appropriate to impose any restriction on the practising certificate of the Respondent but decided that in the particular circumstances of the case this was not necessary.

After hearing submissions on expenses and publicity, the Tribunal made the usual order with regard to expenses and ordered that publicity should be given to the decision which should include the name of the Respondent.



Nicholas Whyte
Chairman