

**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

**GRAEME BRUCE MURRAY, Hingston's Law
Limited, 10-12 Chapel Street, Aberdeen**

Respondent

1. A Complaint dated 20 December 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Graeme Bruce Murray, Hingston's Law Limited, 10-12 Chapel Street, Aberdeen (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 on his behalf.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 24 May 2019 and notice thereof was duly served upon the Respondent.
5. At the hearing on 24 May 2019, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by David Burnside, Solicitor, Aberdeen.

6. A Joint Minute was lodged whereby parties agreed that Productions 1-10 for the Complainers and Production 1 for the Respondent were true and accurate copies of the original documents and were what they bore to be. Of consent and on the Complainers' motion, the Tribunal amended the Complaint by deleting paragraphs 5.1 (i) and (iv). The Respondent gave evidence.

7. Having given careful consideration to the terms of the Complaint as amended, Answers, the oral evidence of the Respondent, the Joint Minute and Productions, the Tribunal found the following facts established:
 - 7.1 The Respondent was enrolled as a solicitor on 15 February 1982. He became a Partner with Graeme Murray & Co, 10-12 Chapel Street, Aberdeen on 4 January 1993 and from 1 January 2014 to 7 December 2016 was a sole partner of the firm.

He was sequestrated on 7 December 2016. On 2 February 2017 the Complainers' Practising Certificate Committee granted him a restricted Practising Certificate.

From 2 February 2017 he has been an employee of Hingston's Law Limited, 10-12 Chapel Street, Aberdeen, AB10 1SP.
 - 7.2 The Respondent was the Cashroom Manager of Graeme Murray & Co (hereinafter referred to as 'the Respondent's firm') between 1 January 2014 and 7 December 2016. He was accordingly a Manager and a Regulated Person in terms of the Law Society of Scotland Practice Rules 2011.
 - 7.3 From July 2013 until the end of December 2013, the firm's partners Faye Watson and Iain Hingston took on the role of acting Cashroom Managers.
 - 7.4 After the resignation of Faye Watson and Iain Hingston as partners on 31 December 2013, the Respondent became a sole practitioner and took over the position of Cashroom Manager, although Faye Watson agreed to complete a handover period and so the Respondent did not in fact commence official cashroom duties until 9 January 2014.

The Respondent was aware of outstanding issues relating to the firms' books when he took over as Cashroom Manager. He had been a partner since 04 January 1993.

- 7.5 As a result of ongoing problems identified by the Complainers' Financial Compliance Department (hereinafter referred to as 'the FCD'), the Respondent was invited to and attended a "Section 40" Interview with the Guarantee Fund Sub Committee (GFSC) on 17 April 2014.
- 7.6 At this Interview, the Respondent admitted that the accounting records of the firm were not correct and did not accurately record sums due to HMRC or the firm's liability in relation to multiple loans. The Respondent was unable to provide a firm trial balance but committed to providing a corrected trial balance "soon".
- 7.7 The Respondent's firm was re-inspected by the FCD on 18-20 August 2014. At this time the firm's trial balance still did not accurately reflect the true financial position of the Respondent's Firm. In addition, the accounts did not reflect the full liability due to HMRC in respect of VAT and PAYE. The Respondent was given until a re-inspection on 27-28 November 2014 to resolve these various matters outstanding.
- 7.8 At the re-inspection on 27-28 November 2014 it was noted that the firm's trial balance still did not accurately reflect the firm's true financial position. In particular, the FDC had requested in August 2014 that the Respondent obtain from his Accountants necessary adjustments as a matter of priority in order that the Accounts disclosed the correct accounting position. He had failed to do so.

Further, there remained a lack of information regarding the firm's liability to HMRC, particularly in relation to VAT and PAYE.

- 7.9 The FCD referred the Respondent back to the GFSC, which met on 5 February 2015 to consider the ongoing breaches of the Accounts Rules. At this meeting it was concluded that although certain matters remained outstanding, it was clear that the Respondent had carried out a significant amount of work since becoming Cashroom Manager towards resolving failures to comply with the Accounts

Rules. It was therefore decided that he should be permitted a further short length of time to rectify matters fully.

7.10 The GFSC considered matters again on 5 March 2015 and found that there continued to be breaches of the Accounts Rules, in particular there was no up to date trial balance, the position regarding liability due to HMRC was unclear, and various other loans appeared to be outstanding.

7.11 The Respondent attended for another Interview with the GFSC on 21 May 2015. At this Interview he accepted that matters were taking some time to resolve and that he was responsible for the proper management of his firm's books. The books/Accounts still did not reflect the true accounting position.

7.12 Despite repeated requests, no correct trial balance had been provided by the Respondent to the Financial Compliance Department by 1 September 2015. The firm's trial balance had not shown the true financial position of the firm since February 2008.

7.13 The Complainers lodged a complaint with the Scottish Legal Complaints Commission in September 2015 and by letter dated 8 January 2016 the SLCC remitted the complaint back to the Complainers to deal with as a conduct complaint.

7.14 The Complainers thereafter carried out the relevant investigation and report procedure and referred the matter to their Professional Conduct Committee.

7.15 The matter was considered by the Complainers' Professional Conduct Sub Committee on 26 April 2018.

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

8.1 He failed as Cashroom Manager to keep proper accounting records such as are necessary to show the true financial position of the practice unit. In particular, the Respondent failed to provide an accurate and truthful representation in respect

of the practice unit's liability to HMRC for VAT and PAYE contributions, and the practice unit's liability in respect of multiple loans in breach of Rule B6.7.4 of the Law Society of Scotland Practice Rules 2011; and

8.2 The Respondent as Cashroom Manager failed or unduly delayed to rectify breaches of Rule B6 which had been identified by the Financial Compliance Department of the Complainers, thereby breaching Rule B6.4 of the Law Society of Scotland Practice Rules 2011

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

Edinburgh 24 May 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Graeme Bruce Murray, Hingston's Law Limited, 10-12 Chapel Street, Aberdeen ; Find the Respondent guilty of professional misconduct in respect of his breaches of Rules B6.7.4 and B6.4 of the Law Society of Scotland Practice Rules 2011; 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 identify any other person.

(signed)

Kenneth Paterson

Vice 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 14 JUNE 2019 .

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chairman

NOTE

At the hearing on 24 May 2019, the Tribunal had before it the Complaint as amended, Answers, an Inventory of Productions for the Complainers, an Inventory of Productions for the Respondent, and a Joint Minute agreeing that said productions were true and accurate copies of the original documents and were what they bore to be. The Respondent gave evidence. Submissions were made on behalf of both parties.

EVIDENCE OF RESPONDENT

The Respondent gave evidence on oath. He confirmed that the Answers lodged on his behalf accurately reflected his position and were based on the information he provided to his agent. He had to step unexpectedly into the cashroom manager's role with no prior experience. He took advice from the Financial Compliance Department on several matters. He engaged "The Cashroom" at their suggestion. He did his utmost to do everything required of him. During the period in question, he experienced extreme professional and personal difficulties. He was eventually sequestered. The medical report contained in the First Inventory of Productions for the Respondent details the health difficulties he was struggling with at the time. When he was trying to deal with the finances in his old firm, he was also appearing in court every day as a criminal defence lawyer and had no control over how long he had to spend at there each day. At the same time various family members were requiring his support. The pressure on him was "relentless". He admitted that he had failed in his professional duties in terms of the amended Complaint. However, his failures were not wilful. There were simply not enough hours in his day. Every weekend was spent dealing with the Law Society financial compliance issues. He had no respite. He was trying to "keep all the plates spinning" and protect his staff. At present, the Respondent works for Ian Hingston Law. He is an employee there, working for his former partner. He has no involvement in the cashroom. He never wants to be involved in the financial side of business again.

During cross examination, the Respondent accepted that the breaches could not go on forever. He said he did his best to comply with everything. He felt at times that the Financial Compliance Department did not believe the extent of his personal problems. He followed their advice. He brought in "The Cashroom" but then he was criticised when that company did not provide information fast enough. He accepted it was his responsibility to ensure compliance with the rules. There was no one else to do it and he did his best.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid noted that the Respondent had admitted the breaches of the Accounts Rules and that the history was set out in the factual averments in the Complaint. Not all breaches of the accounts rules amount to professional misconduct. However, he submitted that these admitted breaches met test in Sharp v The Law Society of Scotland 1984 SLT 313. In the present case, the firm's records did not show the true financial position of the firm for a significant period. The Respondent took over as Cashroom Manager in January 2014. He was aware of the ongoing problems in the firm. The trial balance had not shown the true financial position since 2008. He was interviewed by the Guarantee Fund Sub Committee on 17 April 2014 and admitted that the records were incorrect. The firm was re-inspected on 18-20 August 2014 and 27-28 November 2014. The matter was referred to the Guarantee Fund Sub Committee on 5 February 2015. It was clear that the Respondent had carried out a significant amount of work. However, some matters were unresolved. He was interviewed again on 21 May 2015 and the position had not changed by 1 September 2015. In Mr Reid's submission, a breach of the Accounts Rules regarding the true financial position of the firm cannot go on indefinitely. The period between January 2014 and September 2015 was too long. The Accounts Rules exist for a reason and solicitors must comply. The Respondent's personal difficulties go to mitigation only.

SUBMISSIONS FOR THE RESPONDENT

Mr Burnside said that the Respondent inherited a mess, but the period from 2008 pre-dates his involvement in the case. That the Respondent's failure to sort out the situation was admitted. As Cashroom Manager he had responsibility for compliance with the rules and this cannot be delegated but it was relevant to know that he engaged the recommended organisation to assist him. Mr Burnside accepted that the period of non-compliance was long. However, the Respondent had tried to organise assistance which had fallen short. He is a busy, well respected solicitor. He had a duty to balance his commitments to fulfil his Law Society obligations. He was doing his level best.

Mr Burnside suggested that the Tribunal would have to be persuaded that the Respondent wilfully paid no attention to the rules and did not cooperate or acted without integrity in order to find him guilty of professional misconduct. Mr Reid disagreed with this submission. He said that in that case, a solicitor could run a firm for many years without demonstrating the true financial position without consequence.

DECISION

Although the Respondent admitted professional misconduct, it was for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. In that case it was emphasised that a serious and reprehensible departure from standards of conduct to be expected of competent and reputable solicitors may properly be 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 is made. The Tribunal did not accept that the breach had to be wilful or show a lack of integrity in order to find professional misconduct. The test for misconduct was as described in Sharp v The Law Society of Scotland 1984 SLT 313.

The Respondent was the cashroom manager for his firm from January 2014 and had been a partner in the firm since 1993. The Tribunal noted that Rules B6.7.4 and B6.4 apply to managers as well as practice units (Rule B6.2.3(a)) although the averments of professional misconduct referred to the Respondent's actions as Cashroom Manager. Cashroom Managers must keep proper accounting records such as are necessary to show the true financial position of the practice unit. The Respondent failed to do so in respect of his firm's VAT and PAYE liabilities and loans. Cashroom Managers must also rectify breaches of Rule B6 promptly. The Respondent failed to do so for a significant period. It is essential that the public can have confidence that the profession can be trusted to comply with the Accounts Rules. 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 on them as contained in the Accounts Rules. The Tribunal concluded that the Respondent's conduct was sufficient 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, particularly when the length of the breach was considered.

The Fiscal tendered a previous finding of the Tribunal against the Respondent. The Tribunal had regard to the fact that a previous finding had been made but considered that the conduct was not analogous. There were also several mitigatory factors to consider. The true financial position had not been evident for some time before the Respondent became Cashroom Manager. He experienced professional and personal difficulties at the time of the misconduct. He made attempts to resolve the situation himself and by engaging "The Cashroom". He demonstrated insight into his situation by explaining that he did not intend to be involved in a cashroom again. The Tribunal considered the letter provided by the Respondent's employer and concluded that there was little likelihood of repetition. There was no

additional requirement to protect the public given the Respondent's current working arrangement. Therefore, the appropriate sanction in the circumstances was a Censure.

The Fiscal moved for expenses and asked that publicity be given to the Tribunal's decision. Mr Burnside indicated that he could not oppose the motion for expenses. He confirmed that there was no reason for the Tribunal to defer giving publicity to its decision in this case. Therefore, 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 and his partners in terms of paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. 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.



Kenneth Paterson

Vice Chairman