

**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**

**JACQUELINE MARIE JOHNSTON, 18  
Grampian Court, Beveridge Square, Livingston**

**Respondent**

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 Jacqueline Marie Johnston, 18 Grampian Court, Beveridge Square, Livingston (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 20 March 2019 and notice thereof was duly served on the Respondent.
5. At the hearing on 20 March 2019, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Of consent, the Tribunal granted the Fiscal's motion to amend the Complaint by deleting the words "*to use reasonable endeavours to acquire and maintain the skills necessary to discharge her responsibilities as the said firm's Cashroom*".

*Partner and Cashroom Manager, and failing*” where they appeared in lines 2-4 of Article 4.1(b) and deleting the words “B6.13.2 and” where they appeared in the last line of said Article. The Tribunal received a signed Joint Minute of Admissions from the parties. Said Joint Minute admitted the averments of fact in the Complaint, the averments of duty (with the exception of breaches of Rules B1.2, B1.10 and B6.13.2), and the averments of misconduct as amended. The Joint Minute also admitted productions 1, 2, 3, 4, 6 and 7 for the Complainers as true and accurate. The Tribunal allowed the Respondent to withdraw her Answers.

6. Having given careful consideration to the terms of the Complaint, The Tribunal found the following facts established

- 6.1 The Respondent is a solicitor enrolled in the Registers of Scotland. Her date of birth is 21 October 1957 and she was enrolled on 25 September 1980. Since 1 February 1995 she has been the principal and sole partner of Currie Johnston & Company, 18 Grampian Court, Beveridge Square, Livingston (hereinafter “the firm”). She has also been the Designated Cashroom Partner and Manager since 1 June 2000, and is also the firm’s Client Relations Partner, and the Anti-Money Laundering and Compliance Partner.
- 6.2 The Financial Compliance Department of the Complainers conducted an inspection of the financial records, books, accounts and documentation of the firm on 2 and 3 February 2009. This inspection identified a number of concerns highlighted in an Executive Summary produced by the said Department. The matters highlighted included breaches of Rules 4; 6(1)(c); 8(4); 9; and 24 of the Solicitors (Scotland) Accounts Etc. Rules 2001 and possible delays in recording deeds in breach of Rule 3 of the Solicitors (Scotland)(Client Communication) Practice Rules 2005. All of these matters were to be addressed by the Respondent and to be reconsidered at any subsequent inspection.
- 6.3 The Financial Compliance Department of the Complainers conducted a further inspection of the financial records, books, accounts and documentation of the firm on 5 and 6 March and 27 April, all 2012. This inspection identified a number of concerns highlighted in an Executive Summary produced by the said Department. The matters highlighted included the said firm’s records failing to show the true

financial position of the practice, the payment of client outlays not being met through the client account, the possible revolving of funds and cross-firing of cheques, the said firm's day books not being brought down and closed on a daily basis, the possibility of potentially excessive fees being rendered to clients, delays in the recording of deeds and potential deficits on the said firm's accounts. Said concerns were in breach of Rules B 6.5.1(d); B 6.7.1; B 6.7.4; and B 6.11 of the Law Society of Scotland Practice Rules 2011 (hereafter "the 2011 Rules"). The said Department determined that their report be considered by the Complainers' Guarantee Fund Sub-Committee and following consideration of these matters by the said Committee, an investigation of the firm was authorised. Said investigation took place between May and July 2012. The said Department produced an investigation report. Following upon said investigation, the maintenance of the said firm's financial records improved and the said Department noted that the said firm remained in a surplus position throughout the period of the investigation and no further deficits were noted. The said Department were also satisfied that all clients funds were properly accounted for and that all fees rendered were considered reasonable. The said investigation confirmed that the accounting practices and record keeping procedures of the said firm had been satisfactorily amended and improved to allow the true financial position of the said firm to be ascertained and that as a result of these improved procedures, there was more transparency within the records of the said firm. The said Department accordingly recommended to conclude the investigation of the said firm as at 26 July 2012 but that a further inspection of the said firm be carried out in April 2013.

- 6.4 The Financial Compliance Department of the Complainers conducted a further inspection of the financial records, books, accounts and documentation of the firm on 15 and 16 April 2013. This inspection identified some concerns involving the payment of client outlays by a credit card, a loan due by the said firm not being fully reconciled, and there being an outstanding VAT liability. Whilst those concerns were raised, the said Department determined that the said firm's books and records were generally compliant with the said 2011 Rules and matters were dealt with by way of correspondence between the said firm and the said Department.
- 6.5 The Financial Compliance Department of the Complainers conducted a further inspection of the financial records, books, accounts and documentation of the firm

on 14 and 15 May and 8 June, all 2015. This inspection again identified a number of matters which had previously been highlighted by the said Department. Said matters were detailed in an Inspection Report and Executive Summary produced by the said Department. The matters which then were of serious concern included numerous postings being reversed, inadequate reconciliations of the said firm's day books, deficits on the client and firm's accounts, the day books of the said firm not being closed on a daily basis, cheques being drawn where no funds were held to meet said cheques, erroneous and misleading information being contained within the financial records of the said firm, unauthorised overdrafts, and the said firm's records failing to show the true financial position of the said firm. Said matters were in breach of Rules B 6.3.1; B 6.3.1(a); B 6.5; B 6.5.1(d); B 6.7; B 6.7.4, and B 6.13 all of the said 2011 Rules.

- 6.6 As a result of the concerns highlighted by the said Department during the course of the inspection of the said firm in May and June 2015, the said Department concluded that the risks and findings in relation to the said firm were of such a serious nature that it merited that the said Department's report be considered by the Complainers' Guarantee Fund Sub-Committee or Client Protection Sub-Committee.
- 6.7 The Complainers' Client Protection Sub-Committee met on 3 December 2015 to consider the matters raised during the course of the said inspections by the Complainers' Financial Compliance Department and in particular the inspection carried out in May and June 2015. Said Sub-Committee also had available to it the previous inspections of the said firm undertaken by the Complainers' Financial Compliance Department and noted that issues had arisen in relation to the said firm's accounting records dating back to 2009 and although improvements had been noted by 2012, concerns were raised that a number of similar issues had re-arisen. The said Sub-Committee accordingly resolved to invite the Respondent to attend for interview and to refer the breaches of the said 2011 Rules to the Scottish Legal Complaints Commission.
- 6.8 The Respondent subsequently attended a meeting and interview with the Complainers' Client Protection Sub-Committee on 21 January 2016. She attended said interview with her agent. The said Sub-Committee resolved to allow the

Respondent a period of time to instruct a qualified legal cashier to review and report on the said firm's cashroom procedures and, if so advised, to prepare a report relating to the Respondent's operation of the said firm's cashroom.

6.9 The Financial Compliance Department of the Complainers conducted the further inspection of the financial records, books, accounts and documentation of the firm on 12 September 2016. This inspection identified two matters in relation to possible breaches of Rule B 6.7.1 of the said 2011 Practice Rules and that in relation to posting dates and narratives on certain cashroom entries. The said Department however highlighted the improvement in the record keeping of the said firm and determined that there were no areas or concerns arising from the said inspection.

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

7.1 The Respondent failed to comply with Rule B6.7 of the Law Society of Scotland Practice Rules 2011 in the period preceding, and at least up to, 3 December 2015 in respect that the said firm has not at all times kept properly written up such accounting records as are necessary to show all of the said firm's dealings with clients and other money, and without prejudice to that generality, has failed to keep properly written up at all time such accounting records are necessary to show the true financial position as required by Rules B6.7.3 and B6.7.4;

7.2 The Respondent in the period preceding, and at least up to, 3 December 2015 failed to use reasonable endeavours to advance and maintain the competence of all officers and employees of the said firm, failing to adequately supervise or arrange for the adequate supervision of all such officers or employees, or to adequately train or arrange for the adequate training of all such officers and employees insofar as the duties of such officers and employees involve compliance with Rule B6 of the Law Society of Scotland Practice Rules 2011 thereby being in breach of Rule B6.13.3.

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

Edinburgh 20 March 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Jacqueline Marie Johnston, 18 Grampian Court, Beveridge Square, Livingston; Find the Respondent guilty of professional misconduct in respect of her breaches of Rules B6.7.3, B6.7.4 and B6.13.3; Censure the Respondent; Fine her in the sum of £10,000 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.

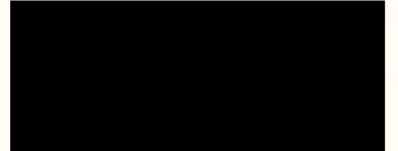
**(signed)**

**Colin Bell**

**Vice 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  
11 APRIL 2019

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Vice Chairman**

**NOTE**

At the hearing on 20 March 2019, the Tribunal allowed the Fiscal to amend the Complaint. Mr Macreath formally withdrew the Respondent's Answers. A Joint Minute was lodged. No evidence was led. Submissions were made on behalf of both parties.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal indicated that the Complainers made no allegation of dishonesty or lack of integrity against the Respondent. The first inspection of the Respondent's firm took place in February 2009 and identified potential breaches of the 2001 Rules. The Respondent's accounts were not in order and reconciliations were not being carried out. The next inspection in March and April 2012 raised issues regarding the true financial position of the firm, the use of revolving funds and cross-firing of cheques, and general record keeping. The true financial position of the firm could not be ascertained because the daybooks were not being closed on a daily basis. Outlays were being settled by credit card. The Financial Compliance Department sought authority from the Guarantee Fund Sub Committee for an investigation. That investigation took place in May and July 2012. By that time, steps had been taken to address the issues identified and no further action was required. The firm was next inspected in April 2013 and potential issues arose regarding the use of credit cards. However, no formal action was taken.

The firm was re-inspected in May and June 2015. The key findings are contained on page 4 of Production 4 for the Complainers. Such were the level of concerns that the matters were reported to the Complainers' Guarantee Fund Sub Committee. There was a reoccurrence of some of the issues highlighted in past inspections. Daybooks were not being closed off. There were many errors in the records necessitating corrections. It was not possible to establish on a daily basis whether there was a surplus on the client account. The Complainers cannot maintain that there was a deficit at any point. However, the state of the records raised a concern that there may have been one. The Complainers' Client Protection Sub Committee met in December 2015. The Sub Committee resolved to invite the Respondent to attend for interview which she did on 21 January 2016. The Respondent's agent's own cashier helped to resolve the problems with the accounts. The Respondent attended the Committee personally. The Committee decided to refer the matter through the complaints procedure. The firm was inspected again in 2016. The Complainers highlighted the improvement of the record-keeping of the firm and noted there were no areas of concerns arising from that inspection.



The Fiscal accepted that many of the problems resulted from the inexperience of the cashier and the Respondent's lack of supervision of the cashroom. The issues were resolved with help from the external assistance of a former Law Society of Scotland inspector. By 2016, virtually all issues had been resolved and in particular, the daybooks were being properly maintained and closed at the end of each day. The Complainers' concern was that these issues appeared to arise in cycles which may be dependent upon cashflow. The Fiscal noted that the Respondent admitted breach of the relevant rules and that this amounted to professional misconduct. She accepted that the books were not properly written up. He asked for findings of misconduct in relation to paragraphs (a) and (b) of article 4.1 of the Complaint.

The Chairman noted that the averments of duty referred only to the 2011 Rules and that both averments of misconduct referred to "the period preceding, and at least up to, the 3 December 2015". The Chair asked the Fiscal if he could be more precise regarding the period over which the conduct was said to have taken place. The Fiscal indicated that it covered the period beginning at the inception of the 2011 Rules. He did not rely on the breaches in 2009.

#### **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath noted that the Respondent had been in practice since 1980. She was present and accompanied by her husband. He assisted his wife in the administration of the firm. An accountant from "Accounting Services for Scottish Solicitors" was also present. This individual was previously employed as a Law Society inspector. That firm provides external accounting assistance to smaller legal firms in Scotland. Mr Macreath had spoken to the accountant about the assistance he gives the Respondent's firm.

The Respondent's firm has two offices, one in Livingston and one in Eyemouth. She works from the Livingston office. The cashroom is run from the Livingston office and the Respondent is the cashier. A consultant runs the Eyemouth office. No cashroom functions are carried out there. The Respondent visits that office once a week. All material is posted up to the Respondent. Postings are made by the accountant of "Accounting Services for Scottish Solicitors". The daybooks are closed every day. The accountant has access to the bank account. There are now two people checking the records. The accountant's services are a significant cost to the firm.

Mr Macreath noted that the Law Society had been patient. They had recognised that the problem was maladministration. The Respondent was interviewed by the Client Protection Sub Committee. There

was a very frank and stark exchange between the Chair of that Committee and the Respondent regarding the continued employment of her cashier. Mr Macreath confirmed that the cashier left the firm last year.

Mr Macreath told the Tribunal that the Respondent uses LawWare. At the time when the books were not being kept properly, the cashier was dealing with all the postings and the accountant was supervising at a distance by reviewing the postings monthly. He now does this daily. At the time when the records were being kept incorrectly, there was carelessness in making the entries and there were many corrective entries. However, Mr Macreath is satisfied on the basis of the report from his cashier that everything is in order. The daybooks have been closed every day since 2016. He highlighted that there was no proven deficit but accepted there was potential for this to occur due to the state of the records. Mr Macreath noted the Complainers' criticism of the Respondent using a credit card for outlays. He said the Respondent was not unique in doing this but that she had altered this practice understanding the Complainers' concern.

Mr Macreath referred to the Respondent's Bundle of Authorities. He confirmed that he was tendering a plea of guilty to professional misconduct on behalf of the Respondent. He noted that according to Sharp v Law Society of Scotland 1984 SLT 313, failure to comply with a rule may be professional misconduct. He and the Respondent took the view that accounts compliance was essential and that these breaches were misconduct. He referred to the recent Tribunal cases Law Society v John Adam and Law Society v Michael Inkster. He noted that less serious breaches of the Accounts Rules could be unsatisfactory professional conduct rather than professional misconduct. However, he drew a distinction between those cases and the present case. In the present case, the Respondent's conduct went back to 2009 with cycles of improvement and then worsening. She was given every opportunity to improve. He submitted that if this was the first inspection of her firm it was possible that the circumstances would not merit a prosecution for professional misconduct. However, the persistence of the problem brought it within that category. The Guarantee Fund Sub Committee obviously had a concern about client money. Solicitors must have transparent systems whereby the surplus can be shown on the day. This should be capable of being done without reference to individual files. The Respondent knew that everything was in order but there were no accounting records to demonstrate this. Client were not at risk but there was not compliance with the rules.

## **DECISION**

Although the Respondent admitted professional misconduct, it was for the Tribunal to consider whether the admitted conduct met the test in 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.

The Respondent admitted that she failed to keep properly written up accounting records necessary to show all of the firm's dealings with clients' and other money and in particular, failed to keep properly written up accounting records to show the true financial position. She had also admitted failing to use reasonable endeavours to advance and maintain the competence of all officers and employees of the firm and failing to supervise them and to train them.

Firms must be able to demonstrate the true financial position every day. Solicitors are entrusted with client's money and need to deal with it responsibly. It should be possible for someone to come into a practice and understand the financial position based on the accounting records. Proper supervision and closing the daybooks daily reduces the risk of manipulation.

As has often been said by this Tribunal, solicitors have a special privilege in being allowed to handle client's money. 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 contained in the Accounts Rules. A solicitor should always be able to account to every client and this requires the solicitor to maintain full and accurate records. The detailed provisions of the Accounts Rules ensure that the funds of each client are separately safeguarded but also enable the solicitor and the Complainers to satisfy themselves at any time that the clients funds are securely held and accounted for.

The Tribunal disregarded the 2009 inspection and considered the period from 1 November 2011 (when the 2011 practice rules came into operation) to 3 December 2015. During this four-year period, known problems were not resolved on repeat inspections. The length of the course of conduct, the repetition of the breaches, and the Respondent's failure to deal with the cashier and the cashroom was a serious and reprehensible departure from the standard of competent and reputable solicitors. Therefore, the Tribunal found the Respondent guilty of professional misconduct individually and *in cumulo*.

The Fiscal tendered the Respondent's record card which disclosed a conviction for professional misconduct from 2008. The Fiscal provided the Tribunal's decision which he submitted was directly analogous to the present matters before the Tribunal. He said there was a pattern from 2006 of peaks and troughs regarding accounting compliance.

## SUBMISSIONS IN MITIGATION

Mr Macreath indicated that the Respondent has been in practice since 1980. She has been a sole practitioner in her current firm since 1995. The opportunity arose relatively recently to take over a firm in Eyemouth. The consultant of that firm wishes to retire in the short term.

Mr Macreath noted that the 2008 decision referred to a 2006 inspection under the 2001 Rules. A host of criticisms were made during that inspection. There were no reconciliations. There were no surplus statements. The certificates issued six monthly did not contain qualification but should have been qualified. There were delays in payment of recording dues. In a period of three years, 900 adjustments had to be made. This is not the position today.

In Mr Macreath's submission, the firm was now operating successfully. The accountant was present and would confirm that he is acting along with the Respondent to close the books every day, produce surplus statements and reconciliations. In 2015, this was not happening. The position from 2006 has materially changed. At that time, the Respondent's cashier was on maternity leave and the volume of business was overwhelming at a time when the Respondent was also experiencing personal issues. It was unfortunate that the 2015 inspection picked up similar issues. It was not unreasonable of the Financial Compliance Department to say that the record-keeping went through peaks and troughs. However, the "proof of the pudding" was the inspection of 2016. This revealed only two issues of minor significance. There were no consistent failures. The Respondent has stopped using her charge card for outlays. Mr Macreath also had his own cashier satisfy him that matters were in hand. The Law Society will inspect the firm again as part of its normal routine.

With reference to Bolton v Law Society [1994] 1 WLR 512, Mr Macreath submitted that the Tribunal could be satisfied that the damage to the reputation of the profession is mitigated substantially and the risk of repetition is low. This is particularly because the Respondent has now engaged the accountant to assist her. Mr Macreath said the Tribunal's duty was not to punish but to ensure that the Accounts Rules were followed. Client money must be sacrosanct. Compliance with the Accounts Rules is essential. He said that the Tribunal had previously noted that breach of the Accounts Rules is generally a serious matter and will often constitute professional misconduct even in the absence of dishonesty. The Accounts Rules provide important protection for the public and the solicitors. Careful regard to the rules sustains public trust in the profession.

However, he said there was significant mitigation in this case and he submitted that the Respondent should be able to continue as a sole practitioner. The Respondent has reformed her practice. All accounting within the office is overseen by the Respondent and the external accountant. The volume of work has now reduced dramatically to 10-15 transactions a month. The turnover of the firm is £200,000 per year. By the time the usual overheads and staff costs are paid, there is about one third profit. The Respondent's taxes are up to date other than £3,000 which is outstanding as at 31 January 2019. It was hugely sad for her to appear before the Tribunal.

The Tribunal had some questions for the accountant, Mr Caldwell, and he was put on oath. He confirmed that since the cashier left in September 2018, his firm has taken over the records and reconciliations. The Chair asked about the current procedures for the cashroom if the Respondent is not available. He said that the Respondent emails all transactions to him. If the email comes in before 5pm he deals with it. If it comes in after 5pm he deals with it the next day. If he is absent, his staff can deal with it. The Chair asked if there was a cheque to be paid in, whether he would get a copy of that cheque. It was ascertained that Mr Caldwell gets a note of the transaction and a copy of the bank statement.

Mr Macreath noted that the firm was back on a routine cycle of inspection. The circumstances giving rise to the 2006 prosecution were different to those giving rise to the present Complaint. Now, there was much more external assistance, although the Respondent recognised that the responsibility remained with her. Mr Macreath urged the Tribunal to impose a Censure and Fine. He did not oppose the Fiscal's motion for the usual orders with regard to publicity and expenses.

## **DECISION ON SANCTION**

The Tribunal was disappointed to note that this was the Respondent's second conviction for professional misconduct involving breaches of the accounts rules. Over a significant period of time, there had been a cycle of compliance and non-compliance with the Rules. The aggravating factors in this case were the ongoing course of conduct, the previous finding of misconduct and the risk of danger to the public. In mitigation, the Tribunal was urged to accept assurances that the matter was now in hand. However, these assurances had also been provided in 2008.

The Tribunal considered its purpose was to protect the public and uphold the reputation of the profession (Bolton v Law Society [1994] 1 WLR 512). It seriously considered whether a restriction on the Respondent's practising certificate was the appropriate sanction. The Tribunal also had regard to Robertson v Law Society of Scotland [2015] CSIH 95 and the criticism made of the Tribunal's decision

to impose restrictions on a solicitor's practising certificate. The factual circumstances were different in that case. However, in common with the Respondent's conduct, the behaviour did not involve dishonesty. The Court noted that the consequences of such a restriction for the solicitor himself and indirectly for the 12 employees of his firm were not proportionate to the misconduct. The Tribunal was ultimately persuaded that there was no ongoing risk to the public necessitating restriction of the Respondent's practising certificate. No client claimed to have been affected by her misconduct. The Respondent had engaged external accounting assistance. The 2016 inspection report was positive. The firm was likely to be inspected again this year. The conduct was at the middle of the range of misconduct. The consequences for the Respondent, her business and consultant would be extremely serious were she to have her practising certificate restricted.

In all the circumstances therefore, the Tribunal considered that Censure and Fine of £10,000 was sufficient. This is the maximum fine which the Tribunal can impose. It marks the seriousness with which the Tribunal viewed the Respondent's conduct in the context of the previous decision against her. It also reflected the fact that the circumstances had only just fallen short of requiring a restriction.

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.



**Colin Bell**  
**Vice Chairman**