

**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, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**JOY PATRICIA DUNBAR,  
Solicitors Direct, 479 Great  
Western Road, Aberdeen**

1. A Complaint dated 20 September 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Joy Patricia Dunbar, Solicitors Direct, 479 Great Western Road, Aberdeen (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 28 November 2012 and notice thereof was duly served on the Respondent.
4. The hearing took place on 28 November 2012. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow.

The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

5. On behalf of the Respondent, Mr Macreath advised that she accepted the averments of fact and averments of professional misconduct in the Complaint. Mr Macreath lodged three documents with the Tribunal. Firstly an email dated 30 October 2012 from the Law Society's Inspection Department to the Respondent. The second was a letter dated 8 June 2012 from the Royal Bank of Scotland addressed to 'Whom it may concern'. The third document was a letter dated 29 October 2012 from the Royal Bank of Scotland to the Respondent.

6. The Tribunal found the following facts established

6.1 The Respondent was born on 17 September 1946. She was admitted as a solicitor and enrolled as a solicitor in the register of solicitors practicing in Scotland in December 1979. From on or about 1 July 1989 until on or about 31 December 1996 she was initially employed as an associate then latterly as a partner with the firm James and George Collie, Solicitors, Aberdeen. From 1 January 1997 until 28 August 1998 she was a partner in the firm Aberdein Considine & Co Solicitors, Aberdeen. From 1 November 1998 until 30 August 2001 she was employed as an associate with Grant Smith Law Practice Solicitors, Aberdeen. From 1 August 2001 until 1 March 2009 she was employed initially as a consultant and then a partner and then latterly again as a consultant with the organisation Solicitors Direct, Aberdeen. From January 2009 until 30 April 2010 she was employed initially as a consultant and latterly as a director of the entity Solicitors Direct Scotland Limited. From 1 May 2010 to date she has been sole principal of the new firm of Solicitors Direct, formerly 4 Golden Square, Aberdeen and now of 479 Great Western Road, Aberdeen.

### Guarantee Fund Inspection

- 6.2 The Respondent was formerly employed by a Duncan Kerr as a consultant. He operated a business under the trading name Solicitors Direct until on or about 2008. In January 2009 he created a limited company called Solicitors Direct (Scotland) Limited. The Respondent remained employed as a consultant, conducting her business on the basis that she was self-employed and securing a percentage of the fee income that she produced. On 24 March 2010, Duncan Kerr was sequestrated. Shortly prior to his sequestration, the Respondent agreed to be assumed a director of the commercial entity to ensure continuity of service to existing clients until the company Solicitors Director (Scotland) Limited ceased trading on 30 April 2010. Thereafter arrangements would be put in place for a new firm, being the Respondent trading as Solicitors Direct to commence business. The Respondent began trading as Solicitors Direct on 1 May 2010.
- 6.3 In pursuit of their statutory duties, the Complainers carried out an inspection of the financial records, books and documentation maintained by the Respondent at her place of business on 30 March 2010. This inspection revealed a number of breaches of the Solicitors (Scotland) Accounts etc Rules 2001. A further inspection of the financial records maintained by the Respondent was carried out on 13 July 2010. The purpose of this inspection was to provide an assurance to the Complainers that the Accounts Rules were being complied with. Regrettably this inspection identified that the financial records and documentation maintained by the Respondent were in serious disarray. In particular the following was identified:-
- (a) The financial records and documentation maintained by the Respondent were not kept up to date. The

postings were six days behind. Entries for the month of May had not been posted until 26 May, being a month in arrears. As a consequence it was impossible to ascertain the true financial position of the firm throughout the month of May. Statements produced by the Respondent later indicated there had been a significant reduction in the surplus previously held, which had dropped to the sum of £17.90. Further, the client bank account was found to be in deficit from 7 May 2010 until 25 May 2010.

- (b) Examples of deficits were also identified in June 2010 which were carried forward to July 2010.
- (c) The day book maintained by the Respondent for 1 July 2010 identified a substantial deficit of £21,019.11 which increased to the sum of £131,793 on 6 July 2010. The inspection revealed the deficit arose as a consequence of funds not being uplifted from deposit investments timeously and to a posting error. In actual fact the true deficit stood at £234,346.48. The inspection revealed this deficit arose as a consequence of a bank error. However, the records maintained by the Respondent were so far in arrears that the cause was not identified until later. These concerns were conveyed to the Respondent who failed to rectify the error timeously.
- (d) The final day of the inspection was 16 July 2010. On that date the records maintained by the Respondent had been brought up to 6 July 2010. The Respondent was still seven working days behind.

(e) The inspection revealed a number of cheques to be out of date. A number of outstanding cheques dated between 16 March 2010 through to 4 June 2010 were out of date. Three of these had been brought to the attention of the Respondent at the previous inspection and she had failed to attend to same. These were client cheques.

(f) In relation to a number of particular transactions, deficits were identified which in the opinion of the Complainers arose as a result of poor record keeping and inadequate systems of management maintained by the Respondent. In particular:

(i) Mr A and Ms B

This was a sale transaction. The records of the Respondent revealed on 20 April 2010 monies from Stronachs for the amount of £320,000. Thereafter in connection with the purchase for these clients on 23 April 2010 there was a transfer from the sale ledger to the purchase ledger of £191,222. On 23 April 2010 a payment was made to Raeburn Christie of £456,222.

Examination of the ledger maintained by the Respondent revealed that the cheque to Raeburn Christie was written on 16 April 2010 but retained by the Respondent as undelivered pending receipt of the cheque for the sale price although the sale proceeds were not received until 20 April 2010. This created an apparent deficit which was not reflected through the records.

(ii) Ms D (Deceased)

An examination of this ledger revealed on 7 May 2010 a credit of £40,040.34 and on 26 May 2010 a credit to the bank of £40,040.34.

The inspection showed a deposit account closed on 7 May 2010. A payment of funeral costs was settled that day. The funds were not uplifted from the deposit until 26 May 2010. During this period the client bank account was in deficit by as much as £3,475. It was only when postings were made on 26 May 2010 that the deficit was noted and corrected.

(iii) Mr E (Deceased)

The inspection revealed on 11 June 2010 a credit to the client ledger of £3,820 and on 17 June 2010 a credit to the bank of £3,820.

The sums from deposit were uplifted late and only noted when the postings for the entry for that date were made on 17 June 2010. However, payments of legacy had been made on 11 June 2010. An insufficient surplus was held by the Respondent to cover the payment as a consequence of which there was a deficit of £1,313.08.

(iv) Ms F

The inspection revealed on 24 June 2010 a bank transfer of £441.20 uplifted from the client's deposit account. On 30 June 2010 this was posted as a credit to the client ledger of £441.20. On 30 June 2010 a

further £441.20 was uplifted from the client's deposit account and posted as a credit to the client ledger.

The inspection revealed that these transfers were in actual fact credited to the firm bank account and not to the client bank account. The funds were eventually transferred back to the client account on 8 July 2010. As a consequence, a deficit of £148.14 was identified on 30 June 2010.

(v) Mr G (Purchase)

The inspection revealed an uplift from the clients' account transferred to deposit account of £81,081.63 by the Respondent on 29 June 2010. Payment of the purchase price was made on the strength of funds held. A duplicate payment was invested on 30 June 2010 which incurred a deficit of £161,081. The inspection identified that whilst this was a banking error the situation was exacerbated by the delays of the Respondent maintaining her records. The Respondent did not identify the error and correct it until 9 July 2010.

(vi) Mr H (Purchase)

The inspection revealed the sum of £22,500 was held on a deposit account. This was not uplifted by the Respondent in time for settlement. Payment of the purchase price was made on 1 June 2010. However the sums had not been uplifted. This was not identified or corrected by the Respondent until 13 June 2010. These difficulties arose as a result of the Respondent failing to maintain up to date postings. There was an

error with the bank. This error was not reflected through the ledger as a result of which it masked the true deficit of £43,560.74.

6.4 From 1 May 2010 the Respondent began practising as a sole practitioner. In March 2010, she had agreed to be appointed as a director of the limited company, Solicitors Direct (Scotland) Limited from 24 March 2012 until 30 April 2010. The Respondent required to reach an accommodation with her bankers, being the Royal Bank of Scotland plc that the client funds held in the bank account of Solicitors Direct (Scotland) Limited would be transferred to the name of Joy Dunbar trading as Solicitors Direct. This was brought to the attention of the Respondent and she undertook to effect this transfer. She failed to do so. She failed to ensure the separation of the accounts until it was brought to her attention again by the Complainers. She failed to maintain a client account in her name. The inspection revealed numerous instances of deficits between 13 and 16 July 2010. The trial balance produced by the Respondent identified liabilities and assets of the former corporate entity were included being the Company 2 firm account, the Company 3 loan and the Company 4 account. The trial balance produced did not therefore reflect the true financial position of the firm.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of her breach of Rules 4 and 8 of the Solicitors (Scotland) Accounts etc Rules 2001
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 28 November 2012. The Tribunal having considered the Complaint dated 20 September 2012 at the instance of the Council of



the Law Society of Scotland against Joy Patricia Dunbar, Solicitors Direct, 479 Great Western Road, Aberdeen; Find the Respondent guilty of Professional Misconduct in respect of her breach of Rules 4 and 8 of the Solicitors (Scotland) Accounts etc Rules 2001; 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.

**(signed)**

**Alistair Cockburn**

**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

**IN THE NAME OF THE TRIBUNAL**

**Chairman**

**NOTE**

Mr Macreath advised that he had been instructed at a very early stage and that the terms of the draft Complaint had been adjusted with him on behalf of the Respondent. Accordingly he advised the Tribunal that the Respondent agreed the averments of fact in the Complaint and accepted that she was guilty of professional misconduct as referred to therein. Mr Macreath lodged three documents with the Tribunal.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid advised that the Respondent is 66 years of age and has been a member of the profession for the last 33 years. He advised that she was previously associated with a solicitor called Duncan Kerr and worked with him in a business called Solicitors Direct. As outlined in the Complaint, the Respondent had a number of different positions within Solicitors Direct. Mr Reid stated that the business known as Solicitors Direct comprised a number of self employed solicitors who had banded together in a single entity in order to be more attractive to mortgage lenders.

Mr Reid advised that on 24 March 2010 Mr Kerr was sequestered. Just prior to that the Respondent agreed to become a director of the business to keep it going to protect the interests of clients. Mr Reid stated that the Respondent took over as the sole director of the business and traded from 30 April 2010.

Mr Reid advised that an inspection was carried on 30 March 2010 which took place while the Respondent was in a position of authority within the firm and therefore was responsible for the bookkeeping. Mr Reid confirmed that the Respondent had been appointed as a director on 24 March 2010 on the date of Mr Kerr's sequestration. Mr Reid referred the Tribunal to Article 2.2 of the Complaint which outlines the defects in the accounts. Mr Reid stated that he was not suggesting that there was any dishonesty involved in this case, rather that the bookkeeping was in chaos and as a result, clients' funds were put at risk. Mr Reid advised that efforts were eventually made by the Respondent to effect the transfer of the old bank account from Mr Kerr and to sort out the problems.

Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct and to make the usual orders for publicity and expenses.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

Mr Macreath stated that a plea of guilty had been negotiated at a very early stage thus saving time and expense. He advised that following a recent inspection the books of the firm are now in order and the Respondent has assisted regarding the prosecution of Mr Kerr.

Mr Macreath referred the Tribunal to the letter dated 8 June 2012 from the Royal Bank of Scotland and indicated that this disclosed that at the point Mr Kerr encouraged the Respondent to become a director of the company she went to her bank to seek advice regarding the removal of Mr Kerr's name as a signatory on the account. Mr Macreath stated that the Respondent believed that the Royal Bank of Scotland had put the necessary protections in place to ensure that she was trading in her own name as Solicitors Direct. However, Mr Macreath stated that he accepted that after that date the bank statements still appeared showing the name of the company.

Mr Macreath referred the Tribunal to the email from the Law Society dated 30 October 2012 confirming that there were no outstanding issues from the inspection undertaken in August 2012.

Mr Macreath stated that the Respondent is 66 years, is married but separated and looks after her elderly husband. She now operates as a sole practitioner in Aberdeen and employs two solicitors, a paralegal and a SOLAS trained cashier. The business deals with residential conveyancing.

Mr Macreath advised that when the Complaint came to the Respondent's attention in 2011 she instructed him immediately. He stated that he was assured by the Respondent that there was no connection between Mr Kerr and the firm since the date of his sequestration. The Respondent was previously a partner with Collies and Aberdeen Considine but did not have a management role in either business. She had no day to day experience of operating a cash room; when she joined Mr Kerr she was

a self-employed consultant and had had no day to day contact in relation to the administration of the business. With hindsight, she understands that the reason she was made a partner was to have two names on the letterhead in order that the firm could secure agency on lenders' panels. Mr Macreath submitted that the Respondent has paid dearly for her naivety.

In relation to Mr Kerr's sequestration, Mr Macreath submitted that Mr Kerr only told the Respondent of his financial plight hours before he was sequestered at the instance of Company 5. Mr Kerr had acquired a number of buy to let properties and could not raise funds to complete the purchases. Mr Macreath submitted that Mr Kerr must have known about this situation for months.

Mr Macreath submitted that the Respondent felt a personal moral responsibility for the welfare of the many members of staff who were going to lose their jobs. She became a director of Solicitors Direct on 24 March 2010 and went to the bank to ensure that Mr Kerr was not involved in the business after that date. From 1 May 2010 she traded as Solicitors Direct.

Mr Macreath stated that there was a firm of accountants in Aberdeen called Davidsons who also acted for Mr Kerr. For a while they continued to act for the Respondent's firm and had seconded a woman named Mrs I as a cashier. Mr Macreath stated that when the Respondent explained the position to him he arranged for another firm to get involved and for the Respondent to have an independent inspection carried out. The matters to be addressed following that inspection were the accounting procedures and compliance with the accounts rules. Ms J carried out an inspection and that inspection from March 2010 essentially related to the period when the Respondent had no control over the limited company or Mr Kerr. Mr Macreath advised that the Respondent was not privy to the communications between the inspectors and Mr Kerr and none of what was said was ever conveyed to her.

There was a subsequent inspection in July 2010. Ms K attended and recognised that the Respondent was doing her best having received training on the Solicitech accounting system. In December 2010 there was a further inspection and in that case

there was no subsequent interview required with the Guarantee Fund Sub Committee. Mr Macreath stated that subsequent inspections have not highlighted any problems.

Mr Macreath stated that after Mr Kerr's sequestration the Respondent had to cope with the reorganisation of a business in chaos and also had to deal with the interests of clients and staff. Mr Macreath stated that the Respondent's daughter who was at the time a 40 year old solicitor went in for an elective back operation on 10 March 2010 during which there were extensive complications. These complications led to further operations and she was in hospital until the end of April 2012 and much of that time was in a high dependency unit because of her serious condition.

Mr Macreath stated that the Respondent realised that there were major issues with Davidsons and Mrs I in that they were not running the cash room part of the business effectively. Not only were the accountants lacking in knowledge but their knowledge of the solicitors accounts rules was non-existent. The Respondent dispensed with their services in July 2010. The Respondent personally took on the role of cashier and got training direct from Solicitech at great expense and by the stage of Mrs K's inspection, things had improved greatly. Postings were being done a daily basis and the accounts were being reconciled as required. Mr Macreath stated that a SOLAS trained cashier is now in post.

Mr Macreath submitted that the Complaint covers only a very short period indeed and whilst he accepts that records were incorrectly posted and were of an unacceptable standard in that dates were wrong, he submitted that there were no actual shortages found.

In response to a question from the Chairman, Mr Reid confirmed that the Complaint deals only with bookkeeping errors.

Mr Macreath referred the Tribunal to Article 2.2(c) of the Complaint where it states that deficits arose due to funds not being uplifted from deposit investments timeously. Mr Macreath advised that he checked the Mr A and Ms B file personally. He advised that the transaction settled on a holiday weekend. He stated that all three firms settled on the basis of cheques tendered late in the day. He advised that the

earliest anyone who could have cashed a cheque was on Tuesday 20 April. There was therefore no actual deficit. In relation to the Ms D and Mr E cases, Mr Macreath advised that the monies were on deposit with the firm but they just were not uplifted in time.

Mr Macreath submitted that the Respondent had contacted the bank and asked them to provide the letter of 29 October 2012 which was lodged with the Tribunal. Mr Macreath advised that the Respondent had been waiting for this letter for some time. Mr Macreath advised that there had been no delay on his part or the part of the Respondent in bringing this matter before the Tribunal. He advised that he had negotiated a plea right away but had to wait until all the reports and the letter from the bank were available.

## **DECISION**

The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal noted that the Respondent had been responsible for a number of breaches of Rules 4 and 8 of the Accounts Rules which are designed to protect clients' funds whilst in the possession of solicitors. The Tribunal was of the view that the Respondent's failures as outlined above would be viewed by competent and reputable solicitors as serious and reprehensible and therefore are sufficient to meet the Sharp test.

However, in considering sanction, the Tribunal noted the circumstances in which the Respondent's failures occurred. The Tribunal took into account that these failures subsisted for a short period of time and that there was no suggestion of dishonesty. The Tribunal was impressed that the Respondent had shown insight into her failures and had taken action to sort out the firm's book keeping problems. It was also noted by the Tribunal that once the firms' books were brought up to date and the balances corrected that there was no actual shortfall in clients' funds and therefore no losses or claims as a result of the Respondent's failures. The Tribunal was pleased to learn that there is confirmation from the Law Society that following a recent inspection there are no outstanding issues.

The Tribunal took into account that the Respondent had appeared before the Tribunal, had candidly admitted her failures and had shown a keenness to have the matter resolved from the earliest possible stage in these proceedings. The Tribunal noted the previous Findings against the Respondent but considered these not to be analogous and took into account the Respondent's lengthy unblemished record in the profession prior to those Findings.

The Tribunal considered that that in all the circumstances the Respondent's failures were towards the lower end of the scale of professional misconduct and that the appropriate sanction was a Censure. The Tribunal ordered that the Respondent be liable for the expenses of the Tribunal and of the Law Society in respect of this Complaint and made the usual Order with regard to publicity.

**Chairman**