

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

INTERLOCUTOR

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY OF
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh (hereinafter referred to as "the
Complainers")

against

MICHAEL RAMSAY, Ramsay & Co. Solicitors &
Estate Agents, 974 Maryhill Road, Maryhill,
Glasgow (hereinafter referred to as "the
Respondent")

By Video Conference, 5 September 2023. The Tribunal, having heard submissions and considered the two questions submitted by the Respondent relating to the Respondent's preliminary plea; Answers both questions in the negative; Upholds the preliminary plea; Dismisses the Complaint; Finds the Complainers liable in the expenses of the Respondent, 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 Directs 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.



Kenneth Paterson
Vice Chair

NOTE

A Complaint dated 17 April 2023 was lodged with the Tribunal and served on the Respondent. The Complaint alleged that the Respondent had failed to comply with Regulations 18, 19, 24, 27, 28 and 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on Payer) Regulations 2017.

Answers to the Complaint were lodged. Those Answers contained the following preliminary plea:

“The Respondent not being subject to the 2017 Regulations at the relevant time, the Form 1 contains no relevant averments of professional misconduct and the instant complaint should be dismissed with expenses in favour of the Respondent.”

At the preliminary hearing on 5 September 2023 held by video conference, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal had before it the Complaint, Answers, and written submissions from both parties.

SUBMISSIONS FOR THE RESPONDENT

“These comprise the written submissions of the Respondent Michael Harvie Ramsay of Ramsay & Co Solicitors Limited (SC527117) (incorporated 17th February 2016).

Two questions require to be answered by the Scottish Solicitors Discipline Tribunal.

1. Whether the Respondent as a manager of the practice unit Ramsay & Co Solicitors Limited is personally under a duty to comply with the requirements of Rules B6.23 of the Practice Rules then in force in the period 26th of June 2017 and the 3rd of May 2019 in terms of Rule B6.2.3 of the then Rules.
2. Whether the Law Society of Scotland averments in the complaint contain relevant allegations of professional misconduct.

In the respect of both questions, it is the Respondent’s submission that the answer is in the negative and the complaint should be dismissed with expenses in favour of the Respondent.

Background

The Law Society in Article 5 under averments of duty assert that (a) under Standard of Conducts Rule B1.2 the Respondent must be trustworthy and act honestly at all times so that his personal integrity is beyond question. He must not behave whether in a professional capacity or otherwise in a way which is fraudulent or deceitful. There is no relevant evidence nor competent material before the Tribunal to justify this averment.

The Law Society then aver at Article 5.3 that the Society's averments of duty rely only on the Money Laundering, Terrorist Financing & Transfer of Funds (Information on Payer) Regulations 2017.

The statement of facts upon which the complaint is based is contained in Article 4 of the complaint. Article 4.5 avers that during the financial compliance inspection between 27th November and 18th December both dates 2018 "a number of transactions were identified as having failed to properly assess risk in relation to anti-money laundering and terrorist financing."

Those transactions are specified at Article 4.5.1 (the [D] transaction) at Article 4.5.2 (the [McT] transaction) and at Article 4.5.3 (the [S] transaction). At Article 4.6 the Law Society of Scotland avers identification of transactions where it is alleged that the Respondent failed to exercise due diligence in relation to proper identification of clients or determination of the source of funds. At Article 4.6.1 the [D] transaction is averred at Article 4.6.2 the transaction averred relates to [the B transaction]. Finally, at Article 4.6.3 the Law Society of Scotland relies upon a transaction involving [RM] and [JMcl] ("the [M] transaction").

The averments of duty are contained at Article 5 and rely upon the Law Society of Scotland Practice Rules B1.2 and the Money Laundering Terrorist Financing & Transfer of Funds (Information on Payer) Regulations 2017.

In Article 6 the Law Society of Scotland sets out the averments of professional misconduct relying upon the Money Laundering Terrorist Financing & Transfer of Funds (Information on Payer) Regulation 2017 ("the 2017 Regulations").

The complainers aver and assert breaches of Regulations 18, 19, 24, 28 and 33 of the 2017 Regulations.

The 2017 Regulations

1. The allegations of professional misconduct at Article 6 assert breaches of Regulations 18, 19, 24, 28 and 33 of the 2017 Regulations.

2. Regulations 18, 19, 24, 28 and 33 of the 2017 Regulations impose duties on the relevant person ("RP").
3. Under Regulation 3(a) RP is defined as a person to whom in accordance with Regulation 8 Parts 1 to 6 and 8 to 11 of the 2017 Regulations apply.
4. In terms of Regulation 8 (2) (d) this includes "Independent Legal Professionals" ("ILP's").
5. Regulation 3 provides that ILP's are defined in Regulation 12 and Regulation 12 defines ILP's as *"a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions..."*.
6. Regulation 3 defines a firm as *"any entity that, whether or not a legal person, is not an individual and includes a body corporate, a partnership or other incorporated association"*.
7. The 2017 Regulations provide no definition of a sole practitioner, but it is "not an individual".
8. It is clear therefore that for the purposes of Regulations 18, 19, 24, 28 and 33 of the 2017 Regulations the RP is "the firm" of Ramsay & Co Solicitors Limited and not the Respondent. The averments of the complainer in paragraphs 4, 5 and 6 of the complaint which assert that the Respondent was in breach of the 2017 Regulations are plainly wrong.

The Law Society of Scotland Practice Rules 2011 ("the 2011 Rules")

9. Prior to 3rd May 2019 and during the period in which the alleged misconduct occurs Rule B6.23 of the 2011 Rules made provision that *"every independent legal professional as regulated by the Society shall comply with the provisions of the Money Laundering Regulations"*.
10. The Regulations are the 2017 Regulations as narrated and averred in this complaint. For reasons set out in paragraphs 4, 5, 6,7 and 8, Rule 6.23 they cannot impose any duties on the Respondent as an individual and he therefore cannot be in breach of that rule because he is not an independent legal professional. The averments of the complaint which assert the Respondent was in breach of Rule B6.23 and had a duty to rectify any breaches are plainly wrong.
11. Rule B6.2.3 of the 2011 Rules provides *"subject to Rules 6.2.1 and 6.2.2, where any of the provisions of Rule 6 are stated to apply to a practice unit (a) they shall also apply to the managers of the practice unit and (b) no regulated person within the practice until shall cause or knowing permit the practice unit not to comply with any such provision"*.

12. The allegations of professional misconduct in Article 6 of the complaint rely entirely on the provisions of Rule B6.2.3 of the 2011 Rules. The Rules state “.....where any of the provisions of Rule 6 are stated to apply to a practice unit (a) they shall apply to the managers of the practice unit”.
13. Rule B6.2.3 does not apply to any other provision of Rule 6 unless that other provision states that it applies to a practice unit.
14. Rule B6.23 does not do such a thing and it does not mention practice units.
15. Rule B6.23 cannot impose a duty on a manager of a practice unit to comply with Rule B6.23. In contrast to most of the other provisions of Rule 6 (including B.6.12, B.6.15 – 6.17 and B6.21, they do state that they apply to practice units). The conclusion must be that B6.2.3 cannot impose a duty on the Respondent to comply with Rule B6.23.
16. The 2011 Rules prior to 3rd May 2019 do not extend the effect of the 2017 Regulations by imposing obligations contained in the 2017 Regulations on persons who are not subject to those regulations.
17. The effect of the phrase “are stated to apply to a practice unit” as contained in Rule B6.2.3 is clear. There is no reason to depart from the plain and ordinary meaning of the words. One must look at the matter purposively and there is nothing surprising about this as the Regulations from 2017 do not impose liability on a director of an incorporated practice.
18. There is an additional consideration which points away from any suggestion that Rule B6.2.3 may mean something other than it says and/or that Rule B6.23 should be read as if the words “practice unit” appears there.
19. Reference is made to Bennion Bailey Norbury on Statutory Interpretation Eighth Edition para 26.4 at pages 830-831. There is a principle against doubtful penalisation which applies to provisions which seek to impose penalties for civil wrongs including professional misconduct.
20. It is irrelevant that Ramsay & Co Solicitors Limited is a practice unit (defined in the 2007 Money Laundering Regulations as “a sole practitioner, firm of regulated persons, incorporated practice, multi-national practice or licence provider” within the meaning of the 2011 Practice Rules). The insurmountable difficulty for the complainers is the wording which is clear and unambiguous in Rule B6.2.3 which provides that it only applies to other rules which state in terms they apply to practice units.

21. It is not legitimate to substitute the words "practice unit" for the words "independent legal professional" in Rule B6.23. That phrase "practice unit" is specifically defined in terms of the Practice Rules.
22. The alleged professional misconduct in relation to those transactions set out in Articles 4.5.1, 4.5.2, 4.5.3, 4.6.1, 4.6.2 and 4.6.3 of the Complaint is said to have occurred during the period of time after the repeal of the Money Laundering Regulations 2007 which Regulations were repealed on 26th June 2017 when the 2017 Regulations came into effect.
23. Reference is made to Articles 5 and 6 of the complaint which concentrates on the alleged breaches of the 2017 Regulations. During the period between 26th June 2017 and 3rd May 2019 the phrase "Money Laundering Regulations" which form part of Rule B6.23 was defined in Rule B6.1.1 as meaning the "2007 Money Laundering Regulations". During that period the phrase "independent legal professional" was, again, by virtue of Rule B6.1.1, given the meaning ascribed in terms of Regulation 3(9) of the 2007 Regulations. That definition is the same as the one contained in the 2017 Regulations.
24. On 3rd May 2019, the 2011 Rules were amended by the Law Society of Scotland Practice Rules (Amendment Number 1 Rules) 2019 ("the 2019 Rules"). Those amendments made changes to the anti-money laundering provisions including in Rule 6(B) the deletion from the 2011 Rules the aforementioned definitions of "*the Money Laundering Regulations*" and "*independent legal professional*".
25. Accordingly, during the period in which the Respondent is alleged to have been in breach of Rule B6.23 the 2011 Rules did not purport to and did not apply to the only anti-money laundering regulations then in force, namely, the 2017 Regulations. During that period the 2011 Rules applied only to the 2007 Regulations which had by then been repealed.

Conclusion

In these circumstances the Respondent cannot be said to have been guilty of professional misconduct by being in breach of a Rule (B6.23) which had no legal effect during the period of the alleged misconduct in respect of the [D], [McT], [S], [B] and [M] transactions which all commenced after the 26th of June 2017 and concluded prior to the 3rd of May 2019.

The second question falls to be answered in the negative regardless of the other points made in this submission."

ADDITIONAL ORAL SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred to his written submissions which expanded on the preliminary plea in the Respondent's Answers to the Complaint. He referred the Tribunal to Law Society-v-Clancy (2022) and indicated that much of what he would say mirrored that decision. He noted that the Clancy decision was not appealed by the Complainers and ultimately, that Complaint was dismissed.

Mr Macreath noted that the 2007 Money Laundering Regulations were revoked on 26 June 2017 on the same date as the 2007 Regulations came into force. The Anti-Money Laundering Supervisors developed significant guidance on Anti-Money Laundering procedures for the legal sector. As the Clancy case recognises, these were brand new regulations. The purpose of the regulations was to prevent criminals using professional services to launder money. Professionals were to take a risk-based approach. The 2017 regulations apply to "Independent Legal Professionals" (ILPs) which is defined as a firm or a sole practitioner who carries out work defined in the regulations. Mr Macreath referred to the particular regulation which the Complainers claim was breached by the Respondent.

Mr Macreath said that he had adopted the same questions for the Tribunal as had been raised in the Clancy case. He invited the Tribunal to answer both questions in the negative. He said the Complaint should be dismissed and expenses awarded to the Respondent.

Mr Macreath noted that the Complainers concede that the transactions all post-dated the 2007 regulations and predated the incorporation of the 2017 Regulations into the 2011 Practice Rules. However, the Complainers argue that the Respondent is a sole practitioner. Mr Macreath submitted that the word "or" created a disjunctive effect in the definition of ILP meaning that an ILP had to be either a sole practitioner or a "firm" as defined in the Regulations, but, could not be both. Mr Macreath said that an incorporated practice has its own separate legal personality. It is convenient for the Complainers to say that the Respondent is a sole practitioner but following its own rules, that cannot be the case. The relevant person in this case is the firm of Ramsay and Co Solicitors. It cannot be the Respondent.

Mr Macreath noted that Rule B6.23 of the 2011 Practice Rules provides that every ILP as regulated by the Complainers shall comply with the Money Laundering Regulations. The problem for the Fiscal is that those regulations are defined as the 2007 Regulations. The 2017 Regulations were not incorporated until 2019. Rule B6.23 cannot impose duties on the Respondent as an individual because he was not an ILP.

Mr Macreath highlighted the terms of Rule B6.2.3 of the 2011 Practice Rules which states that where any of the powers are stated to apply to a Practice Unit, they also apply to managers of a Practice Unit. Mr Macreath submitted that this rule could not apply to any other rule unless it explicitly referred to "Practice Unit". He referred the Tribunal to other rules which did specifically refer to Practice Units (for example, Rules B6.12 and B6.17). He submitted that the conclusion must be that Rule B6.2.3 does not impose a duty on the Respondent to comply with Rule B6.23. Although the limited company would be bound by the Regulations, allegations of professional misconduct did not apply to incorporated practices. He suggested that there was always an element of intention or *mens rea* in misconduct cases. There was no reason to depart from the plain and ordinary meaning of the words. An additional consideration pointing away from "reading in" the words "Practice Unit" was the rule against doubtful penalisation and the usual rules of statutory interpretation. Mr Macreath stated that Rule B6.23 had no legal effect because the definition was tied to the 2007 Regulations which had been revoked.

Mr Macreath noted that the Tribunal was not bound by its decision in Law Society-v-Clancy but he said the decision was powerful. In answer to a question from the Tribunal he noted that he disagreed that practice unit and ILP were synonymous for these purposes but otherwise commended the Clancy decision to the Tribunal. The Complainers could not correct their own failure to incorporate the 2017 Regulations into the 2011 Rules but treating the Respondent as a sole practitioner.

SUBMISSIONS FOR THE COMPLAINERS

"Introduction

The Respondent contends that contrary to the averments of professional misconduct contained within the complaint of 17 April 2023 he was not subject to the 2017 Regulations at the relevant time, that the complaint contains no relevant averments of professional misconduct, and the instant complaint should be dismissed with expenses in favour of the Respondent.

The complainers submit that the Respondent was effectively operating as a sole practitioner and as a consequence the preliminary plea should be dismissed.

The Obligation to Comply with the 2017 Regulations

The complaint against the Respondent avers that he breached the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in various respects. The complaint avers breaches of 18, 19, 24, 28 and 33 of the 2017 regulations.

The aforementioned regulations came into force on 26 June 2017. Failures in compliance with those Regulations were identified through two inspections of the Respondent's firm, the first on the 08 October 2015 and the second on 27 November 2018.

Each of Regulations 18, 19, 24, 28 and 33 imposes obligations on a "*relevant person*";

In terms of Regulation 3, a "*relevant person*" is a person to whom, in accordance with Regulation 8, Parts 1 to 6 and 8 to 11 of the 2017 Regulations apply.

Regulation 8(1) provides that persons listed in Regulation 8(2) (and who do not come within the exclusions in Regulation 15) are relevant persons.

The Regulation 8(2) list includes "*independent legal professionals*".

That term is defined in Regulation 12(1) as being "*a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning [specified matters]*"

"*Firm*" is defined in Regulation 3 as "*any entity that, whether or not a legal person, is not an individual and includes a body corporate and a partnership or other unincorporated association*".

Ramsay & Co Solicitors and Estate Agents has been an incorporated practice since 2016. The Respondent's position therefor is that Ramsay & Co Solicitors and Estate Agents is a firm for the purposes of Regulation 12(1), that the Respondent is not a sole practitioner for the purposes of Regulation 12(1) and the relevant person on whom the Regulations 18, 19, 24, 28 and 33 obligations are imposed is the firm and not the Respondent personally.

Law Society of Scotland Practice Rules 2011

At the time of the 2018 inspection the rules made in accordance with Section 34(1) of the Solicitors (Scotland) Act 1980, and then in force, were the Law Society of Scotland Practice Rules 2011. The particular rule that was concerned with anti-money laundering requirements was Rule B6.23 which provided as follows:

Rule B6.23.1: Every independent legal professional who is regulated by the Society shall comply with the provisions of the Money Laundering Regulations.

Rule B6.23.2: A regulated person shall demonstrate to the Society on request that the information held by him or his practice unit is sufficient to evidence compliance with the provisions of Part 7 of the Proceeds of crime Act 2002 and Part 3 of the Terrorism Act 2000.

The "Money Laundering Regulations" were defined in Rule 6.1.1 as the Money Laundering Regulations 2007 (SI 2007/2157) and "independent legal professional" was defined as having the meaning given in Regulation 3 of the 2007 Regulations. Regulation 3 of the 2007 Regulations provided (until its revocation on 25 June 2017) that the definition of independent legal professionals was "a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning [specified matters]". It is the same definition as that contained in the 2017 Regulations.

Also of note is Rule B6.2.3 of the 2011 Rules which provided at the relevant time that:

B6.2.3: Subject to rules 6.2.1 and 6.2.2 [which are not material], where any of the provisions of rule 6 are stated to apply to a practice unit: (a) they shall also apply to the managers of the practice unit; and (b) no regulated person within the practice unit shall cause or knowingly permit the practice unit shall cause or knowingly permit the practice unit not to comply with any such provision.

"Practice Unit" is defined in Schedule 1 to the 2007 Rules as "a sole practitioner, firm of regulated persons, incorporated practice, multi-national practice or licensed provider". This is a broader definition than that of independent legal professionals contained in the 2007 and 2017 Regulations and is not restricted by reference to the nature of the transactions undertaken by the practice unit.

Analysis

It is accepted that the 2017 Regulations were not incorporated into the Law Society of Scotland Practice Rules 2011 until 3rd May 2019. It is also accepted that the transactions listed in the complaint relating to [B], [D], [McT], [S], [McI] and [M] commenced in June, July and September 2018 and completed prior to May 2019.

In recent the case of *The Council of the Law Society of Scotland v Paul Harvey Clancy* the tribunal determined that between the period 26th June 2017 and 3rd May 2019 in terms of Rule B6.2.3 duties

could not be imposed upon the Solicitor as a manager of the practice unit and he therefore could not be found to be in breach of that rule because he is not an independent legal professional.

The complainer's contention is that the Respondent was in effect operating as a sole practitioner. If the Tribunal accepts that the Respondent was operating as a sole practitioner as opposed to an individual within a firm, he would be considered an independent legal professional in terms of Regulation 12(1) and in terms of Regulation (3) a relevant person who would have obligations under regulations 18,19,24,28 and 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Although the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 provide no definition of sole practitioner the reference to "not an individual" within the legislation is in reference to the definition of "firm" at Regulation 3. A sole practitioner can be nothing else other than an individual.

The Respondent operates as the sole director and secretary of Ramsay & Co, there are no other employees. Consequently, he was the sole individual in control of Ramsay & Co and was the beneficial owner.

Reference is made to regulation 5(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:

Meaning of beneficial owner: bodies corporate or partnership

5.—(1) In these Regulations, "beneficial owner", in relation to a body corporate which is not a company whose securities are listed on a regulated market, means—

- (a) any individual who exercises ultimate control over the management of the body corporate;
- (b) any individual who ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate; or
- (c) an individual who controls the body corporate.

Conclusion

If the tribunal conclude that the Respondent was operating as a sole practitioner then the Respondent would have been obliged to comply with 18, 19, 24, 28 and 33 of the Money Laundering,

Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. In such an event the complainers invite the Tribunal to dismiss the plea to relevancy submitted by the Respondent.”

ADDITIONAL ORAL SUBMISSIONS FOR THE RESPONDENT

The Fiscal said that he did not take issue with anything that Mr Macreath had said about the 2007 Regulations, the 2017 Regulations or the 2011 Rules. The Complainers had not appealed the Clancy case. The Fiscal took no issue with that decision. The Fiscal referred the Tribunal to his written submissions. He said there was no definition of sole practitioner in the 2017 Regulations. The Complainers’ position was that the Respondent was operating as a sole practitioner. He was the sole director and secretary. He was the beneficial owner. If he was a sole practitioner, he was a relevant person and an independent legal professional. He said it was a very small, niche point which the Complainers were attempting to argue. The point would have to be conceded if the Tribunal felt it could not disregard the concept of separate legal personality. The Regulations apply to a sole practitioner. If the Tribunal held that the Respondent was a manager, then the matter will fall following the reasoning in the Clancy case. The Complainers’ whole argument was that the Respondent was a sole practitioner.

DECISION

The Complaint referred to shortcomings identified at the Respondent’s practice unit during a Law Society inspection in November 2018. The alleged failures related to reported breaches of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on Payer) Regulations 2017 (“2017 Regulations”). The Respondent intimated a preliminary plea in his Answers to the effect that the Complaint contained no relevant averments of professional misconduct and should be dismissed. The Respondent asked the Tribunal to address two questions. The first question was whether the Respondent as a manager of a practice unit was personally under a duty to comply with the requirements of Rule B6.23 in terms of Rule B6.2.3 of the Law Society of Scotland Practice Rules 2011 (“2011 Rules”). The second question was whether the averments in the Complaint contained relevant allegations of professional misconduct.

In Law Society-v-Clancy the Tribunal had decided that there was no duty on that Respondent as a manager of a practice unit to comply with the requirements of Rule B6.23 by virtue of Rule B6.2.3. However, in the present case, the Complainers contended that because the Respondent was a sole practitioner, he was an independent legal professional regulated by the Society and was therefore

under a duty to comply with the provisions of the Money Laundering Regulations by virtue of Rule B6.23 alone, without reference to Rule B6.2.3.

The Tribunal rejected the Complainers' suggestion that the Respondent was an independent legal professional by virtue of being a sole practitioner. Regulation 3(9) of the Money Laundering Regulations 2007 ("2007 Regulations") and Regulation 12(1) of the 2017 Regulations define independent legal professional as "a firm or sole practitioner" which carries out particular work. The definition of firm encompasses corporate entities such as the Respondent's practice unit. The Respondent was the sole director and secretary of the company and he was the beneficial owner. However, this did not mean that the separate legal personalities of the Respondent and the company should be conflated. The Tribunal agreed with the Respondent that the use of "or" in the definitions of independent legal professional was a disjunctive, and that the same entity could not exist as both a sole practitioner and a firm. Ramsay & Co. Solicitors & Estate Agents was a corporate body. The Respondent was not therefore a sole practitioner. The Complainers having failed to persuade the Tribunal on this narrow point, the Complaint fell to be dismissed following the reasoning in Clancy. However, the Tribunal wished to set out its reasoning in relation to the other matters which had been canvassed at the preliminary hearing debate.

The Respondent had asked the Tribunal to determine whether a manager of a practice unit was personally under a duty to comply with the requirements of Rule B6.23 in terms of Rule B6.2.3 of the 2011 Rules. Rule B6.23.1 of the 2011 Rules provided that every independent legal professional who is regulated by the Society shall comply with the provisions of the Money Laundering Regulations. Rule B6.1.1 of the 2011 Rules defines the Money Laundering Regulations as The Money Laundering Regulations 2007. Rule B6.1.1 defines independent legal professional in terms of Regulation 3(9) of the Money Laundering Regulations 2007. Regulation 3(9) of the 2007 Regulations defines independent legal professional as "a firm or sole practitioner" which carries out particular work. The definition encompasses corporate entities such as the Respondent's practice unit. The 2007 Regulations came into force on 15 December 2007. The 2007 Regulations were revoked on 26 June 2017 when the 2017 Regulations came into force.

Rule B6.2.3 of the 2011 Rules provides that where any of the provisions of Rule 6 are stated to apply to a practice unit, they shall also apply to the managers of the practice unit and no regulated person within the practice unit shall cause or knowingly permit the practice unit not to comply with any such provision. The Schedule to the 2011 Rules provides that a practice unit includes a sole practitioner, a firm of regulated persons and an incorporated practice. A manager includes a sole practitioner, partner in a firm of solicitors and a member or director of an incorporated practice.

The Tribunal noted that in Law Society-v-Clancy it had rejected the suggestion that Rule B6.23 could not apply in that case because that rule was not “stated to apply to a practice unit”. The Tribunal in Clancy was of the view that the terms “independent legal professional” in Rule 6.23 were synonymous with “practice unit” for the purposes of the discussion in that case. It was therefore of the view that a personal duty was created by Rules B6.23 and B6.2.3 (although it ultimately decided that the personal duty did not apply due to other reasons). The Tribunal in the present case was not convinced that the terms were synonymous and for that reason might have been inclined to answer that question posed in Clancy in the negative solely on that basis. However, this matter did not have to be determined since the Complaint was bound to fail due to the failure to incorporate the 2017 Regulations into the 2011 Practice Rules.

As is set out in the Tribunal’s decision in Law Society-v-Clancy, the 2017 Regulations created a new money laundering regime. The 2017 Regulations were created to implement European law that was made after the 2007 Regulations. The 2007 Regulations and the 2017 Regulations have different names. The 2017 Regulations are far more extensive than the 2007 Regulations, cover a much wider range of topics, and contain over twice the number of provisions. Although Regulations 19 and 24 of the 2017 Regulations have their counterparts in Regulations 20 and 21 of the 2007 Regulations, Regulation 18 is entirely new. The 2017 Regulations are not a substitution of, or a minor modification to, the 2007 Regulations. Section 17(2) of the Interpretation Act 1978 could not apply to the reference to the 2007 Regulations in the 2011 Rules. Therefore, there was no personal duty on the Respondent to comply with the requirements of Rule B6.23 of the 2011 Rules by virtue and in terms of Rule B6.2.3 of those same Rules after the 2007 Regulations were revoked on 26 June 2017. All of the transactions in question took place after this date, and before 3 May 2019 when the Complainers took corrective action regarding their rules (Law Society of Scotland Practice Rules (Amendment No.2) Rules 2019). There were therefore no relevant averments of professional misconduct.

Therefore, having carefully considered all the arguments presented to it by the parties, the Tribunal answered both questions posed by the Respondent in the negative. It upheld the Respondent’s preliminary plea and dismissed the Complaint. Mr Macreath moved for expenses on the usual scale. He noted that the Complaint had been made by the Complainers in the knowledge of the points raised at this preliminary hearing. The Fiscal noted that the Complainers had acted in good faith, the sole practitioner point being different to the issues raised and determined in Law Society-v-Clancy. Both parties were content that this decision should be published. Having considered all the circumstances, the Tribunal decided that expenses should follow success. Therefore, the Complainers will be liable in the expenses of the Respondent on the usual basis. The Tribunal directed that publicity would be

given to the decision and the Respondent would be named but there was no requirement to name any other person.



Kenneth Paterson
Vice Chair