

**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

**MARTIN GRAHAME HOGG, residing at 39
Kingshill Avenue, Cumbernauld**

Respondent

1. A Complaint dated 7 October 2021 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Martin Grahame Hogg, residing at 39 Kingshill Avenue, Cumbernauld (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. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a virtual procedural hearing on 21 January 2022 and notice thereof was duly served on the Respondent.
5. On 8 December 2021, parties invited the Tribunal to convert the virtual procedural hearing fixed for 21 January 2022 to a virtual hearing. There was insufficient Tribunal time on that date to deal with a hearing. In accordance with Rules 44 and 56, the virtual procedural

hearing was discharged and a virtual hearing set down for 26 January 2022. Notice thereof was duly served on the Respondent.

6. At the virtual hearing on 26 January 2022, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. Prior to the hearing, parties had lodged a Joint Minute and the Respondent had submitted a letter to the Tribunal dated 3 December 2021. On the Fiscal's motion, the Tribunal amended the Complaint to reflect the Respondent's current address. On the Fiscal's motion, the Tribunal also made two amendments by deleting the words "established nor" in paragraph 3.11 and "at least" in paragraph 5.1.3 in the Complaint.

7. The Tribunal found the following facts established:-

7.1 The Respondent is Martin Grahame Hogg. He resides at 13 Glen Rosa Gardens Cumbernauld. The Respondent was admitted to the roll on 18 September 1974. From the 1 May 1978 he was a partner in Hogg & Co, Falkirk. He practised under that name until 9 January 1998. During the period 1 May 1996 to the 21 March 1997 he was also a partner of Hogg, Mellon & Co Bathgate. He became a consultant with Caesar & Howie Bathgate for the period 2 January 1998 until 16 June 1998. He practised as Hogg & Co between 1 May 1998 and 16 June 1998. The Respondent signed a Trust deed on the 16 June 1998 accordingly his practice certificate was suspended. The suspension was lifted on 21 August 1998. He commenced employment with Blackwood & Co, Dunlop on the 22 August 1998. He remained an employee until the 6 October 2005 when he became partner in that firm. He remained a partner until 31 August 2013. He became the sole principal of MGH Legal on the 1 September 2013, when he took on the roles of Cashroom Partner and Money Laundering Reporting Officer. He retired from practice on the 31 October 2018.

7.2 The Respondent's practice unit MGH Legal was subject to a Law Society of Scotland Financial Compliance Inspection on the 13 & 14 June 2017. A report was prepared and intimated to the Respondent on the 27 June 2017. Over a period of 4 months his responses were considered, and adjustments made to the report.

- 7.3 The inspectors found numerous points for concern. The concerns are gathered in schedules. Not all schedules were before the Tribunal.
- 7.4 Schedule 2. The Respondent's client and firm bank accounts were not properly reconciled. The Respondent's client bank account reconciliation of the bank statements, unpresented cheques and client bank ledger did not balance. There was a difference of £526.71. On examination there had been a continual misbalance since March 2014 (3 year 3 months). The Respondent was unable to demonstrate properly written up accounts showing all his dealings with client's money.
- 7.5 The Respondent presented the inspectors with a list of adjustments of intromissions and posting errors. These were not reflected in the reconciliation of the client accounts.
- 7.6 The Respondent's firm bank reconciliation of his balance per bank statement, uncleared funds and firm ledger balance did not balance. There was difference of £8,963.85. The reconciliation had remained misbalanced since September 2013 (3 years 9 months). The Respondent was not able to demonstrate properly written up accounts showing the true financial situation of the of the practice unit. The books had not been balanced monthly.
- 7.7 The Respondent presented the inspectors with a list of adjustments of intromissions and posting errors. These. were not reflected in the reconciliation of the firm accounts.
- 7.8 Schedule 7. The Respondent operated another client bank account – Client Bank Account no 2. It had a £80 balance. It had not been reconciled since at least 2015.
- 7.9 Schedule 3. The inspectors reviewed a sample of client credit balances. The inspector observed the following credit balances.

File ref	Credit balance	Held since	Nature of instruction
GINGX01-01	£88.41	September 2016	Purchase of Glenmore House
KELLX01-01	£43	March 2015	Purchase of three flats

KELLX01-01	£253	August 2015	Sale of Plot 26, High Valleyfield
KRUPD01-01	£250	March 2015	Purchase of 61 Culmore Place,
TEMPJ03-01	£60	July 2015	Discharge of Standard Security
IRONX01-01	£60	October 2015	Sale of development properties

- 7.10 Schedule 4. The practice unit's policies and procedures should assist compliance with the Money Laundering and Proceeds of Crime Legislation and demonstrate to the Law society of Scotland the practice units compliance. Any policy should be tailored to the individual circumstances of the practice unit but should make a statement on the following
- a.) Customer due diligence and on-going monitoring
 - b.) Reporting
 - c.) Record keeping
 - d.) Internal Control
 - e.) Risk Assessment and Management
 - f.) Monitoring and Communication of such Policies
- 7.11 At the inspection, the Society was not provided with any documentation demonstrating that the Practice had designed and implemented risk sensitive policies and procedures in line with Regulation 20 of the 2007 Money Laundering Regulations. The Respondent had not maintained risk sensitive policies and procedures relating to customer due diligence measures for the practice unit and ongoing monitoring, reporting, record-keeping, internal control, risk assessment and management.
- 7.12 Schedule 5. The Respondent was required to submit an accounts certificate to the Council within 1 calendar month of the completion of each accounting period (Rule B6.15.1). The Respondent submitted Accounts Certificates for the periods 30/09/14, 31/03/15, 30/09/15, 31/03/16, 30/09/16 and 31/03/17.
- 7.13 In each of the certificates a solicitor is required to answer Accounts Rules questions. In particular, the Respondent declared he had complied with rule 6.11 that the practice unit returned client monies to clients as soon as there is no longer any proper reason to retain the money. The Respondent answered in the

affirmative. The Respondent had not done so. The Respondent did not declare the rule breach.

7.14 In each of the certificates a solicitor is required to answer Accounts Rules questions. In particular, the Respondent declared that the practice has complied with Rule B6.23 re Money Laundering Regulations etc. The Respondent answered in the affirmative. The Respondent had not done so. The Respondent did not declare the rule breach.

7.15 Schedule 1. The Respondent was the cashroom manager of the practice unit. He was responsible for devising, implementing, monitoring and enforcing compliance of all accounts rules (Rule B6). The averments contained in the complaint illustrate significant failings.

7.16 The Respondent as cashroom manger is responsible for the practice unit remedying any breach of Rule B6. The averments in the complaint highlight significant breaches which had not been remedied in the three years to the June 2017 inspection.

7.17 An inspection on the 7 May 2014 observed breaches of B6.23 Anti-money laundering Regulations – Record Keeping Requirements, Rule B6.23 Anti-money laundering regulations – Risk Assessment, Rule B6.11 Review of Client Balance, all of which continued as highlighted.


8. Having given careful consideration to the established facts, the Fiscal's submissions, the terms of the Joint Minute, and the Respondent's letter, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that he breached the Law Society of Scotland Practice Rules 2011 in that he:-

- (a) Failed to keep at all times properly written up record showing his client accounts, maintained an unbalanced client account for years, and operated a second client bank account without reconciling the same (Rule B6.7.1);
- (b) Failed to balance his practice unit bank accounts monthly, as a consequence of which it was not possible to ascertain the true financial position of his practice unit for years (Rule B6.7.3);

- (c) Maintained at least 6 client accounts with aged balances (Rule 6.11);
- (d) Failed to establish and maintain any procedures to meet his obligations in terms of the Money Laundering Regulations including customer due diligence or risk assessment procedures which are required to prevent money laundering or terrorist financing (Rule B6.23);
- (e) Recklessly completed inaccurate account certificates which the Society relied upon to assess the level of risk attached to his practice unit, and which prevented the Society from effectively targeting its regulatory activity (Rule B6.15.1);
- (f) Failed/ delayed to remedy breaches of which he was aware (Rule B6.4.1);
- (g) Failed to use reasonable endeavours to acquire/maintain the competencies/skills of a cashroom manager, or discharge his duties as cashroom manager (Rule B6.13.2 & 3).

9. The Tribunal pronounced an Interlocutor in the following terms:-

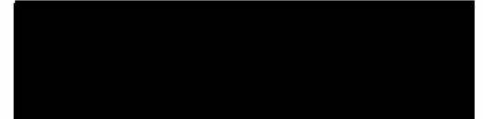
By Video Conference, 26 January 2022. The Tribunal having considered the Complaint dated 7 October 2021 at the instance of the Council of the Law Society of Scotland against Martin Grahame Hogg, residing at 39 Kingshill Avenue, Cumbernauld; Find the Respondent guilty of professional misconduct *in cumulo* in respect of breach of Rules B6.7.1, B6.7.3, B6.11, B6.23, B6.15.1, B6.4.1, B6.13.2 and B6.13.3, all 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)
Beverley Atkinson
Vice Chair

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 *21 February 2022*.

IN THE NAME OF THE TRIBUNAL



Beverley Atkinson

Vice Chair

NOTE

At the virtual hearing on 26 January 2022, the Tribunal had before it the Complaint dated 7 October 2021, an Inventory of Productions for the Complainers, a Joint Minute of Admissions, a letter from the Respondent dated 3 December 2021, a List of Authorities for the Complainers, and an email from the Respondent dated 8 December 2021.

The Fiscal moved the Tribunal to proceed in the Respondent's absence. The Tribunal heard evidence on oath from the Clerk regarding service of the Complaint and the Notice of Hearing. The Notice of Hearing was sent to the Respondent by post and Egress email on 10 December 2021. The Respondent had agreed and executed the Joint Minute and had also corresponded with the Tribunal Office by letter and email. He updated his address by email on 4 January 2022 and invited the Tribunal to update its records. The Tribunal was satisfied in terms of its Rules that the Respondent had been given proper notice of the hearing and that it was fair to proceed in the Respondent's absence, noting the need to exercise its discretion with great caution and close regard to the overall fairness of the proceedings. The Respondent was plainly aware of the hearing and had taken steps to participate by entering into a Joint Minute and providing a letter in mitigation. He had intimated that he did not intend to appear at the hearing.

On the Fiscal's motion, the Tribunal amended the Respondent's address in the Complaint. The Respondent's current address was as set out in the joint minute. The Respondent had also asked the Tribunal to update its records regarding his change of address. In addition, the Fiscal moved the Tribunal to make two minor deletions to the Complaint. While the Joint Minute covered the averments of fact and duty set out in the Complaint, the Tribunal made these amendments since they were very minor, they were in the Respondent's favour, and they were supported by the information contained in the Complainers' productions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal described the Respondent's conduct outlined in the Complaint and the duties of solicitors imposed by the Practice Rules. He referred the Tribunal to documents contained within the Complainers' Inventory of Productions. He also highlighted the cases contained in the Complainers' List of Authorities.

SUBMISSIONS FOR THE RESPONDENT

The Tribunal had regard to the terms of the Joint Minute and correspondence from the Respondent. By letter of 3 December 2021, the Respondent said he had never sought to deny or avoid responsibility for his conduct. No losses were caused to clients or to the Client Protection Fund. He believed all matters were dealt with prior to his retirement. He repeated his offer to be voluntarily removed from the Roll of Solicitors.

DECISION

The Tribunal made findings in fact based on the facts agreed by the Joint Minute. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the Complaint.

The Tribunal considered the applicable rules. Solicitors must keep proper accounting records (Rule B6.7.1). The Respondent breached this rule. He did not balance his client account for a period of years. He operated another client account without reconciling it. Solicitors must balance the firm account monthly (Rule B6.7.3). The Respondent breached this rule and as a result, it was not possible to ascertain the true financial position of his practice unit for a period of years. Solicitors must deal with credit balances (Rule B6.11). The Respondent breached this rule in respect of six accounts. Solicitors must comply with the Money Laundering Regulations and demonstrate that to their regulators (B6.23). The Respondent failed to maintain procedures to meet his obligations including client due diligence or risk assessment procedures. A practice unit shall deliver accurate accounts certificates to the Law Society (Rule B15.1). The Law Society is entitled to rely upon the information contained with accounts certificates to monitor risk and target regulatory activity (Rule B15.2). The Respondent breached these rules and was reckless by completing inaccurate accounts certificates. Solicitors must remedy breaches of Rule B6 promptly (Rule B6.4.1). He failed to do so. Cashroom managers have specific responsibilities (Rule B6.13). The Respondent breached his obligations by failing to use reasonable endeavours to acquire and maintain the competencies and skills of a cashroom manager and discharge his duties.

The Tribunal considered the test for professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that case,


“There are certain standards of conduct to be expected of competent and reputable solicitors. 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. Whether or not the

conduct complained of is a breach of rules or some other actings or omissions. the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made."

In holding funds for clients, solicitors are in a privileged position of trust. The public must have confidence that the profession will comply with the Accounts Rules. Failure to comply with the rules diminishes the trust the public places in the profession. The Respondent was the cashroom manager. This is an important and highly responsible position. It is essential that cashroom managers comply with the Accounts Rules, including the provision of accurate accounts certificates. The Respondent was also the Money Laundering Reporting Officer. Compliance with the Anti-Money Laundering Regulations is essential to prevent crime. While not every breach of a rule will constitute misconduct, the Tribunal was satisfied that the Respondent's conduct *in cumulo* represented a serious and reprehensible departure from the standards of competent and reputable solicitors and was accordingly professional misconduct.

The Fiscal confirmed that there were no previous conduct matters on the Respondent's record card. The Tribunal examined the Respondent's letter in mitigation. It considered the Respondent's clean record, his cooperation with the Fiscal, the fact he had entered into a Joint Minute, his health, and his stated intention not to return to practice. In all the circumstances, the Tribunal was satisfied that the appropriate sanction was a Censure.

On the Complainers' motion, the Tribunal awarded expenses against the Respondent. Publicity will be given to this decision and will include the name of the Respondent but need not identify any other person.



Beverley Atkinson

Vice Chair