

**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

**HAROLD WILLIAM JOSEPH of Messrs.
Harold W. Joseph, 54 Carlton Place, Glasgow**

Respondent

1. A Complaint dated 6 August 2019 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 Harold William Joseph of Messrs. Harold W. Joseph, 54 Carlton Place, Glasgow (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 22 November 2019 and notice thereof was duly served upon the Respondent. Before the hearing, parties indicated that they had entered into a Joint Minute of Admissions. The Respondent intimated the withdrawal of his Answers and submitted a written plea in mitigation.
5. At the hearing on 22 November 2019, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Respondent having no objection, the Tribunal granted the Fiscal's

motion to amend the Complaint by deleting the last sentence of paragraph 3.12; deleting “2014” in the second line of paragraph 3.19 and substituting “2015”; and deleting “2015” in the fourth line of paragraph 3.19 and substituting “2014”. The Tribunal received a signed Joint Minute of Admissions whereby the Respondent admitted all averments of fact, duty and misconduct in the Complaint. The Fiscal made submissions regarding misconduct. During the course of these he indicated that the averment of duty relating to breach of Rule B6.13.3 could be disregarded, along with the reference to that Rule in averment of misconduct 5.1(b).

6. Having given careful consideration to the terms of the Complaint, the Joint Minute, and the submissions, the Tribunal found the following facts established:-

6.1 The Respondent is Harold William Joseph. He practises as the sole principal of Messrs. Harold W. Joseph, 54 Carlton Place, Glasgow. His date of birth is 19 November 1951. He was admitted to the roll of solicitors in Scotland on the 15 December 1975. He was partner in Joseph Davis & Co from July 1983 to December 1998, and thereafter at McClure & Partners between January 1999 and September 2002. On the 1 October 2002 the Respondent set up Harold W Joseph where continues to practise as the sole principal.

True financial position/ Keep proper books

6.2 The Respondent’s practice was inspected by the Financial Compliance team of the Complainers on the 21 November 2016. The practice had been inspected in each of the previous three years (2013, 2014 and 2015). The previous inspections highlighted a significant number of failures to comply with the Law Society of Scotland Practice Rules 2011 (the 2011 Practice rules). On each previous occasion the solicitor had been given the benefit of the doubt and no disciplinary action instigated. The previous failings included failures to:

- Reconcile on a monthly basis his client accounts, accordingly the inspectors were unable to ascertain the true extent of monies held by the Respondent (2013 and 2014);
- Maintain client accounts in credit, accordingly they often showed a deficit (2013 and 2015);
- To pay SLAB outlays timeously (2015);

- Prepare client ledgers timeously (2013 and 2014);
- Produce a true trial balance showing the firms “true financial position” (2013, 2014 and 2015);
- Reconcile client bank accounts correctly (2013, 2014 and 2015);
- Narrate the rule breaches in accounts certificates (2013);
- Declare accurately his indebtedness to HMRC (re VAT & PAYE) (2013, 2014 and 2015);
- Attend to aged client balances (2014 and 2015);
- Rectify breaches (2013);
- Meet his cashroom manager responsibilities (2013).

6.3 The primary conclusion of the inspectors on the 21 November 2016 was that the books and records of the Practice Unit of Messrs Harold W. Joseph were insufficient to demonstrate compliance with the 2011 Practice Rules. The records were in such a condition that the true financial position of the Practice Unit could not be ascertained, with many instances of deficits noted. Further it could not be confirmed that there were sufficient funds held within the Client Bank Account to cover all credit balances.

6.4 On inspection the Respondent immediately conceded the books and records were not fully complete and were in arrears. The Respondent used the services of a law accountant to write up his monthly books having completed manual accounting himself. The law accountant stated that the Respondent had not provided information to him timeously and he had only received the last full year’s entries (for the period October 2015 to October 2016) for posting in November 2016, following upon intimation of the Compliance Inspection.

6.5 The law accountant advised he had completed LawWare records from October 2015 to May 2016. These revealed a deficit on the client account of £10,541.26 in May 2016. The Respondent admitted to the inspectors his manual records showed further months where deficits had occurred. In respect of the manual entries/books it was noted that the manual records prepared by the Respondent were not, and had not been, consistent with the computerised books and records produced on LawWare by the law accountant. Many differences and discrepancies

were noted throughout the records reviewed from January 2016 onwards. As an example, the inspectors observed

- Manual records as at May 2016 £2,573.28 Surplus
- LawWare records as at May 2016 (£1,102.71) Deficit

6.6 Without the full year's LawWare books/accounts being prepared, the accounts at the time of inspection could not and did not show the true picture of the firm's and the firm's clients' financial position.

6.7 As at the date of the inspection, the inspectors were not able to identify the true figure of indebtedness of the practice unit to HMRC in respect of PAYE & VAT from the Respondent's accounts. The Respondent was not able to confirm the true figure to the inspectors immediately post inspection.

6.8 The inspectors observed that that the practice's books were not written up contemporaneously, that it was not possible to ascertain the true extent of client monies held, nor establish the true financial position of the practice unit at particular historical points. As the books were in arrears it would not have been possible for the Respondent to be certain of the practice unit's true financial position nor the precise balance of the client money at month ends.

6.9 The Client List of Balances and surplus statements did not appear to be correct as the figures on the Client List of Balances did not match the Client Ledgers as illustrated below, (the top figure is the Respondent's manual figure and the bottom figure is the LawWare figure prepared by the law accountant).

	Total Credit Balances per Client List of Balances	Total Credits Balances per Client Ledgers
June Surplus	£8,392.26	£8,409.94
	£513.47	£495.79
July Deficit	£11,005.02	£11,119.86
	(£5,888.36)	(£6,003.10)

August Surplus	£5,102.18	£11,123.86
	£7,538.89	£1,517.21
September	£4,009.92	£11,123.86
Surplus/Deficit	£6,690.21	(£423.71)
October Surplus	£9,589.19	£9,492.03
	£7,095.86	£7,193.02

6.10 For the period 1 June 2016 to 31 October 2016 the Respondent had not completed the following accounting records:

- Firm Trial Balance
- Client Trial Balance
- Firm and Client Bank Reconciliations
- Firm and Client Bank Statements
- Firm and Client Bank Nominal Ledgers
- Daybooks / Cashbooks
- Statements of Surplus

By December 2016 the Respondent had still not provided accurate financial reports.

6.11 The Respondent's Client cash book showed debits in November 2016 to pay salaries, drawings and his accountant. There was no running client balance. Accordingly, the Respondent could not be certain that funds surplus to client funds were available to make such payments from the Client Account.

6.12 The Respondent's practice had been inspected in the previous 3 years, at each inspection there were a number of breaches of the rules highlighted to the Respondent by the inspectors. The breaches were not insignificant.

Deficits on client account

6.13 The inspectors were able to identify the following client account deficits. These were identified after the inspection once further information being provided by the Respondent and his law accountant:

- January 2016 deficit of £4,695.20
- February 2016 deficit of £6,630.01
- May 2016 deficit of £1,102.71
- June 2016 deficit of £2032.26
- July 2016 deficit of £6003.10
- September 2016 deficit of £3435.56

Accounts certificates

6.14 The Respondent was, as with all practice units, required to submit Accounts certificates. The Respondent submitted certificates dated 15 May 2016 and 4 November 2016 in respect of the accounting periods up to and including 31 March 2016 and 30 September 2016 respectively. The certificates were inaccurate.

6.15 Certificate to 31 March 2016 – signed 15 May 2016.

- In Section 1, he certified that he had complied in full with Rules B6.3.1 to B6.11, including: that his client account had not been in deficit; that his drawings from the client account during the accounting period had been made in accordance with Rule B6.5.1(a) to B6.5.1(f); that his books re his client account had been properly written up; that he carried out monthly reconciliations between client bank statements and client ledgers; and that he reconciled items within a reasonable timescale. This certification was not true, it was false.
- In Section 2, he certified *inter alia*: that “all practice unit officers and employees required to implement and/or adhere to the Accounts Rules ha[d] received adequate training and supervision appropriate to their roles”; that the systems he employed to carry out and to secure compliance with the Accounts Rules were fit for purpose; and that he personally, as Cash Room Manager, had been able adequately to discharge his responsibilities under Rule B6.13 at all times during the accounting period. This certification was false.
- In Section 4, he certified that he had held £32,559.76 on the General Client Bank Account and that he had held £22,734.24, by way of total credit balances due to clients as at the ‘Certificate End’ date and that he had held

£13,494.03 re the former and £10,034.54 re the latter as at 31 December 2015. Also, he confirmed that his payments to HMRC were not up to date. This certification was false.

- In Section 7, he did not reveal he utilised an outsourced cash room provider. The certification not true, it was false.

The Respondent subsequently in February 2017 submitted a substitute certificate for the same period. In this submission he certified:-

- He had not complied with Rules B6.3.1 to B6.11: his client account had been in deficit; his drawings from the client account had not been made in accordance with Rule B6.5.1(a) to B6.5.1(f); and his books re his client account had not been properly written up in accordance with Rule B6.7. He did not indicate whether he carried out monthly reconciliations between client bank statements and client ledgers and whether he reconciled items within an acceptable timescale;
- He had not adequately discharged his responsibilities under Rule B6.13 at all times during the accounting period;
- That monies held on the general client bank account, as at the “certificate end” date amounted to £31,415.89, and that total credit balances due to clients amounted to £28,216.92; for the previous “quarter end”, the equivalent figures were £13,254.09 and £10,726.19. He confirmed that he was still in arrears with payments to HMRC.
- In a ‘Paper Apart’, the Respondent said the firm had been in deficit in two out of the six months covered by the Certificate.

6.16 Certificate to 30 September 2016 – signed on the 4 November 2016

- In Section 1, the Respondent certified that he had complied in full with Rules B6.3.1 to B6.11, including: that his client account had not been in deficit; that his drawings from the client account during the accounting period had been made in accordance with Rule B6.5.1(a) to B6.5.1(f); that his books and

records re his client account had been properly written up; that he carried out monthly reconciliations between client bank statements and client ledgers; and that he reconciled items within a reasonable timescale. This certification was not true, it was false.

- In Section 2, the Respondent certified *inter alia*: that ‘all practice unit officers and employees required to implement and/or adhere to the Accounts Rules ha[d] received adequate training and supervision appropriate to their roles’; that the systems he employed to carry out and to secure compliance with the Accounts Rules were fit for purpose; and that he personally had been able adequately to discharge his responsibilities under Rule B6.13 at all times during the accounting period. This certification was false.
- In Section 4, the Respondent certified that monies held on the general client bank account, as at the ‘certificate end’ date, amounted to £10,720.63 and that the total credit balances due to clients amounted to £6,469.19. He confirmed that his payments to HMRC were in arrears. This certification not wholly true, it was false.

Subsequently the Respondent signed and submitted a substitute accounts certificate dated 26 January 2017. The Respondent certified:-

- That he had not complied with Rules B6.3.1 to B6.11: his client account had been in deficit; his drawings from the client account had not been made in accordance with Rule B6.5.1(a) to B6.5.1(f); he had not carried out quarterly reconciliations between the accounting records for Client Funds invested in Specified Accounts and statements provided by the bank/building society; and “reconciling items shown in the reconciliations [had] not been investigated and resolved within an acceptable timescale”
- That, as Cash Room Manager, he had not been able adequately to discharge his responsibilities at all times during the accounting period, but certified that he had complied with Rule B6.13 in all other respects

- The monies held on the general client bank account, as at the ‘certificate end’ date, amounted to £10,720.63 and that the total credit balances due to clients amounted to £14,156.19 (the latter figure is at variance with the previous figure and indicates that there was a deficit) and his payments to HMRC were in arrears.

Rectifying breaches

6.17 Following an inspection by the Complainer’s Financial Compliance Department in 2013 it was observed that the Respondent was in breach of Rules

- B6.3.1(a) that there were observed deficits on the client account in November 2012 through April 2013;
- B6.3.1 Client Funds Held in the Firm Account – SLAB Outlays were not being paid timeously;
- Rule B6.7.1 The Respondent’s control figure and actual recordings were different;
- B6.7.1 The Respondent had failed to reconcile his RBS firm bank account;
- B6.7.4 The true financial position of the firm was not discernible as the trial balance did not show an accurate position of the practice unit; the Respondent’s VAT & PAYE arrears were not identifiable;
- B6.8.1 The Client bank reconciliations were incorrectly carried out, there was no running total and the inspector manual reconciliation was not the same as the trial balance figure;
- B6.8.2 Statement of Surplus. The surplus statement produced at 30/06/13 showed a surplus position of £16,123.67 which was incorrect;
- B6.13 Cashroom Manager. The records of the practice unit were insufficient and did not demonstrate compliance with the Accounts Rules requirements and;
- B6.15 Failure to disclose breaches on accounts certificates.

6.18 Following an inspection by the Complainer’s Financial Compliance Department in 2014 it was found that the Respondent was in breach of Rules

- B6.11, in that he had aged client balances;

- B6.7.1, in that it was noted that there were transactions which were properly and contemporaneously posted; that the Respondent continued to utilise manual and computerised records which did not match and;
- B6.7.4, that the true financial position of the firm was not ascertainable because the Respondent did not reconcile his RBS firm Bank account statements on a monthly basis.

6.19 Following an inspection by the Complainer's Financial Compliance Department in 2015 it was found that the Respondent was in breach of Rules

- B6.11 that he had aged client balances, two of which had been highlighted in the 2014 inspection;
- that he failed to pay SLAB outlays timeously on re-imburement and payment had been outstanding for in excess of 10 months;
- the Respondent was in HMRC arrears, the extent of which was not readily ascertainable;
- B6.7.4 the Respondent's failure to reconcile the RBS accounts continued. This had been highlighted in 2014.

6.20 The Respondent continuously failed over the periods October 2012 to November 2016 to meet his obligations in terms of the rules (*inter alia* continued failure to reconcile client funds monthly, take payments from the client account without a running total, failure to exhibit a true position of the firm's financial position and failure to exhibit a true position of the client funds held), failed to heed warnings and failed to correct these repeated breaches.

Cashroom Manager Duties

6.21 The Respondent continually failed to meet his obligation to properly manage the financial affairs of his practice unit. Despite being given numerous chances over the period 2013-2016 he has failed *inter alia* to reconcile his firm bank accounts; distribute aged client balances and outlays timeously; keep a running reconciled client balance; keep a client balance surplus; keep an comprehensive audit trail; keep an ascertainable true position of the firm; instruct his law accountant timeously. Generally, his books were in a state of disarray. The Complainers saw no evidence throughout the inspections that the Respondent attempted to acquire

or maintain any skills in relation to the financial running of his practice unit.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that he:-

- (a) failed to keep at all times properly written up such account records as were necessary to show the true financial position of the said firm, and dealings with client money, and that in breach of Rule 6.7.1 & 3 of the Law Society of Scotland Practice Rules 2011;
- (b) in his capacity as Cashroom Manager, failed to acquire and maintain skills necessary to ensure that his firm complied with the Law Society of Scotland Practice Rules 2011, and that in breach of Rule B6.13.2;
- (c) in his capacity as Cashroom Manager, failed to ensure that the said firm complied with the Law Society of Scotland Practice Rules 2011 by *inter alia* his repeated failures, lack of remedial work, lack of foresight of the importance of maintaining books, utilisation of client funds when the true trial balance was unknown, signing accounts certificates which were plainly wrong amounting to reckless behaviour in breach of Rule B6.12.1(a) through (c) of the Law Society of Scotland Practice Rules 2011;
- (d) failed to ensure that the any breaches of the 2011 Practice Rules were remedied upon discovery and that in breach of B6.4.1 of the Law Society of Scotland Practice Rules 2011;
- (e) in his capacity as Cashroom Manager, failed to ensure that the said firm complied with the Law Society of Scotland Practice Rules 2011, in that he allowed his client account to fall into deficit, and that in breach of Rule B6.3.1 of the Law Society of Scotland Practice Rules 2011;
- (f) in his capacity as Cashroom Manager, submitted false Accounts certificates and that in breach of Rule B6.12.1 and B1.9.1 of the Law Society of Scotland Practice Rules 2011;

(g) when signing the accounts certificates were true to the best of his knowledge, when he was aware that the information contained therein was not true, was in breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011.

8. Having considered the Respondent's written plea in mitigation, his oral submissions in mitigation and the parties submissions with regard to publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 22 November 2019. The Tribunal having considered the Complaint dated 6 August 2019 at the instance of the Council of the Law Society of Scotland against Harold William Joseph of Messrs. Harold W. Joseph, 54 Carlton Place, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect that he breached Rules B1.2, B1.9.1, B6.3.1, B6.4.1, B6.7.1, B6.7.3, B6.12.1 and B6.13.2 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine him in the sum of £1,000 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)

Kenneth Paterson

Vice Chair

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
7 JANUARY 2020

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the hearing on 22 November 2019, the Tribunal had before it the Complaint, a Joint Minute of Admissions, a List of Authorities lodged by the Complainers and a written plea in mitigation.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that the Respondent failed to comply with the Practice Rules but he had not been dishonest. He did not provide his accountant with the raw data required. There were discrepancies between his manual notes and the LawWare accounts. No accounting was carried out between June 2016 and October 2016. There were periods where the client account was in deficit. However, the Respondent did not hold a lot of money for clients. He was a civil legal aid practitioner. He was paying outlays from his client account and ran it at a deficit rather than using other funds. There were errors on the accounts certificates submitted by the Respondent and some of these were signed late. The Respondent also failed to rectify breaches timeously. He failed in his duties as cashroom manager. The Respondent's firm was inspected in 2013, 2014 and 2015 and various low-level failures were identified. In 2016 things came to a head and the Respondent was referred to the Client Protection Sub Committee. A complaint was made to the Scottish Legal Complaints Commission. The Fiscal noted that the Respondent fully accepted his culpability immediately and cooperated.

The Fiscal summarised the averments of misconduct and indicated the averments of fact which supported each averment of misconduct. With regard to the last averment of misconduct, the Fiscal indicated that the Complainers accepted there was no dishonesty on the part of the Respondent. The firm was afloat and he was in a position to pay all sums due. However, he was unable to demonstrate this in his accounts. He signed the accounts certificates in hope rather than in true and honest belief. He did not set out to mislead the Society but the certificates were not accurate as he did not carry out the proper checks.

The Fiscal referred to Sharp v Law Society of Scotland 1984 SC 129 and the Tribunal cases of Law Society of Scotland v Christopher Forrest and Law Society of Scotland v Caroline McCallum. He reminded the Tribunal that the test for professional misconduct was that contained in Sharp. He noted the similarities of Forrest and McCallum to the present case. In Forrest, the misconduct was cumulative. There were some serious rule breaches against a background of minor breaches in the preceding years.

In answer to a question from the Tribunal, the Fiscal indicated that the Respondent's conduct was capable of constituting professional misconduct at least on a *cumulo* basis but he was content to leave that matter to the Tribunal.

The Respondent indicated that he had nothing to say about the facts of the case and would hold over his plea in mitigation until the Tribunal had made its decision on professional misconduct.

DECISION ON PROFESSIONAL MISCONDUCT

Although the Respondent admitted professional misconduct, it was for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. 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.

Solicitors must act with personal integrity and communicate effectively. The client account must not be in deficit. Solicitors must remedy any breaches promptly. They must keep proper accounting records of dealings with clients' funds. They ought to keep proper accounting records for the practice unit. Special responsibilities rest on cashroom managers. They must ensure compliance with the Rules and submit accurate accounts certificates. The Accounts Rules exist to protect the public. It is important that the public have confidence that the profession will abide by the Rules. The Respondent failed in his duties and his behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct. The Tribunal was particularly concerned that the Respondent signed accounts certificates which he did not know were accurate. Accounts certificates are not a formality. They must be completed properly so that the Society can use the information to monitor compliance and assess risk.

The Fiscal confirmed that the Respondent had a clean record card. He noted that the Respondent's firm had been inspected in 2017 and there had been a significant improvement meaning that there was no requirement for a re-inspection.

SUBMISSIONS IN MITIGATION

The Tribunal had regard to the written plea in mitigation and the oral submissions made by the Respondent. The Respondent described his firm and the staff working for him. He explained that he undertakes a lot of civil legal aid work, particularly personal injury litigation. This kind of work presents specific challenges when covering outlays and recovering fees. He noted that the deficits on the client account arose as a result of these challenges and not because he was dishonest with clients' money. No client suffered any loss. The compliance issues arose at a time when he was experiencing an abnormally heavy workload. He was under a lot of pressure. He accepted that he "took his eye off the ball".

The Respondent noted that he had fully cooperated with the Law Society and had entered into a joint minute. He has been compliant and in surplus every day since September 2016. He does his banking daily and sends information to his accountant to prepare daily reports. The last four years demonstrated that this system was working. The public is therefore adequately protected. He noted that he never wants to appear before the Tribunal again as the process has been very stressful. The Respondent urged the Tribunal to impose a disposal which would allow him to continue practising.

The Fiscal moved for expenses. The Respondent acknowledged that this was difficult to resist and was happy to leave the matter with the Tribunal. The Fiscal made no motion regarding publicity. The Respondent noted that he would prefer if the matter was not given publicity.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal had regard to its indicative outcomes guidance. The Tribunal noted that the Respondent's accounts had not been compliant for three years. He had ample opportunity to resolve the matter and failed to do so. The Tribunal was particularly concerned about the failures regarding the accounts certificates. However, it noted that dishonesty was not a feature of this case and that the Respondent had fully cooperated with the Complainers and the Tribunal. There were no previous conduct findings against the Respondent. He had shown remorse and insight. There was no requirement for supervision and no ongoing risk to the public. Therefore, the Tribunal Censured the Respondent. It also fined him £1,000 to mark the seriousness of the misconduct and the length of time for which it had persisted.

The Tribunal awarded expenses to the Complainers. The Tribunal considered its obligations under Paragraph 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 and ordered that publicity

should be given to the decision and that the Respondent ought to be named in the decision. However, there was no requirement to name any other person as publication of their personal data was likely to be detrimental to their interests.



Kenneth Paterson

Vice Chair