

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

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**ALAN JACKSON, 14 Barn Place,
Livingston, West Lothian formerly
of 28 Swift Brae, Livingston, West
Lothian**

1. A Complaint dated 17 November 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alan Jackson, Solicitor, 14 Barn Place, Livingston, West Lothian formerly of 28 Swift Brae, Livingston, West Lothian (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 by the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 17th February 2005 and notice thereof was duly served on the Respondent.
4. The hearing took place on 17th February 2005. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented by Mr McMenamain, Solicitor, Livingston.
5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint as amended were admitted. No evidence was led.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born 29th February 1960. He was admitted as a solicitor on 18th July 1984. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 10th August 1984. From 8th July 1989 until 31st December 1990 he was employed with the firm Stanton Dow, 145 North High Street, Musselburgh. Thereafter from 1st January 1991 until 6th August 1999 he was a partner with the firm Jackson Hetherington, 145 North High Street, Musselburgh. Thereafter from 9th August 1999 until 31st October 2002 he practised as a sole practitioner under the firm name Jackson Law, 145 North High Street, Musselburgh. From 4th December 2002 until 31st January 2003, he was employed as a Consultant with the firm Garden Stirling

& Burnett, 145 North High Street, Musselburgh. From 28th April 2003 to date he has been employed as an Assistant with the firm of Messrs Keegan Walker & Co of Almondvale Boulevard, Livingston.

6.2 Inspection of 30th and 31st January 2003

In pursuit of their statutory duties, the Complainers carried out an inspection of the financial records and documentation operated by the Respondent at his place of business on 30th and 31st January 2003. At the time of the inspection the Respondent was in the course of transferring the practice of Jackson Law Solicitors to the firm of Garden Stirling & Burnett. The inspection revealed to the Complainers a number of breaches of the Solicitors (Scotland) Accounts Etc. Rules 2001. In particular the inspection identified the following breaches.

- (a) The Respondent had prepared month end reports and bank reconciliations for 30th November 2002 and 31st December 2002. These highlighted many differences. The firm and client bank reconciliations did not agree with the trial balance. The client control total did not agree with the list of balances. The surplus statements/bank analysis print noted a different bank figure and client credit balance figure as detailed in previous reports prepared. The inspectors produced a breakdown of the differences which were offered to the Respondent for explanation. No explanation was forthcoming.
- (b) The Respondent prepared a firm's trial balance for 30th November 2002 and 31st December 2002. This was examined. This revealed an

account with the Clydesdale Bank which had a debit of £120. Upon enquiry of the Respondent, it was revealed that this particular account was not a bank account for the firm Jackson Law but rather was an older bank account from a previous firm, Jackson Hetherington. As such this figure should not have appeared within the financial records of Jackson Law. Further examination revealed that the figure had appeared within the records of Jackson Law since 2000.

- (c) The Respondent operated a petty cash account under the heading "Jackson Law Petty Cash" which at the date of the inspection had a debit of £1,656.30. The inspection of the petty cash account revealed the true position had not been reflected. Cash expenditure was not accounted for resulting in the cash balance and the other relevant expenditure. Ledgers being incorrectly stated.
- (d) An examination of the surplus calculation/bank analysis print prepared by the Respondent revealed an account with the Clydesdale Bank plc with a credit of £5,487.42. This bank account was included within the surplus calculation. Upon enquiry the Respondent advised that this was a previous bank account belonging to the firm Jackson Hetherington. As such it should not be part of the surplus calculation or the records of the firm Jackson Law. This resulted in an incorrect surplus calculation being produced for a considerable length of time. At the end of each month the bank account had simply been scored through.

6.3 At the date of the inspection the Respondent was in the course of transferring his business to the firm Garden Stirling & Burnett. The examination revealed that the Respondent transferred client balances of £30,743.48 on 12th December 2002 and £2,012.26 on 24th December 2002 to the client bank account operated by the firm Garden Stirling & Burnett. These sums represented both client credit and debit balances. Having examined the client ledger kept by the Respondent and the postings in connection therewith at the date of the inspection would indicate that on 12th December 2002 the net sum to be transferred to Garden Stirling & Burnett was £26,073.04 which meant a difference of £4,670.44. The inspection also revealed that despite the monies being transferred to Garden Stirling & Burnett on 12th and 24th December 2002, that firm did not receive a breakdown of the client balances which had been transferred by the Respondent until 28th January 2003 as a consequence of which they could not enter the client information onto their own system prior to that date.

6.4 In the course of the inspection the Complainers carried out an examination of a number of conveyancing files which revealed to the inspectors a number of matters of concern. A significant number of unrecorded deeds were noted throughout the files examined. These deeds were only sent for recording when the files were passed to the firm Garden Stirling & Burnett following the transfer of the business. Examples included:-

(a) Ms A (A005). The transaction settled in June 2002. The deeds were sent for recording by the

firm Garden Stirling & Burnett on 27th January 2003.

- (b) Mr B (B025). The transaction settled on 9th July 2002. The deeds were sent for recording by Garden Stirling & Burnett on 10th January 2003.
- (c) Ms C (C017). The transaction settled on 26th July 2002. The deeds were sent for recording by Garden Stirling & Burnett on 8th January 2003.
- (d) Mr O and Ms P (OP13). The transaction settled on 11th September 2002. The deeds were sent for recording by Garden Stirling & Burnett on 8th January 2003.
- (e) Mr D (D024). The Respondent acted for the client Mr D in connection with a re-mortgage over the subjects at Property 1. An examination of the client ledger operated by the Respondent revealed that mortgage funds were received from the Royal Bank of Scotland plc of £50,000 on 25th October 2002. The inspection revealed no evidence that the Standard Security had been forwarded for registration.
- (f) Ms E (E021). The inspection revealed a credit balance of £44 had remained on the client ledger for this particular client since 1999. Loan funds were received on 15th September 1999. The inspection did not make it clear as to whether the transaction had been completed or not.

6.5 The inspection revealed the Respondent operated an invested funds account for the client, Ms F (Deceased) with a credit balance of £14,973 as at 31st December 2002. The invested funds Solicitors Special Deposit Account was opened on 12th April 2002 and was incorrectly designated in the name of Mr G. This error was further compounded by a cheque book being issued which also stated the incorrect name. The discrepancy was never amended by the Respondent. In addition the administration in connection with the Executry commenced in February 2002 with Death Certificates being obtained on 27th February 2002. An examination of the client ledger operated by the Respondent revealed that he only applied for confirmation on 14th November 2002. No explanation was provided by the Respondent as to why there was such a delay in dealing with the administration of the estate.

6.6 The inspection revealed the Respondent had failed to comply with the obligations expected of him by the Money Laundering Regulations. In many instances no client identification was seen. An examination of the files did not indicate why identification would not have been necessary, examples noted included:-

(a) Ms H (H013)

(b) Mr I (I036)

(c) Mr J (J001)

(d) Ms K (K001)

(e) Mr L and Ms M (LM013)

(f) Ms N (N042)

(g) Mr Q and Ms R (QR007)

6.7 In addition the Respondent gave no consideration to evidencing the source of funds received from clients towards their transactions. Examples included:-

(a) Ms H - £85,000 received 17th September 2002.

(b) Mr I - £10,039.50 received 27th September 2002.

(c) Mr S - £30,718.75 received 4th October 2002.

(d) Mr J - £10,958.75 received 8th October 2002 from Ms K.

(e) Ms N - £18,000 received 13th November 2002.

(g) Mr Q and Ms R – 2 x £12,400 received 20th November 2002.

(h) Mr L and Ms M - £22,490.50 received 29th November 2002

6.8 In relation to the ledger kept for the client Ms T (T007) a payment had been made of £3,318 to an Ms U on 19th November 2002. No written authority in respect of the payment from the client was on the file.

6.9 The inspection further revealed that on many occasions the ledger entries prepared by the Respondent were found to be insufficient or incorrect. Examples notes:-

- (a) Mr I “received from you price £75,000”. This was wrong. In actual fact the monies were mortgage funds received from the Halifax Building Society.
- (b) Mr V “received from lender mortgage funds - £49,400”. This was insufficient. The funds were receiving from Lloyds TSB.
- (c) Mr W and Ms X “received sale proceeds Property 2 - £59,995”. This was wrong. The monies were in actual fact the purchase price received from Leslie Deans W.S.

6.10 Professional Indemnity Insurance

At the date of the inspection the Respondent was in the course of transferring his business interests to the firm Garden Stirling & Burnett. The inspection revealed that between the period 1st November 2002 and 4th December 2002 the Respondent had failed to have in place the required insurance in terms of the Master Policy provided for in terms of the Professional Indemnity Insurance Rules 1995, Rule 7. The Respondent had allowed the indemnity cover provided in terms of the previous certificate to expire and thereafter failed to replace or reinstate insurance during the period aforesaid. During the period aforesaid he continued to practice as a solicitor.

6.11 Failure to Respond

Having carried out the inspection on 30th and 31st January 2003 the Complainers thereafter wrote to the Respondent by letter dated 20th February 2003 in terms

of which they outlined in detail their concerns regarding the book-keeping practices of the Respondent and the breaches of the 2001 Accounts Rules which had been identified by their inspectors. The Complainers requested that the Respondent provide them with a reply within fourteen days together with the information and documentation which they requested to allow them to satisfy themselves that all was in order. A response was received by the Respondent on 27th March 2003 advising that he would address the matters raised in due course and requesting an extension of time to answer. This was granted. Nothing further was heard from the Respondent. On 11th February 2004 the Complainers wrote to the Respondent inviting him to attend for interview at their office. By letter dated 17th February 2004 the Respondent replied advising that he was in the course of considering matters and would revert to the Complainers with the information sought. He offered an explanation that he was involved in a difficult case and would return to the Society shortly. Reminders were written to the Respondent on 25th March 2004 and 11th May 2004. No reply was received by the Respondent. The Complainers required the Respondent to answer the enquiries made of him to allow them to complete their statutory duties. The Respondent failed to do so. As a consequence the Complainers were hampered, impeded and frustrated in the course of carrying out their statutory duties.

7. After hearing submissions the Tribunal found the Respondent guilty in cumulo of Professional Misconduct in respect of:

- (a) His breach of Rule 6, 8, 9, 10 and 24 of the Solicitors etc Accounts Rules 2001 including his transferring client balances that were not accurately reflected in the client ledgers, his failure to keep accurate records and books in respect of client ledgers, his incorrectly designating an invested funds account, his failure to comply with the Money Laundering Regulations and failure to properly administer client ledgers
- (b) His failure to have in place the required insurance in terms of the master policy provided for in terms of the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995 Rule 7.
- (c) His failure or unreasonable delay in recording deeds timeously following upon settlement of conveyancing transactions
- (d) His failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society concerning the breaches of the Solicitors (Scotland) Accounts etc Rules 2001.

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

Edinburgh 17th February 2005. The Tribunal having considered the Complaint dated 17th November 2004 at the instance of the Council of the Law Society of Scotland against Alan Jackson, 14 Barn Place, Livingston, West Lothian formerly of 28 Swift Brae, Livingston, West Lothian; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his breach of Rules 6, 8, 9, 10 and 24 of the

Solicitors (Scotland) Accounts etc Rules 2001, his breach of Rule 7 of the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995, his failure or unreasonable delay in recording deeds timeously and his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any Practising Certificate held or to be issued to the Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to, and to being supervised by, such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland for an aggregate period of five years; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity will include the name of the Respondent.

(signed)

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

A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended. No evidence was accordingly led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid moved to amend Article 1.1 in the Complaint and delete Articles 2.12 and 2.13. This was agreed. Mr Reid stated that the Respondent's difficulties had arisen when he had ceased to be a sole practitioner and was transferring his business to another firm. His books were inspected and there were a number of matters which caused concern. He had failed to keep accurate records and books in respect of client ledgers and on two occasions the ledgers did not accurately reflect balances transferred. The Respondent incorrectly designated an invested funds solicitors special deposit account. This was compounded by the fact that a cheque book was issued in the wrong name and there was a delay in getting confirmation in the executry. The Respondent had also failed to comply with his money laundering obligations and there had been a failure in the administration of client ledgers. Mr Reid stated of greater concern to the Law Society was the fact that the Respondent had no professional indemnity insurance cover from 1 November 2002 until 4 December 2002 and he had continued to practice. The Respondent had also failed to respond to the Law Society in connection with the matters. The Respondent's course of conduct showed inattention. Mr Reid acknowledged that the Respondent had co-operated and entered into a Joint Minute.

SUBMISSIONS FOR THE RESPONDENT

Mr McMenemy stated that the Respondent accepted that his conduct in cumulo amounted to professional misconduct and this had been accepted from the outset. Mr McMenemy pointed out that the Respondent had had no previous problems with the Law Society and there were no other matters outstanding. The Respondent was presently employed as an assistant solicitor within his firm and had worked there

since early 2003 in the Criminal Court Department and his conduct had been exemplary. Mr McMenemy explained the Respondent's history and the financial difficulties that he got into when he was partner in the firm of Jackson Hetherington. The Respondent set up as a sole practitioner but had numerous debts from the previous partnership which caused him difficulty. The Respondent realised he could not continue as a sole practitioner and made arrangements with Messrs Garden, Stirling & Burnett to be employed as a consultant and to transfer his business to them. His lack of professional indemnity insurance was a consequence of his financial problems. The Respondent was a consultant with Garden, Stirling & Burnett until January 2003 but even after this date he continued to help with the transfer of the business. Mr McMenemy pointed out that the Respondent had been forthright about his problems and had at no time acted with dishonest intent. The failure to respond to the Law Society had occurred at a stage when the Respondent was still suffering from pressures and he put his head in the sand. Mr McMenemy asked the Tribunal not to impose a fine given the Respondent's financial situation. He stated that the Respondent had no intention of returning to practice as a principal in the near future. He was working capably in a supervised role as a competent court lawyer.

DECISION

The Tribunal considered that the Respondent's breaches of the Accounts Rules together with his failure to have professional indemnity insurance, delay in recording deeds and failure to respond to the Law Society clearly amount in cumulo to professional misconduct. The Tribunal noted that no-one had been damaged by the Respondent's failures but there was potential for damage especially in connection with the lack of indemnity insurance and the delay in recording conveyancing deeds. The Accounts Rules and Professional Indemnity Rules are there to protect the public and failure to comply is damaging to the reputation of the profession. The Tribunal however noted the Respondent's past history and the difficulties that he had encountered. The Respondent was clearly trying to do his best and had realised that he could not continue as a sole practitioner and had taken steps to transfer his business to another firm. The Respondent had also co-operated and entered into a Joint Minute admitting the facts, averments of duty and averments of misconduct. The Respondent

clearly requires to work under supervision and the Tribunal considered that a Censure and a Restriction on his practising certificate for an aggregate period of five years, ensuring that he gains experience while working under supervision, would be sufficient to protect the public. The Tribunal made the usual order with regard to expenses and publicity.