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

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

STEPHEN McGUIRE, Hennessey, Bowie & Co., 2 Kenmure Lane, Bishopbriggs

Respondent

1. A Complaint dated 20 April 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 Stephen McGuire, Hennessey Bowie & Co., 2 Kenmure Lane, Bishopbriggs (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 hearing on 28 October 2021 and notice thereof was duly served on the Respondent.

5. At the virtual hearing on 28 October 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. A Joint Minute was lodged. Parties made submissions.

6. The Tribunal found the following facts established:-

6.1 The Respondent is Stephen McGuire, Hennessy, Bowie & Co, 2 Kenmure Lane, Bishopbriggs, Glasgow. His date of birth is 9 June 1967. He was enrolled as a solicitor on the 19 September 1989. He was employed by Ross Rogers & Co between 16 October 1989 and 31 December 1994. He became a partner there on the 1 January 1995. He remained as a partner or consultant until 30 April 2002. He was sole practitioner under his own name between the 1 September 2002 and 31 December 2007. During that time, he was also a consultant in WW& J McClure between 1 November 2004 and 31 August 2006. His record further states he was a consultant with Jas. Campbell & Co WS between 1 November 2005 and 29 March 2007. The Respondent joined Hennessey, Bowie & Co on 1 January 2008 as a partner where he continues to practise.

6.2 The Respondent became the Cashroom Partner on joining Hennessy Bowie & Co in January 2008. He has remained at all material times in charge of the firm's cashroom activities. He became and remains the Cashroom Manager. He became the AML Partner and thereafter Money Laundering Reporting Officer (MLRO) on the 1 November 2014. During the period 1 January 2008 and June 2017, the Respondent was in partnership with Alistair Bowie (AB). Alistair Bowie had been a partner in Hennessy Bowie & Co since 1984. On the 4 October 2019 Alistair Bowie was struck from the roll of solicitors in respect of his conduct in 2013/4. Hennessy Bowie operates mainly as a chamber practice.

6.3 The Council's financial compliance department carried out an inspection of Hennessy Bowie & Co "the practice unit" on the 31 July and 1 August 2013. At that time the Respondent was the Cashroom Partner. The practice unit's property had recently suffered a fire. Amongst other things the inspector found that no anti money laundering folder was kept by the practice unit. That there was no evidence/record of the Respondent as the MLRO carrying out sample file check; regular reviews of the AML procedures nor staff training records.

6.4 The Inspectors further found that the AML risk assessments were not signed or dated, some were incomplete and there was no evidence of ongoing monitoring on a number of inspected files. The Respondent advised the firm's policy was that

risk assessment forms should be signed and dated, and a further risk assessment was to be carried out prior to settlement. These files were observed not to have proper identification documents.

6.5 There were concerns raised about a lack of information about client source of funds. The Respondent advised that source of funds was covered in a practice note, which would be reviewed quarterly.

6.6 There were payments from client accounts to persons or companies who were not the practice unit's client without the client's written instructions. The Respondent acknowledged written instruction was required.

6.7 Concerns were raised regarding the record keeping of client ledgers. It was clear that in some cases where the practice unit represented two or more clients jointly, the ledger recorded one name only.

6.8 The Inspectors were content with the Respondent's comments to each of these queries and accepted the Respondent's advices re improvements.

6.9 A further inspection took place over the 21-22 October 2015. The Respondent was the Cashroom Manager. The inspection report contained 12 key findings and 17 schedule points. In other words, the inspectors found that 12 rules were breached and there were 17 reasons for the breaches. Most concerning were the errors previously identified which had not been rectified.

6.10 In addition, it was found of new there was no record of sample file checks and staff training records maintained by the MLRO. There were instances of files without client identification and instances of incomplete risk assessments.

6.11 Record keeping requirements had not improved; the risk assessment procedure had not been followed; client due diligence had not been carried out; the client identification process was not being followed; and there remained breaches re seeking client's written authority to pay others. The Respondent advised he had revamped the risk assessment forms which required to be updated every two months, that an anti-money laundering folder had been created.

6.12 The Inspectors resolved the risks and findings included in this report were of a serious nature, but did not merit the submission of this report to the Client Protection Sub Committee.

6.13 A Special Inspection was carried out of the practice unit on 17-18 March 2016 and a follow up visit carried out on the 24 May 2016. The inspectors made 7 key findings, in other words found 7 significant breaches of Rule B6 of the 2011 Law Society of Scotland Practice Rules. The Respondent was given an opportunity to respond to each of the entries in the Inspection report. Despite the work carried out, the Client Protection Sub-Committee resolved that a complaint should be made in respect of the Respondent's conduct as Cashroom Manager/Money Laundering Reporting Officer.

6.14 **Record keeping – Correct ledger account identification (schedule 8)**

On inspection 8 ledgers were identified as having been opened with the incorrect client names. The ledger accounts were in a single name. The instructing clients were the named individual and another on a joint basis. Both clients required to be identified in the ledger name. On re-inspection corrections had been made to the 8 ledgers. However, a further 3 out of 4 ledgers were identified as falling foul of the same error.

6.15 **Destination of funds/Written Authority (schedule 5 & 6)**

A practice unit should not become involved in any unnecessary movement of funds, regardless of a client's written instructions. The practice unit should settle directly with clients. The practice unit should always consider its position to ascertain whether there are any suspicious circumstances or any other reasons which may have legal implications when disbursing funds to any third party other than their client. A practice unit should have proper written authority for intromitting with funds.

6.16 The inspection identified two ledgers where the free proceeds of sale of heritable property was not paid to the named client. On Ledger 1, the client details were recorded as Ms A. The free proceeds of sale were paid to Ms B. The file was AB's.

AB had not sought nor received, any documentation to evidence Ms B's divorce and her reverting to her maiden name.

6.17 On Ledger 2, the client details were recorded as Ms C. The free proceeds of sale of heritable property were paid to Ms D. The file was AB's. AB was aware of but had not obtained any documentation to evidence the marriage of Ms C nor her change of name.

6.18 The Respondent had established policies to ensure client identification was obtained. AB did not follow the policies. The Respondent did not ensure AB complied.

6.19 On the follow up inspection (24 May 2016) a further four files were examined. File 3, concerned the sale of commercial premises which had been converted to residential flats by Company E (the recorded client). The free proceeds of sale were distributed as follows:

(a) £12,000 paid to Company F on 1 April 2016;
(b) £10,000 paid to Ms G on 1 April 2016;
(c) £40,000 paid to Ms G on 4 April 2016;
(d) £50,000 paid to Mr H on 4 April 2016;
(e) £18,000 paid to Ms G on 11 April 2016;
(f) £10,000 paid to Ms G on 26 April 2016.

There was no explanation for the distribution of the company's funds to these individuals; there was no identification obtained for the persons receiving the funds. There was a lack of true ownership diligence. The distribution without receipt of this information was *prima facie* suspicious. The Respondent should have considered making a report in terms of his duties in terms of the Proceeds of Crime Act 2002. The Respondent did not. In addition, there was no written authority from an authorised person of the company to make these payments. The file contained an email requesting

i. £50,000 be sent to Mr H;
ii. £40,000 be sent to Ms I's TSB a/c

Email communication is not sufficient to meet the requirement of written authority.

6.20 File 3 was AB's. The Respondent had, prior to the intromissions, put a policy in place to ensure proper written instruction was obtained and funds were paid appropriately. AB did not follow the policy.

6.21 File 4 in the name of Mr J showed a payment of the free proceeds of sale of heritable property to Ms K. The file was AB's. The heritable property was in the joint names of Mr J and Ms K. The file/client ledger should have been opened in joint names. However, as the ledger/file was in a single name, written authority was required to make payment to Ms K. Email communication requested payment to Ms K. Email communication is not sufficient to meet the requirement of written authority.

6.22 **Client Identification/Customer Due Diligence (schedule 4)**

Regulations 5 & 7 of the Money Laundering Regulations 2007 require and define the customer due diligence measures. The Society advises that individual client's identity is verified by a reliable and independent source. This should include full name, residential address and date of birth. This should be verified by sight of a credible document. The document should be valid and the original viewed. The inspectors noted the practice was largely compliant, however it was noted no information was held in respect of files File 5, File 6 and File 7. The practice unit had therefore not carried out proper identification and customer due diligence procedure. It was noted the Respondent had a written policy in respect of customer due diligence.

6.23 File 5 was the Respondent's file the other two were AB's files. On re-inspection there was still an absence of identification in respect of File 5 and File 7. Further files were inspected. File 8 and File 9 did not contain the required photo identification. Failure to comply with Regulation 7 of the Money Laundering Regulation may amount to a criminal offence.

6.24 **Anti-money Laundering regulations – Risk assessment (schedule 3)**

All solicitors as individuals, Cashroom Managers and Money Laundering Reporting Officers are obliged to meet their obligations in terms of the Money Laundering Regulations 2007. Part of those duties is to carry out risk assessments and client due diligence. Risk assessments are or should be carried out on risk sensitive basis. As Cashroom Manager and MLRO the Respondent was responsible for ensuring the practice unit had proper policies, training and monitoring in place. In 2013 the Society's inspectors found that there were no policies in place. In 2015 the policies were lacking, there was no record of training and there was no monitoring of officers and employees by the Respondent.

6.25 On inspection in March 2016 it was observed the practice unit had the appropriate systems in place for assessing risk, However, the risk assessments inspected were all recorded as low risk. There was no review of the risk assessment during the transaction. The inspector noted that the policies were not being implemented properly and that the practice unit was in breach of their obligation – to monitor the ongoing risk.

6.26 On re-inspection on the 24 May 2016, four files were inspected. There was no evidence of ongoing monitoring of the risk assessment during the transaction.

6.27 **Anti-Money Laundering Regulations - Record keeping (schedule2)**

The relevant person – in his practice unit, the Respondent - must design and implement risk sensitive policies and procedures in terms of regulation 20 of the Money Laundering Regulations 2007.

6.28 The Respondent had a risk assessment policy in place but failed to ensure all risk assessments were signed and dated. The policy noted the assessment was to be reviewed every two months. No on-going monitoring was carried out. All the risk assessments were low risk.

6.29 The inspectors identified the customer due diligence requirement that all files should have client ID. If that was not the case, a file should be brought to the

attention of the person responsible for the file. Files were observed without ID. This omission had not been bough to the attention of the solicitor in charge. The records were lacking, the procedure in place was not working. It was suspicious that a full risk sensitive evaluation was not being carried out on each file.

6.30 **Manager/Rectification/permitting non-compliance (schedule1)**

The Respondent as Cashroom manager in term of rule B6.13 is ultimately responsible for the staff, officers and practice unit's systems compliance with rule B6. The repeated failures averred above are the Respondent's. He is obliged in term of Rule B6.4 to rectify any breach of Rule B6 if identified by him, his staff or the Society.

6.31 The Respondent's practice unit was inspected in 2013 and 2015. There were no cashroom or anti money laundering policies in place. Some were available in 2016, however despite direction that the practice unit required compliance policies, the Respondent did not draft complaint polices. The policies drafted and in place were not sufficient for a practice unit of the size. The Respondent is obliged to remedy any breach upon discovery. He has failed to correct his earlier breaches of Rule 6.

6.32 The Respondent worked with his partner and fellow manager AB for a number of years. The Respondent knew for a number of years that AB was not complying with his obligations in terms of Rule 6 and the Money Laundering Regulations, as narrated in the Executive Summaries prepared following the inspections in 2013, 2015 and 2016. Despite having this knowledge, the Respondent permitted AB to continue to practise in contravention of his obligations.

7. Having given careful consideration to the Complaint, Joint Minute and submissions, the Tribunal found the Respondent guilty of Professional Misconduct, *in cumulo*, in respect that:-

7.1 He failed to properly identify clients of the firm on ledger cards and failed to rectify incorrect records in breach of Rules B6.7.1 and B6.13;

7.2 He made payments in breach of Rules B6.23 and B6.5.1 and the Regulations 5 and 7 of the Money Laundering Regulations;

7.3 He made payments to clients in new names without obtaining and recording details of the change of name, in breach of Rule B6.23 and Regulations 5 and 7 of the Money Laundering Regulations;

7.4 He failed to fulfil his obligations as Cashroom Manager, Money Laundering Reporting Officer, and manager of the practice unit, in breach of Rules B6.2.3, B6.13.1 and B6.13.3;

7.5 He failed to fulfil his obligations under Rules B6.23 and Regulations 5 and 7 of the Money Laundering Regulations;

7.6 As Cashroom Manager, he failed to ensure the practice unit's compliance with the Money Laundering Regulations 2007 in respect of client identification, client due diligence, and risk monitoring;

7.7 He failed to demonstrate he had established compliant risk assessments, failed to implement a risk assessment policy and failed to record ongoing monitoring of risk in breach of Regulation 7 of the Money Laundering Regulations 2007;

7.8 He failed to monitor ongoing risk, failed to retain records that monitoring of ongoing risk had been carried out, failed to retain client identification, and failed to communicate the policy to staff in breach of Regulation 20 of the Money Laundering Regulations 2007;

7.9 He failed to comply with his Cashroom Manager responsibilities in breach of Rule B6.13; and

7.10 He knowingly permitted the practice unit to fail to comply with the Practice Rules in breach of Rule B6.2.3(b).

8. Having heard further submissions in relation to mitigation, expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 28 October 2021. The Tribunal having considered the Complaint dated 20 April 2021 at the instance of the Council of the Law Society of Scotland against Stephen McGuire, Hennessey Bowie & Co., 2 Kenmure Lane, Bishopbriggs; Find the Respondent guilty of professional misconduct, *in cumulo*, in respect of his breaches of Rules B6.2.3, B6.4.1, B6.5.1, B6.7, B6.13 and B6.23 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 and his former partner but need not identify any other person.

(signed)

Catherine Hart

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 10 JANUARY 2022.

IN THE NAME OF THE TRIBUNAL

[redacted]

Catherine Hart

Vice Chair

NOTE

At the Hearing on 1 November 2021, the Tribunal had before it the Complaint, two medical letters and two references. Parties had lodged a Joint Minute agreeing certain matters in the Complaint. The Fiscal indicated that the Complainers did not insist upon the averments of misconduct which were not admitted in the Joint Minute.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal expressed his gratitude to the Respondent and Mr Macreath for their cooperation. The Fiscal explained that the Respondent joined Hennessey Bowie in 2008 and has been Designated Cashroom Manager since then. He was Money Laundering Reporting Officer from November 2014. He was formerly in partnership in Hennessey Bowie with Alastair Bowie who was struck off the Roll of Solicitors in 2019.

With reference to specific paragraphs in the Complaint, the Fiscal described the Respondent's conduct. He noted that the Respondent's firm was inspected in August 2013. Various matters were drawn to the Respondent's attention. The firm was inspected again in October 2015. The inspectors continued to have concerns. Another inspection took place in 2016. Following that inspection seven key findings were made in relation to breaches of the Accounts Rules. The Fiscal gave details of these findings. The most serious breach from the Complainers' perspective related to the six payments made to persons who were not clients. The firm did not hold identification for the recipients and no due diligence had been carried out with regard to the company.

The Complainers sought a finding of professional misconduct *in cumulo* in relation to the admitted averments. Over a period of three and a half years, the Respondent had been Designated Cashroom Manager while the firm breached various Accounts Rules and there was a risk of money being paid in breach of the Proceeds of Crime Act.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath acknowledged that professional misconduct was for the Tribunal to determine but noted that the Respondent had accepted in September 2019 that a finding of misconduct was inevitable due to the number and nature of the breaches of rules. He noted that the Complainers did not rely on breach of Rule B1.2 (honesty and integrity). Mr Macreath noted that the Respondent properly explained the

situation to the inspectors. He did not abdicate responsibility as Designated Cashroom Manager and Money Laundering Reporting Officer. Mr Macreath noted that during the period in question, there was a fire at the firm's premises and business was interrupted for 18 months.

The Respondent was previously in partnership with Alastair Bowie who was struck off the Roll in 2019. There was a fiduciary relationship between Mr Bowie and the Respondent. Mr Bowie "ploughed his own furrow" and they had quite separate practices. The Respondent did not fulfil his duties arising as Designated Cashroom Manager and Money Laundering Reporting Officer. Sampling files is a vital part of these roles. There were obligations on the Respondent but it was difficult for him to deal with these when Alastair Bowie was the senior partner. The Respondent accepted that the payments to third parties in particular ought to have been picked up and stopped or the appropriate consents obtained. Alastair Bowie's strike off had an enormous effect on the Respondent. Although he had capital in the business, he is now "completely out of the picture". The Respondent has taken on an assistant to help him comply with the rules. He also has an able cashier.

Mr Macreath is assisting the Respondent to wind up his practice or move it on. They are attempting to get value for it. However, if they cannot move it on, the firm will be wound up by Easter 2022. It is a profitable business. Mr Macreath asked the Tribunal to make a finding which would allow the Respondent time to dispose of his business.

Mr Macreath gave details of the Respondent's health and referred to reports he had lodged in confidence as well as two references. The references were from experienced solicitors who were "serious players" in the profession. They spoke highly of the Respondent and trusted him. Mr Macreath noted that the Respondent promptly obtempered all Mr Macreath's requests for information. The Joint Minute was dealt with quickly. He cooperated with the Fiscal.

DECISION

Both parties had entered into a Joint Minute agreeing that the Respondent, *in cumulo*, was guilty of professional misconduct in relation to a list of specified acts and omissions. Nonetheless, Section 53(1)(a) of the Solicitors (Scotland) Act 1980 requires the Tribunal to be satisfied that the conduct amounts to professional misconduct. The test for professional misconduct is set out within Sharp v Council of the Law Society of Scotland 1984 SLT 313 where it is said:-

"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."

The admitted conduct related to a number of significant breaches of the Accounts Rules, including those in relation to the Money Laundering Regulations 2007. The Respondent failed to properly identify clients and failed to rectify breaches. He failed to ensure that the firm had proper systems in place. He failed to train his staff. As Designated Cashroom Manager, he allowed payments to be made to individuals who were not clients, without appropriate identification, due diligence and written authority. He failed to keep accurate records. He did not supervise his partner properly as Designated Cashroom Manager and Money Laundering Reporting Officer. He failed to comply with the Money Laundering Regulations. The risk monitoring was insufficient. Although he formulated risk management policies following the 2013 inspection, he did not monitor the firm's compliance with those policies. He did not keep proper records. He was given a number of opportunities to rectify the situation. He knew there was a problem, created procedures, but failed to implement them.

Designated Cashroom Managers must retain responsibility for the books and records. Money Laundering Reporting Officers must ensure compliance with anti-money laundering procedures. This includes documenting compliance. It is essential that the public can have confidence that the profession can be trusted to comply with the Accounts Rules and the money laundering provisions. The Money Laundering Regulations exist to protect society against criminal acts. Documentation of anti-money laundering procedures allows the solicitor to demonstrate compliance with the Rules. Problems were drawn to the Respondent's attention in 2013. These persisted in 2016. The Respondent's conduct in relation to a wide variety of breaches over a significant period of time fell below the standards of conduct to be expected of a competent and reputable solicitor to a serious and reprehensible degree. He was therefore guilty, *in cumulo*, of professional misconduct.

SUBMISSIONS IN MITIGATION AND ON PUBLICITY AND EXPENSES

Mr Macreath submitted that the risk of repetition was low. He asked the Tribunal to take the Respondent's health into account. Mr Macreath said that the Respondent had given him a formal

instruction to sell or wind up his practice no later than Easter next year. The Respondent was giving an undertaking to the Tribunal that he would adhere to that instruction.

The Fiscal indicated that there were no previous disciplinary findings against the Respondent. He moved for expenses and noted that the Tribunal would give the matter publicity. Mr Macreath noted that publicity was inevitable but would have a marked impact on the Respondent.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal took into account what had been said on the Respondent's behalf. It considered the medical reports and references. It considered that the ongoing course of conduct was an aggravating factor. The conduct was likely to damage the legal profession. Mitigating factors were the Respondent's health problems which he has been dealing with for some time, his cooperation with the Fiscal, entering into a Joint Minute, and his obvious remorse. The Tribunal considered that all factors considered, the misconduct was at the lower to middle end of the scale.

The Tribunal considered whether a restriction on the Respondent's practising certificate was necessary but was satisfied there was no ongoing risk to the public. His former partner had been struck off, and the Respondent had taken on another solicitor who was assisting with compliance. The Respondent's formal instruction to wind up the firm by Easter 2022 supported the Tribunal's view that a Censure and Fine of £1,000 would be sufficient in all the circumstances of this case.

The Tribunal made the usual award of expenses against the Respondent. There was no reason to depart from the usual approach. The decision will be given publicity. The Respondent and his former partner will be named. However, third parties' details will be anonymised as publication of their personal data may be likely to damage their interests.

[redacted]

Catherine Hart

Vice Chair