

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**EILEEN AGNES COOGANS,
Solicitor, of E Coogans & Co,
Solicitors, 669 Cathcart Road,
Glasgow**

1. A Complaint dated 3 September 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Eileen Agnes Coogans, Solicitor, of E Coogans & Co, Solicitors, 669 Cathcart Road, Glasgow (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. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 16 January 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 16 January 2008. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The

Respondent was present and represented by Anne Benny, Solicitor, Glasgow.

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

6. The Tribunal found the following facts established

6.1 The Respondent was admitted as a Solicitor on 04 June 1985. She was enrolled as a Solicitor in the Register of Solicitors in Scotland on 26 June 1985. From 1 September 1985 to 4 January 1995 she was a Partner in the firm of Frazer Coogans in Ayr. From 5 January 1995 to 1 July 1995 she was engaged as a Consultant by Frazer Coogans. From 5 July 1999 to 31 July 2003 she was employed as an Assistant with a variety of firms. She has been the sole Partner of E Coogans & Co, Solicitors, 669 Cathcart Road, Glasgow from 1 August 2003.

Law Society Inspection - 22 January 2004

6.2 The Complainers carried out an inspection of the Respondent's records on 22 January 2004 in terms of the Solicitors (Scotland) Accounts etc. Rules 2001. The Complainers noted breaches of the said Rules.

6.3 In breach of Rule 4, there was a deficit of £22,691.45 on the Respondent's client bank account as at 31 December 2003. On the Respondent's client ledger for Client 1 there was a debit balance of approximately £9,000 which existed from 09.12.03 to 19.01.04. The client ledger did not have any entries showing the transaction history between these two dates. The Respondent's client ledger for Client 2 had a debit balance of £13,233.85 from 23.12.03 to 05.01.04.

- 6.4 In breach of Rule 9(2) the Complainers found that the Respondent was not producing “surplus statements” in that at each month end, she did not extract the client credit balances and compare them to the client bank figure in order to determine the month end surplus.
- 6.5 Under Rule 8(4) the Respondent was obliged to produce a firm’s trial balance at each month end. The Complainers found that no such trial balance was being produced. Separately, the client list of balances produced to 31.12.03 was inaccurate with some balances being omitted and some balances differing as between the list of balances and the client ledger.
- 6.6 Rules 8 and 9 require the production of client bank and firm bank reconciliations to the month end date. The Respondent did not produce said reconciliations to every month end date.
- 6.7 In terms of Rule 24, a Solicitor requires to verify the identification of clients and the source of any funds received from clients. The Complainers noted that the Respondent had not seen identification from clients, Clients 3. The Respondent had not seen verification of the source of funds received from Client 4 £2,315.00. Clients 3 £9,907.00. Client 5 £10,717.00 and Client 6 £10,000.00.

Law Society Inspection – 17 May 2004

- 6.8 In terms of the said 2001 Rules, the Complainers carried out an inspection of the Respondent’s records on 17 May 2004.
- 6.9 Under Rule 8(1) and Rule 8(4) a Solicitor has an obligation to keep separate client and firm ledger accounts with lodgements and withdrawals together, running in strict chronological order

and showing running balances. The Respondents records did not meet these requirements. The client and firm ledger accounts could only be produced by printing the whole bank ledger for any required period.

- 6.10 Under Rule 10(2) there is a requirement that invested funds' balances be listed and compared with reconciled investment funds on at least a quarterly basis. The Respondent's records did not show any such list or comparison.
- 6.11 In terms of Rule 9(2), the Respondent had not prepared any "surplus statements" by extracting at the end of each month the total client credit balances and comparing them to the client bank figure to determine the month end surplus.
- 6.12 Under Rule 24 a Solicitor is obliged to verify the identity of all clients and the source of funds received from clients. In respect of Miss A, the client ledger showed an entry on 23.10.03 with "cheques £23,750". Said credit represented five cheques and one bank draft, which had not been posted separately. No identification had been obtained in respect of the five individuals who had provided payments other than Miss A, nor was there any record of the source of the funds. In respect of a client, Mrs. B, the Respondent had received two bank drafts. There was no record of the source accounts from which the funds and the bank drafts had been drawn.
- 6.13 Under Rule 8(3)(b), a Solicitor is obliged to keep a separate record of inter-client transfers. The Respondents records showed inter-client transfers on the ledgers for individual clients, but there was no separate record in terms of the Rule.

- 6.14 In terms of the said 2001 Rules, the Complainers carried out an inspection of the Respondent's records on 29 September 2004.
- 6.15 Under Rule 4(1) a Solicitor has an obligation to ensure that the sums at the credit of the Client Account are not less than the total of the client's money held by the Solicitor. As at 31 July 2004 the Certificate produced by the Respondent showed a surplus of £2,083.23. Examination of the records showed that, as at 31 July 2004, there was a deficit of £122,677.42. The Respondent's records, in respect of clients, Mr and Mrs C, did however allow an offset of credit balances against debit balances to the extent of £53,470, producing an overall deficit on the Client Account of £69,207.42.
- 6.16 Examination of the client ledgers for five clients disclosed delays in payment of recording dues as follows:-
- K18. Mr D. Purchase of Property 1, 27.8.04 – no recording dues paid.
- I1. Mr E. Re-mortgage of Property 2, 16.6.04 – recording dues of Discharge not paid until 3.9.04.
- M43. Mr F. Purchase of Property 3, 2.7.04 – no recording dues paid.
- P10. Mr EE. Purchase of Property 4, 30.7.04 – no recording dues paid.
- K11. Mr G. Purchase of Property 5, 23.8.04 – no recording dues paid.
- 6.17 Under Rule 24 a Solicitor is obliged to verify the identity of all clients and the source of funds received from clients. No

evidence for the source of funds was seen in respect of K11, Mr G, £4,000 received on 6.7.04 and £6,900 and £2,213 received on 13.7.04.

- 6.18 Under Rule 8(1) a Solicitor has an obligation to keep properly written up books and accounts. The Respondent's daily list of transactions (Client Account print) did not include narratives, dates of transactions or a running account balance.

Law Society Inspection 25 & 27 April 2005

- 6.19 In terms of the said 2001 Rules the Complainers carried out an inspection of the Respondent's records on 25 and 27 April 2005.

- 6.20 Under Rule 4(1) a Solicitor has an obligation to ensure that the sums at credit of the Client Account shall not be less than the total of the clients' money held by the Solicitor. Under Rule 8 a Solicitor has an obligation to keep properly written up books and accounts, all as set out in Rule 8(1) to 8(7) inclusive. The Complainers were unable to ascertain the true position of the Respondent's firm. The last set of figures, which appear to be complete, were as at 31.1.05. The Client Account records at that date appear to show a deficit of £816,890.41. As a result of the condition of the client records, it was not possible for the Complainers to ascertain whether there were in fact sufficient funds in the Respondent's Client Bank Account to cover client credit balances, either at 31.1.05 or at any subsequent date.

- 6.21 Specifically in terms of Rule 8(3), a Solicitor must keep a record of sums transferred from the ledger account of one client to that of another client. The Complainers noted transfers of balances from the client ledger of several clients to other client

ledgers. There was no inter-client transfer record listing such transfers.

6.22 Under Rule 24 a Solicitor is obliged to verify the identity of all clients and the source of funds received from clients. Evidence of identification was not provided to the Complainers in respect of clients, Ms H, Mr I and Mr J. Evidence in respect of the source of funds was not provided to the Complainers in respect of:-

Ms H - £165,000 received 21.9.04 and split between four client ledgers.

A26. Mr and Mrs J - £50,000 received 22.10.04.

A44. Mr and Mrs K - £16,085 received 10.11.04.

A46. Mr L - £10,000 cash on 10.9.04.

A46. Mr L - £5,000 on 16.11.04.

A59. Ms M - £293,733.75 received on 17.12.04.

A68. Mr N - £10,044 received 18.11.04.

6.23 A48 Mr & Mrs K P/O Property 6
This purchase settled on 12/11/04 with a loan from UCB, but the deeds had not been recorded.

6.24 A49 Mr O P/O Property 7
This purchase settled on 22/10/04, with a loan from Lloyds TSB (although this was not clearly narrated on the ledger). The deeds had not been recorded.

6.25 A26 Mrs J & Mr J Lease of Property 8
This transaction settled on 22/10/04, but a cheque payable to SDLT dated 24/11/04 is still held on file and the deeds had not been recorded.

6.26 A44 Mr & Mrs K remortgage of Property 9
The remortgage settled on 14/9/04, but the deeds had not been recorded.

Law Society Inspection – 3 & 4 August 2005

6.27 In terms of the said 2001 Rules the Complainers carried out an inspection of the Respondent's records on 3 and 4 August 2005.

6.28 The inspection disclosed a delay in recording Title Deeds.

K40/1 Mr P – purchase of Property 10. The loan sum was received from Halifax on 23.02.05 for £269,982. The recording dues had not been paid.

G14/1 Mr Q – purchase of Property 11 A Halifax loan payment of £97,000 was received on 17.05.05. The recording dues had not been paid.

6.29 Under Rule 24 a Solicitor is obliged to verify the identity of all clients and the source of funds received from clients.

09/1 Mr R. £87,697.37 was received on 18.05.05
No evidence of the source of the funds was available.

C30/1 Mr S. A Lloyds TSB loan was redeemed on 01.07.05.
No evidence was available to confirm the client's identity.

H44/1 Mr T. No evidence was available to show the source of funds of £26,547 received on 31.03.05.

J11/1 Mr U. A payment of £8,000 was received on 08.03.05. No suitable evidence as to the source of the funds was available.

T35/1 Client 6. There was no evidence of the source of funds in respect of six payments, being 21.02.05 £21,000 from the client; 07.04.05 £4,000 from the client; 25.05.05 £3,000 from the client; 07.06.05 £4,000 from the client; 07.06.05 £3,000 from the client and 07.06.05 £1,000 from Mr W.

- 6.30 On 15 December 2005, the Respondent was interviewed by members of the Law Society of Scotland Guarantee Fund Committee. The Respondent gave the Committee various assurances in respect of the operation of her business and her accounting practices.

Law Society Inspection 30 & 31 May 2006

- 6.31 In terms of the said 2001 Rules, the Complainers carried out an inspection of the Respondent's records on 30 and 31 May 2006.
- 6.32 The inspection disclosed seven matters where there had been no recording of deeds.

Ms X – purchase of Property 12 on 21.11.05 with Platform Funding loan.

Ms X – purchase of Property 13 on 4.11.05 with Platform Funding loan.

Mr Y – purchase of Property 14 on 16.12.05 with Bradford & Bingley loan.

Mr Z - purchase of Property 15 on 23.12.05 with Platform Funding loan.

Mr AA – re-mortgage of Property 16. Royal Bank of Scotland loan was received on 4.7.05 and The Mortgage Business loan redeemed on 22.7.05.

Mr T – purchase of Property 17 on 16.12.05 with a Platform Funding loan.

Mr BB & Mrs CC – sale of Property 18 on 8.4.05 and Halifax loan redeemed on the same date.

6.33 Under Rule 24 a Solicitor is obliged to verify the identity of all clients and the source of funds received from clients. Evidence in respect of the source of funds was not provided to the Complainers in respect of:-

Mrs X, £29,798.65 received on 14.11.05 from Ms H.

Mrs X, £33,420 received by bank draft on 4.11.05.

Mr Z, £30,000 received on 14.12.05.

Mr FF, three payments received on 25.1.06, being £8,956.37, £2,480 cash and £1,000 cash.

Mr DD, £10,790.37 received by bank draft on 28.2.06.

Mr Y, £24,000 received on 12.12.05.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

7.1 her breach of rules 4, 6, 8, 9, 10 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001

7.2 her failure or unreasonable delay in recording title deeds timeously following upon settlement of conveyancing transactions.

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

Edinburgh 16 January 2008. The Tribunal having considered the Complaint dated 3 September 2007 at the instance of the Council of the Law Society of Scotland against Eileen Agnes Coogans, Solicitor, of E Coogans & Co, Solicitors, 669 Cathcart Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of her breach of rules 4, 6, 8, 9, 10 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001 and her failure or unreasonable delay in recording title deeds; Censure the Respondent; Fine her in the sum of £4,000 to be forfeit to Her Majesty; 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 an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kenneth Robb

Vice 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

Vice Chairman

NOTE

A Joint Minute was lodged on the morning of the Tribunal admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended. There were substantial amendments to the Complaint including deletions there from. No evidence was led and the Tribunal heard submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

The fiscal took the Tribunal through the Joint Minute pointing out the various deletions. He then referred the Tribunal to Article 2.2 where there was a deficit from 9 December 2003 until 19 January 2004 which was a serious matter. He referred the Tribunal to Complainer's Production number 2 being a letter dated 4th February 2004 which set out the position in detail. In connection with Article 2.3, there was a lack of surplus statements, Mr Reid explained that these were necessary to allow a check to be made as to whether or not the account was in surplus. In connection with Article 2.4, no trial balances had been prepared, these were required to show the true financial position of the practice. In connection with Article 2.5, no reconciliation to the month end was done so there was a lack of information and inaccurate information. Article 2.6 concerned money laundering and Article 3.2, referred to no separate firm and client accounts which meant that it was not possible to see what the position was. In connection with Article 3.3, there required to be a list of invested funds so that the position could be checked. The Respondent did not have one. In connection with Article 3.4, there was again a lack of surplus statements. Article 3.5, again related to money laundering. Article 3.6 related to inter client transfers. It was important to keep a record of this so that it could be seen that the transfers were authorised. Article 4.2 related to a client account deficit. Mr Reid referred the Tribunal to Complainer's Production number 6 being a letter dated 6th October 2004 setting out the position. In connection with Article 4.3 there was a delay in recording titles which resulted in lenders being unprotected and the possibility of clients being prejudiced. Article 4.4 again concerned money laundering. Article 4.5 referred to books not being written up, this meant that the Respondent would not have been able to identify what matter related to what. In connection Article 5.2, there was an

apparent deficit in January 2005 and it was impossible in April 2005 to determine the true position. In connection with Article 5.3 there was a lack of records for inter client transfers. Article 5.4 again concerned money laundering. Article 5.6 related to no recording of deeds. Article 6.2 concerned a delay in recording titles. Article 6.3 again concerned money laundering and this was the fourth inspection in a row where this had been raised. Article 6.4 referred to the interview with the Guarantee Fund Committee where there was specific reference to the recording of deeds and money laundering and yet despite this at Article 7.2 there was delay in recording deeds and at Article 7.3 money laundering issues.

Mr Reid pointed out that for a period of two years the Respondent had failed to comply with the Accounts Rules and had not run her firm in accordance with the rules. There were three significant areas of concern being deficits on the client accounts, delay in recording deeds and money laundering issues. The lack of information regarding the identity of clients and source of funds led to a risk of clients taking advantage for money laundering purposes.

SUBMISSIONS FOR THE RESPONDENT

Ms Benny emphasised that the Respondent accepted that her conduct amounted to professional misconduct. Ms Benny explained that the Respondent became a sole practitioner on 1st August 2003 and when she started up in business on her own she did not have the correct procedures in place. She should have had these procedures in place before she started out in practice. There was no system to ensure that the required checks and balances were done. This led to problems. Ms Benny explained that when the Respondent commenced in practice she did not know what her business would be. She was acting professionally as a solicitor and also attempting to administer the practice. Business went well and volume increased but this led to a problem due to lack of procedures being in place. The January 2004 inspection revealed short comings and she instructed Kean Jarman Accountants in Glasgow to put systems in place. The problems however continued despite this. Ms Benny emphasised that the Respondent did cooperate with the Law Society during the process. There were three inspections in 2004 and by September 2004 the Respondent realised that she was not getting the support that she needed from her accountants.

She accordingly terminated this service and instructed Accounting Services for Scottish Solicitors. This firm provided her with continuous support from January 2005 until October 2006. She worked with Accounting Services for Scottish Solicitors to put systems in place.

Ms Benny referred to Article 5.2 being the time when the Law Society could not establish what the deficit was. The Respondent had already identified this as a problem and she had brought in Accounting Services for Scottish Solicitors to try and remedy this. Accounting Services were able to give information to the Law Society with regard to the true extent of the deficit and Ms Benny referred the Tribunal to the Respondent's Productions being letters from Accounting Services for Scottish Solicitors which showed that by June 2005 there was no shortfall. Ms Benny explained that the support she had received from the previous accountants was not sufficient as she did not understand the spreadsheets provided by them. Accounting Services for Scottish Solicitors devised a computer system for the Respondent's firm. Ms Benny referred to the Respondent's Production 10 being a letter from J. Bruce Andrew and Co., the Respondent's present accountants, which indicated that for the year 2007 the records were accurate and suitable. The Respondent has implemented all the changes necessary and resolved all the previous problems. Ms Benny referred the Tribunal to Productions 8 and 9 for the Respondent being letters from the Law Society confirming that the Respondent's systems have improved and that matters had now been concluded satisfactorily. Ms Benny explained that the Respondent presently had four full time and two part time staff members. She and her staff had been trained in money laundering and the accounts rules. There had been an audit done of the money laundering procedures and all was in order. Ms Benny stated that the Respondent had not just done this for today's hearing but had sent a letter to the Law Society on 27th February 2007 detailing the fact that she had doubled her staff and had got her accountants to do a full review and install the computer system.

In connection with Article 2.2, Ms Benny explained how the deficit arose and that it was an administrative error. There was a deficit for a longer period of time due to the holiday period. Although there was a deficit, it was only as result of innocent errors. In respect of Article 2.6 Ms Benny stated that the Respondent had responded to all matters raised and now had systems in place to ensure that this would not happen

again. In connection with Article 4.2, Ms Benny explained that there were three ledgers involved for a husband, a wife and a joint account and the problem was caused by money being credited to the wrong ledger. There was a difficulty concerning this as client consent was required but it was remedied. Another part of the deficit was due to a cheque being cancelled which was only written in the cash book and not in the ledger and this was again a systems error. There was never an actual deficit.

Ms Benny stated that the delay or failure in recording deeds was due to systems failures which would not be repeated. Ms Benny emphasised that no lender or client had been affected and that the titles had all now been recorded and the Law Society was satisfied that everything was in order.

DECISION

The Tribunal considered that the Respondent's conduct clearly amounted to professional misconduct. The Accounts Rules are in place to ensure that the public are protected and that solicitors put systems in place to ensure that their businesses are properly run. The Tribunal was most concerned that the Respondent in this case started up in business without having the proper systems in place and continued in business for a two year period whilst still not having the proper systems in place. Solicitors who set up in business on their own have a responsibility to ensure that the necessary systems are in place before they start trading. It was fortunate in this case that no one was adversely affected by the Respondent's lack of compliance with the rules and delay in recording deeds. The Tribunal considered the Respondent's method of operating for a period of two years did put the public at risk. If solicitors fail to run their practices properly this results in standards not being maintained and the profession is brought into disrepute. In this case the Respondent's business appeared to be successful but she had a professional responsibility to sort her systems out if she wished to continue to remain in business.

The Tribunal however took account of the fact that the Respondent has now resolved all matters and has proper systems in place. It is extremely unfortunate that it took her such a long period of time to properly address matters. The Tribunal noted that she

had cooperated with the Law Society and that by January 2005 she had started to take appropriate steps. It was clear that the recent Law Society inspection found matters to be satisfactory and accordingly the Tribunal did not consider that it was necessary to restrict the Respondent's practising certificate. The Tribunal however wishes to make it clear that it is not good enough for a solicitor to start out in practice without proper systems in place and then sort matters out later. The Tribunal accordingly imposed a Censure plus a Fine of £4,000. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman