

**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

**JACQUELINE MARIE
JOHNSTON, Solicitor of Messrs
Currie Johnston & Co, Solicitors,
18 Grampian Court, Beveridge
Square, Livingston**

1. A Complaint dated 18 February 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Jacqueline Marie Johnston, Solicitor of Messrs Currie Johnston & Co, Solicitors, 18 Grampian Court, Beveridge Square, Livingston (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 for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 29 July 2008 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 29 July 2008, the Respondent was present and represented by her Solicitor, William Macreath, Glasgow. The

Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow.

5. A Joint Minute was lodged admitting the averments of facts, averments of duty and averments of professional misconduct in the Complaint as amended. There was accordingly no need for any evidence to be led.
6. The Tribunal found the following facts established

6.1 The Respondent was born on 21 October 1957. She was admitted as a Solicitor on 3 September 1980. She was enrolled as a Solicitor in the Register of Solicitors in Scotland on 25 September 1980. From 1 January 1986 until 5 December 1994 she was employed by Caesar & Howie, Solicitors. From 1 February 1995 she has been a partner with Messrs Currie Johnston & Co., Solicitors, 18 Grampian Court, Beveridge Square, Livingston.

Law Society Inspection 27th and 28th June 2006

- 6.2 The Complainers carried out an inspection of the Respondent's records on 27 and 28 June 2006 in terms of the Solicitors (Scotland) Accounts, Etc Rules 2001. The Complainers noted breaches of the said Rules.
- 6.3 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 clients' money held by the Solicitor. The Complainers noted that the Respondent had three Client Bank Accounts, all requiring adjustments dating back as far as 2003. In respect of one Client Bank Account with the Clydesdale Bank, there were approximately nine hundred adjustments to be made to the said Account. It was impossible for the Complainers to determine from the Respondent's records what the correct Client Bank balance figure was or the correct Client

Credit balances. As a consequence it was not possible to confirm whether or not sufficient funds were held to comply with the rules. It was impossible for the Complainers to determine whether the Client Bank balance had been in credit or debit during the period from 2003 to date in view of the adjustments which required to be investigated and processed.

6.4 Under Rule 8(1) a Solicitor has an obligation to keep properly written up books and accounts. The Respondent had a substantial number of outstanding adjustments as averred at 27 and 28 June 2006. The books and accounts were not properly written up and had not been properly written up since 2003 in relation to the unprocessed entries highlighted by the Bank reconciliation adjustments. As a result, it was not possible to confirm the correct position in relation to individual clients or the overall Client Bank Account position.

6.5 Under Rule 8(4) a Solicitor is obliged at all times to keep properly written up such books and accounts as are necessary to show the true financial position of the practice and to balance the books monthly and on the last day of each accounting period. As a result of the averred outstanding adjustments, since 2003 the Respondent's books and accounts were not properly written up to show the true financial position of the practice. In addition to the averred adjustments the Respondent had a Lombard loan. This was not shown properly in the firm's trial balance. It was impossible for the Complainers to determine from the state of the Respondent's records whether the Respondent had any other loans due by the firm.

6.6 Under Rule 9(1) a Solicitor requires to carry out a reconciliation of the Client Bank Account at intervals not exceeding one month. An integral part of the reconciliation process, having identified any differences between the firm's

records and the Bank records, is to investigate and enter such differences in the records so that they show the true position. The Respondent had not produced such reconciliations since 2003.

6.7 Under Rule 9(2) the Respondent had not prepared regular “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. Any surplus statements produced could not be relied upon because the Client Bank Account and Client Credit balance figures were unreliable as a result of the un-posted adjustments, dating back to 2003.

6.8 The Respondent, as the designated Cashroom Partner, in terms of Rule 12, submitted to the Respondents Certificates under Rule 14(1) for the following six month periods:-

- (a) From 1 May 2003 to 31 October 2003.
- (b) From 1 November 2003 to 30 April 2004.
- (c) From 1 May 2004 to 31 October 2004.
- (d) From 1 November 2004 to 30 April 2005.
- (e) From 1 May 2005 to 31 October 2005.
- (f) From 1 November 2005 to 30 April 2006.

As averred above, the Respondents’ books and accounts were not properly written up from 2003. It was not possible for the Respondent to determine the true position of the firm from on or about 1 May 2003 to 30 April 2006. The Respondent could not submit accurate Certificates, given the absence of properly written up books and accounts but nevertheless, submitted Certificates purporting to certify the true position.

- 6.9 The Complainers carried out an inspection of the Respondent's Records on 23 and 24 October 2006 in terms of the Solicitors (Scotland) Accounts, Etc Rules 2001. The Complainers noted breaches of the said Rules.
- 6.10 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 clients' money held by the Solicitor. In October 2006, immediately prior to the said inspection, the Respondent paid in £60,000 to the Client Bank. As a result of a substantial number of outstanding adjustments, it was impossible for the Complainers to determine from the Respondent's records whether or not the Client Account had sufficient funds in the Client Bank to cover all Client Credit balances between the inspection on 27 and 28 June 2006 and 30 September 2006.
- 6.11 Under Rule 6(2) if money drawn from a Client Account by cheque is payable to an account with any Bank or Building Society, the Solicitors' cash book and the relevant ledger entries, as well as the said cheque, must include the name of the person whose account is to be credited with the payment. An examination of the Respondent's records disclosed several cheques not correctly designated with the client name or account name on the payee line. Cheques were noted to be designated with an account number or to show no designation at all
- 6.12 Under Rule 8(1) a Solicitor has an obligation to keep properly written up books and accounts. The Respondent had a substantial number of outstanding adjustments between June 2006 and October 2006. The books and accounts accordingly failed to show all of the Respondent's dealings with clients' money held or received. The Complainers noted entries within

the daybooks being backdated and appearing out of date order. Such entries had no narrative showing any differing dates from the dates of posting.

6.13 Under Rule 8(4) a Solicitor is obliged at all times to keep properly written up such books and accounts as are necessary to show the true financial position of the practice and to balance the books monthly and on the last day of each accounting period. As a result of the averred outstanding adjustments and the backdating of entries, the Respondent's books and accounts were not properly written up to show the true financial position of the practice. The Complainers noted that the firm's trial balance showed a Lombard Loan and a Professional Indemnity Insurance Loan as both outstanding although they had been repaid. The firm trial balance showed a refurbishment loan as repaid although the loan was still current. The Complainers were not provided with any statements during the inspection and were unable to ascertain the outstanding balance of the said loan.

6.14 The Complainers' examination of the Respondent's Client ledgers disclosed delays in recording and in payment, and non-payment, of recording dues in respect of Deeds as follows:-

a) Mrs A. Transfer of Title of Property 1 – transaction settled on 22.12.05 with loan funds received from Halifax and an existing Royal Bank of Scotland loan being redeemed. No recording dues paid.

b) Mr B. Mortgage over Property 2. Loan funds received from Alliance & Leicester on 20.02.06 and paid to the client. No record of the Standard Security having been recorded.

c) Mr C. Purchase of Property 3 – transaction settled 1.3.05 with loan funds from Lloyds TSB. No record of recording dues having been paid in respect of the Disposition or Standard Security.

d) Mr D/Mr E. Re-mortgage of Property 4 – transaction settled 4.1.06 with loan funds from Barclays plc and a redemption to Platform Home Loans/Future Mortgages. No record of recording dues being paid.

7. Having heard submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct in respect of

7.1 her breach of rules 4, 6, 8, 9, 12 and 14 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 29 July 2008. The Tribunal having considered the Complaint dated 18 February 2008 at the instance of the Council of the Law Society of Scotland against Jacqueline Marie Johnston, Solicitor of Messrs Currie Johnston & Co, Solicitors, 18 Grampian Court, Beveridge Square, Livingston; Find the Respondent guilty of Professional Misconduct in respect of her breach of Rules 4, 6, 8, 9, 12 and 14 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 £1000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and 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 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.

(signed)

David C Coull

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

The Respondent did not lodge answers to the Complaint. A joint minute was however lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended, which amendments included certain deletions from the Complaint.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid indicated that he was grateful to the Respondent and her representative for their co-operation in entering into a joint minute. The Complaint related to 2 inspections in June and October 2006. The Respondent's client account was in a mess for a period of 3 years. 900 adjustments had to be made. It was accordingly impossible to tell what the true position of the Respondent's firm was. This resulted in there being no properly written up books and accounts and it being impossible to tell the true financial position of the Respondent's firm. The accounts certificates produced by the Respondent could not reflect the true position. Mr Reid indicated that in respect of the delay in recording deeds these matters were all ultimately resolved and there were no losses as a result. They had arisen because the accounts were in disarray and accordingly the delays were not picked up. At this point Mr Reid moved to amend the averments in article 3.6 to make it clear that there was a delay in recording the deeds not just in paying the recording dues. There was no objection to this amendment by the Respondent's Solicitor. Mr Reid submitted that it was unacceptable for the Respondent's accounts to be in such a state for a period of 3 years, so that it was impossible to know what the true financial position of the firm was.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath pointed out that the matter had been outstanding for a considerable period of time. Mr Macreath referred the Tribunal to the report and supplementary report by Accounting Services for Scottish Solicitors prepared on the Respondent's firm. This set out in detail the steps which had been taken to resolve the situation. Mr Macreath explained that the Respondent had commenced her own firm in 1995 and dealt mainly with residential conveyancing. She initially did her own book-keeping but as she became busier, she employed a cashier. In November 2002 the Respondent

experienced various personal difficulties and this had an adverse effect on her professional life. In November 2002 the Respondent was working with 2 paralegals and dealing with 70 – 90 transactions a month. This resulted in a lot of pressure and at this time her legal cashier left which led to problems. She got a SOLAS trained cashier but this cashier did not stay with the firm long. The assistant cashier was off on maternity leave. By December 2005 the Respondent had employed a competent cashier who was of the view that matters were so in arrears it was necessary to have Mr F from Company 1 to come in and assist. Mr F had to go back to April 2003 to find the first reliable reconciliation. Due to the volume of business in the Respondent's firm, it took some time to sort matters out. It was agreed that if there was a sign of any potential shortfall, cash would be put in by the Respondent. The Law Society put the Respondent and her cashier and also Mr F under pressure to get matters sorted out. It was recognised that a lot of the adjustments required were in connection with fee transfers which were due to the firm but which had not been properly posted. The Respondent made a payment into the accounts to ensure that there was no shortfall. Mr Macreath emphasised that there was no prejudice to any client.

Mr Macreath advised the Tribunal that all the bank accounts were now reconciled every month. The volume of business had decreased and the Respondent was only dealing with 20 – 30 transactions per month and was operating as a sole practitioner with the help of a member of staff who helped in the cash room and acted as a paralegal. Mr Macreath explained the reasons for the delay in recording deeds. Mr Macreath pointed out that the Respondent had done a lot at great expense to ensure that everything was sorted out. Mr Macreath also referred the Tribunal to the references lodged from local solicitors. Mr Macreath advised the Tribunal that the Respondent's appearance before the Tribunal had had a profound effect on her and asked the Tribunal to consider a Censure. Mr Macreath advised that the costs and publicity relating to the Tribunal proceedings would be a severe penalty on the Respondent. Mr Macreath also advised the Tribunal that there had been a further inspection of the Respondent's books in March/April 2008 and there were only small matters arising therefrom. Mr Reid confirmed there was an inspection in January 2008 and then another one in March/April 2008. Mr Reid stated that the Law Society was of the opinion that there was a major improvement in the Respondent's books but

there were still some outstanding concerns. There was to be another inspection in January 2009.

DECISION

The Tribunal was extremely concerned that the Respondent's books were in such a state of disarray for a period of 3 years. Difficulties in a Solicitor's personal life are not an excuse for failure to deal with professional responsibilities. The Tribunal was also concerned that the Respondent sent in certificates to the Law Society that were inaccurate. The Tribunal is of the view that the Respondent took on too much work and she had a professional responsibility to ensure that her firm operated properly. Her records were in an unacceptable state for a 3 year period and she also put clients at risk by delay in recording deeds. The Tribunal however considered that this was a case of maladministration and recognised that the Respondent had taken steps to ensure that she now had systems in place to ensure there would be no repeat of the problems. The Tribunal also considered that there was no evidence of the Respondent having a cavalier attitude to her problems. The Tribunal is pleased to note that the Law Society is continuing to carry out regular inspections of the Respondent's firm and notes that the Respondent will have to bear the costs of a further inspection in January 2009. The Tribunal recognises that the Respondent has engaged appropriate assistance to enable matters to be sorted out and that she has made very real progress in having everything rectified. The Tribunal considered a Censure plus a fine of £1000 to be an appropriate penalty. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman