

**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, 26
Drumsheugh Gardens, Edinburgh**

against

**RODERICK GRAHAM MICKEL,
Solicitor, of Graham Mickel & Co,
38 James Square, Crieff,
Perthshire**

1. A Complaint dated 31 March 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Roderick Graham Mickel, Solicitor, of Graham Mickel & Co, 38 James Square, Crieff, Perthshire (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 by 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 29th July 2008, the Respondent was present and represented himself. The Complainers were represented by 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. No evidence was accordingly necessary.

6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 17 October 1951. He was admitted as a Solicitor on 25 October 1997. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 11 November 1977. From 02 April 1979 to 31 July 1988 he was a partner in the Firm of S. Graham Mickel & Company WS. From 01 August 1988 to 07 May 1993, he was a Partner in the Firm of Drysdale Mickel & Anderson, Crieff. From 08 May 1993, he has been the sole Partner of Graham Mickel & Co, WS, 38 James Square, Crieff.

 - 6.2 The Complainers carried out inspections of the Respondent's records on 17-19 July 2006 and 17-20 October 2006 in terms of the Solicitors (Scotland) Accounts, Etc Rules 2001. The Complainers noted breaches of the said Rules.

 - 6.3 The Respondent had not carried out any reconciliations of his clients' bank accounts since in or about May 2003.

 - 6.4 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 the absence of any reconciliations of the clients' Bank Accounts since in or about May 2003 and due to the large number of reconciling items identified when reconciliations were prepared retrospectively, it was impossible to determine whether or not the sums at the credit of the Respondent's Client Account were not less than the total amount of clients' money held by the Respondent.

- 6.5 Under Rule 8(1) a Solicitor has an obligation at all times to keep properly written up books and accounts as necessary to show all dealings with clients' money, held, received, paid or in any way intromitted with and to show any other money dealt with through a client bank account. In the absence of client bank account reconciliations, it was not possible for the Respondent to know or to demonstrate whether the records showed all his dealings in terms of Rule 8(1). When the reconciliations were prepared retrospectively, a large number of reconciling items were identified confirming that the records did not show all the Respondents dealings in terms of Rule 8(1).
- 6.6 Under Rule 8(4) every Solicitor shall, at all times, keep properly written up books and accounts as necessary to show the true financial position of the practice and balance the books monthly and on the last day of each accounting period. In the absence of client bank account reconciliations, it was not possible for the Respondent to know or demonstrate whether his records showed the true financial position of his Practice, nor could he properly balance his books either monthly or on the last day of an accounting period. When reconciliations were prepared retrospectively, a large number of reconciling items were identified, confirming that his records did not show the true financial position of his Practice.
- 6.7 Under Rule 9(1) a Solicitor has an obligation to produce a client bank reconciliation to each month end date. The Respondent did not produce said reconciliation to every month end date for a period in excess of three years from in or about May 2003.

6.8 Under Rule 9(2) a Solicitor has an obligation at each month end date to prepare a Statement comparing a total of the balances due by him to clients with the reconciled balance in the client bank account, referred to as a Surplus Statement. Any Surplus Statements produced by the Respondent could not be relied upon because the client bank account and the client credit balance figures could not be relied upon. Both the client bank account and the client credit balance figures were incorrect, as a result of unposted adjustments ultimately identified by the retrospective bank reconciliation. Said adjustments dated back to 2003. It was not possible to obtain confirmation that had the correct entries been processed and posted at the correct time and in the correct order, the Respondent's records would have shown a surplus at all times.

6.9 The Respondent, as a 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 June 2003 to 30 November 2003.
- (b) From 1 December 2003 to 31 May 2004.
- (c) From 1 June 2004 to 30 November 2004.
- (d) From 1 December 2004 to 31 May 2005.
- (e) From 1 June 2005 to 30 November 2005.
- (f) From 1 December 2005 to 31 May 2006.

As averred above, the Respondent's client bank accounts were not reconciled from in or about May 2003. It was not possible for the Respondent to determine the true position of the firm from on or about 1 June 2003 to 31 May 2006. The Respondent could not submit accurate Certificates, given the absence of client bank account reconciliations but nevertheless submitted Certificates purporting to certify the true position.

- 6.10 The Respondent as a designated Cashroom Partner, in terms of Rule 12 submitted to the Respondents a Certificate under Rule 14(1) for the six months period from 01 June 2006 to 30 November 2006. Said Certificate was not accurate and did not give a true representation of the position for the period of the Certificate. The Complainers drew to the Respondent's attention, the breaches discovered as a result of the Inspections as averred in paragraph 6.2. The Respondent thereafter submitted an Amended Certificate to the Complainers for the period to 30 November 2005.
7. Having heard submissions from the Complainers and from the Respondent, the Tribunal found the Respondent guilty of professional misconduct in respect of his breach of rules 4, 8, 9, 12 and 14 of the Solicitors (Scotland) Accounts etc Rules 2001.
8. Having heard from the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 July 2008. The Tribunal having considered the Complaint dated 31 March 2008 at the instance of the Council of the Law Society of Scotland against Roderick Graham Mickel, Solicitor, Graham Mickel & Co, 38 James Square, Crieff, Perthshire; Find the Respondent guilty of Professional Misconduct in respect of his breach of Rules 4, 8, 9, 12 and 14 of the Solicitors (Scotland) Accounts etc Rules 2001; Censure the Respondent and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that the Respondent's practising certificate be subject to a condition that the books and records of the Respondent's practice be inspected by the Council of the Law Society of Scotland no later than 31 December 2008, such inspection to be at the expense of the Respondent; 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 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)
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

The Respondent admitted the terms of the Complaint in his answers. A joint minute was also lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint and also admitting the terms of the Complainers productions.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid thanked the Respondent for his full co-operation in dealing with the Complaint. Mr Reid explained that in July 2006 there was an inspection of the Respondent's books. No reconciliation of the client bank accounts had been done since May 2003 which meant that from then until July 2006 it was not possible for the Law Society to determine whether or not the client account was in credit. It followed on from that that it was not possible to tell the true financial position of the firm and the accounts certificates were not accurate. The Respondent dealt with all the queries and there had not been an inspection since October 2006. Mr Reid stated that the Law Society did not see a need to do further inspections and he accordingly assumed that as matters had been resolved after the October 2006 inspection the Respondent would now be back on the cycle of 3 yearly inspections by the Law Society.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that he apologised to the Tribunal. He indicated that he had been very silly and regretted what had happened. The Respondent assured the Tribunal that nothing similar would ever happen again. The Respondent explained that he did do daily entries at the time on the computer but he knew that this was not sufficient. He now had everything up to date and had handwritten reconciliations on a weekly basis and computer ones on a monthly basis. The Respondent stated that he had learnt his lesson. He explained that he had an assistant cashier and 2 members of typing staff. He himself was involved in the cashier work as his cashier had just come back from maternity leave and was presently working 3 mornings a week. He explained that he ran a general small country practice.

DECISION

The Tribunal was concerned about the number of breaches of the Accounts Rules and the fact that the Respondent lodged account certificates with the Law Society which were incorrect. The Tribunal also noted that the Respondent's books were in a state of disarray for a period of 3 years. The Respondent did not give the Tribunal any real explanation as to why this had happened. Although the Tribunal noted that matters appeared to have been sorted out to the satisfaction of the Law Society, no evidence was provided to the Tribunal with regard to systems which were now in place to ensure that there would be no repeat of this in the future. The Tribunal considered that it would be appropriate for the Law Society to carry out another inspection of the Respondent's books prior to 31 December 2008 to ensure that everything was in order. The Tribunal noted that the cashier work was presently being done by the Respondent and his cashier who was not SOLAS trained. The Tribunal considered that to ensure protection of the public, a further inspection was required. The Tribunal accordingly Censured the Respondent and put a restriction on his practising certificate to the effect that his books and records must be inspected not later than 31 December 2008. As the Respondent will have to bear the costs of the additional inspection the Tribunal did not consider it appropriate to impose a fine. The Tribunal made the usual order with regard to publicity and expenses.

Chairman