

**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

**DESMOND WILLIAM
DONOGHUE, Solicitor, of Ide
Legal, 23 Manor Place, Edinburgh**

1. A Complaint dated 11 August 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Mr Desmond William Donoghue (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 15 October 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 15 October 2008. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and represented by Mr McCann, Solicitor, Clydebank.

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

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 12 August 1957. He was admitted as a Solicitor on 6 November 1991 and enrolled in the Register of Solicitors on 21 November 1991. Following his enrolment, he was an employee with Glenrothes Development Corporation from 1 November 1991 until 29 March 1996. Thereafter he was an employee with the firm McQuittys from 23 April 1996 until 14 February 1997. Thereafter he was an employee with Falkirk Council from 5 May 1997 until 9 April 1998. Thereafter he was initially an employee then an associate and latterly a partner with the firm Smith & Grant from 15 February 1999 until 31 August 2004. He was thereafter employed with the PSM Law Group. On 20 June 2005 he became an employee of the organisation Ide Legal. From 19 June 2006 he has been a partner of the firm Ide Legal of 23 Manor Place, Edinburgh.

6.2 Inspection on 8 December 2006

The Respondent commenced practice as a sole practitioner in July 2006. On 8 December 2006 the Complainers then acting in the course of their statutory duties carried out an inspection of the financial records, books and documentation maintained by the Respondent at his place of business. A number of concerns were identified by the Complainers regarding a failure on the part of the Respondent to comply with the obligations expected of him in terms of the Accounts Rules. In particular the following was identified:-

- (a) The inspection revealed that the Respondent was operating a manual books system. The books and records maintained by him were found to be inadequate and non-compliant in terms of the requirements of the Accounts Rules. The opinion of the inspectors present was that the Respondent did not appear to have understood what was required and expected of him, despite him having attended a course organised by the Complainers in September 2006 for those who operated manual books. At that course the Respondent received a full set of compliant style books, records and reconciliations for reference purposes and was provided with information as to what was required to be produced by a solicitor operating a manual books system at each month end accounting period. At this inspection, the concerns of the Complainers were discussed at length with the Respondent and he was advised to study carefully the course material produced or to employ the services of the Accountant in order to ensure and achieve compliance.

- (b) The Respondent had produced no firm trial balances at all. It was explained to the Respondent what was required of him and why this information was necessary. The Respondent produced no client list of balances for the months of September and October 2006. It was explained to the Respondent why such a list was required.

- (c) The client bank account operated by the Respondent had not been reconciled for the months of September and October 2006. It was explained to the Respondent

why client bank account reconciliation was required on a month end basis.

- (d) The client and firm cash books maintained by the Respondent had not been kept up to date. The Respondent had not totalled the cash book at the end of the month. The Respondent did not have a firm cash book.
- (e) The Respondent had failed to prepare a surplus calculation on a monthly basis at each month end accounting period comparing the reconciled client bank figure to the total of the client credit balances held. The importance of carrying out a surplus calculation was explained to the Respondent.
- (f) The Respondent had failed to ensure that his books and records had been kept up to date. His client cash book included entries up to 31 October 2006 but some client ledgers included entries for November 2006. Separately not all November entries had been entered as a result of which a number of client ledgers did not show the true financial position. Many ledgers disclosed large debit balances because the original receipt of funds had not been entered. The overall picture presented was misleading and gave a false impression of events.
- (g) The Respondent had a habit of using insufficient narrative in his ledger entries. The importance of ensuring that all ledger entries were full, clear and correct in their description was impressed upon the Respondent. Detailed advice was given to the Respondent by the inspectors. The client ledgers maintained by the Respondent were in a state of

disarray, had been mixed and did not run in date or transaction order.

- (h) The Respondent had failed to maintain a list of invested funds on a month end accounting period. The Respondent had failed to maintain reconciliations of the invested funds accounts at the quarter end period. The Respondent had failed to maintain a separate client ledger in respect of each invested funds account held.
- (i) At the date of this inspection, all entries in the client ledger had been written by the Respondent in pencil. The Respondent was advised that client ledger entries required to be completed in ink.

6.3 Inspection of 15 March 2007

On 15 March 2007, the Complainers then acting in the course of their statutory duties carried out an inspection of the financial records, books and documentation maintained by the Respondent. This inspection revealed to the Complainers a number of breaches by the Respondent of the Solicitors (Scotland) Accounts etc Rules 2001. In particular the following issues were identified:-

- (a) The concerns identified by the Complainers at the inspection of December 2006 were intimated to the Respondent. At this inspection in March 2007, in general, the narrative had improved and no pencil entries were seen. However no progress had been made by the Respondent in respect of the other areas of concern brought to his attention.

- (b) All cheques issued by the Respondent up to 23 February 2007 had been recorded. Those issued in March 2007 were posted to the ledger without being written up in the cash book. Separately bank lodgements made by the Respondent had only been recorded to the end of November 2006. In addition, from 1 December 2006 to the date of inspection, lodgements totalling £1,098,725.13 had been posted by the Respondent to the client ledger but not written up in the cash book. Where the cash book had been written up, it had not been totalled and balanced at the month end by the Respondent. (Rule 8(1))
- (c) The Respondent had failed to maintain a cash book or produce a monthly trial balance. (Rule 8(4))
- (d) The Respondent had failed to prepare client bank reconciliations. As a result the inspector employed by the Complainers reached an adjusted balance in relation to the bank statement of the Respondent. However, without supporting client records in place, it could not be assumed that the balance reached did in fact reflect the balance which the records, if properly maintained, would have shown. (Rule 9(1))
- (e) The Respondent had failed to prepare a monthly listing of client balances or surplus statements. Upon questioning, the Respondent was unable to demonstrate a surplus in the client bank as at 28 February 2007. From records produced, the inspector extracted a list of balances. Thereafter a comparison was made with the adjusted bank statement balance which identified a surplus of £4,249.36. (Rule 9(2))

- (f) The Respondent acted on behalf of a client, Mr A. From the inspection it was clear that transactions on behalf of this client were carried out by the Respondent in February and March 2007. The Respondent had not created a client ledger for this client. During the inspection, there was discovered only a slip of paper on the file showing a pencil record of the transactions. The credit balance of £282.60 on this scrap of paper was taken into account in reaching some sort of possible surplus.
- (g) The Respondent acted for the client, Mr B. The inspection revealed that the sum of £3,000 was received in respect of this client by the Respondent on 11 December 2006. This was not recorded by the Respondent at this time. It was until 9 March 2007 before the bank was instructed to transfer this sum to an investment account in the name of the client. The Respondent had failed to properly post this entry. The Respondent had failed to properly invest monies on behalf of his client. (Rule 11)
- (h) The inspection revealed that whilst in general the records maintained by the Respondent concerning the identification of clients were good, there was inadequate information maintained regarding the source of accounts or funds received from third parties towards transactions. Examples included:
- (i) £15,200 introduced by Mr C for Mr D and Mr E, 20 November 2006.
- (ii) £50,000 introduced by Mr F, 8 December 2006.

(iii) £9,900 introduced by Mr B, 8 December 2006.

(i) During the course of the inspection the Complainers reviewed a number of conveyancing files maintained by the Respondent. This examination revealed a failure on the part of the Respondent to have or have filed receipted Forms 4 from the Land Register in respect of the presentation of deeds for registration. In particular the following were identified:

(i) Mr G – purchase of Property 1, settled 27 October 2006.

(ii) Mr D and Mr E, purchase of Property 2, settled 20 November 2006.

(iii) Mr & Mrs H, purchase of Property 3, settled 10 November 2006.

6.4 Guarantee Fund Interview of 19 April 2007

Such were the concerns on the part of the Complainers at the ignorance of the Respondent to the obligations expected of him in terms of the Accounts Rules and his lack of understanding as to the precarious manner in which he maintained his books and records, the Respondent was invited to attend a Guarantee Fund Interview on 19 April 2007. The comments made by the Respondent during the course of this interview revealed to the Complainers a complete absence of understanding of the Accounts Rules. The Respondent admitted during a series of correspondence which occurred after the inspection of December 2006, replying to the Complainers with inaccurate and misleading information. A detailed discussion took place during which various items of concern identified during the

earlier inspections were brought to the attention of the Respondent. He was provided with advice as to how these items of concern could be resolved. The meeting concluded with the Respondent being warned once again as to the need for him to comply with his obligations in terms of the Accounts Rules.

6.5 Inspection on 6 November 2007

The Complainers then acting in the course of their statutory duties carried out an inspection of the financial records, books and documentation maintained by the Respondent at his place of business on 6 November 2007. Said inspection followed upon earlier inspections carried out by the Complainers where a number of concerns were identified in relation to the failure on the part of the Respondent to comply with his obligations in terms of the Accounts Rules. The inspection of 6 November 2007 revealed further concerns to the Complainers regarding a failure on the part of the Respondent to comply with his obligations in terms of the Accounts Rules. In particular the following was identified:-

- (a) A difference of £181.10 was noted from the books and records provided by the Respondent to the Complainers in correspondence after the inspection of March 2007. The Respondent advised that the difference was a net balance of interest received and bank charges and that these had been posted to the cash book maintained by him. However, at the inspection of November 2007, these postings could not be found. Upon enquiry the Respondent suggested that these had been carried forward in the client bank reconciliation. This could not be vouched as the reconciliation produced by the Respondent had an unreconciled difference of £838.26.

- (b) The inspection revealed client ledgers in the name of D Donoghue. Previously the Complainers had requested sight of these client ledgers. In the inspection of November 2007 it was identified that balances remained in the client bank account and on the client ledger. These balances had not been included in the list of client balances of 30 September 2007 provided to the inspector which totalled £289,874.77. As a result of this omission, further examination was carried out by the inspectors which revealed further client balances, both debit and credits which should have been included in the list provided.
- (c) The inspectors sought a list of the client balances from the Respondent as at 30 April 2007, 31st May 2007 and 31 July 2007. These were never provided by the Respondent. The inspectors ascertained that they had never been prepared as requested. The inspection revealed that there had been an effort by the Respondent to balance the books at March and September for the purposes of issuing a Certificate only.
- (d) The inspector requested sight of a trial balance for the firm account for the month end March 2007. The inspection revealed that no trial balances had been prepared by the Respondent since the start of his business. This was despite an assurance given by the Respondent in the course of correspondence and communication following earlier inspections. (Rule 8(4))
- (e) The Respondent acted on behalf of the client Mr A. The sum of £20,000 was instructed to be lodged in a

solicitors deposit account. The bank failed to carry out this instruction. Instead the sum of £20,000 was paid to the client's own account. A further instruction was made on 30 March 2007 to lodge £11,645.53 but this was not carried out by the bank of the Respondent until 25 April 2007. Although the client ledger was posted on 30 March 2007, the client cash book was not posted until 25 April 2007. With no reconciliation as at 31 March 2007, showing these funds as an outstanding withdrawal, the surplus figure produced by the Respondent on 31 March 2007 was incorrect as it included these funds as being due to the firm.

- (f) Earlier inspections revealed that the Respondent was not preparing a trial balance at the end of each month. This was raised with the Respondent at each of the inspections previously and at a Guarantee Fund interview which he attended in April 2007. This inspection revealed that the Respondent was still failing to prepare a trial balance. The Respondent was provided with advice that he must begin to record all the firms postings in nominal ledgers. They should include all firms fees and other incomes such as bank interest. The inspection revealed that although the Respondent had been rendering fees since the commencement of business, none of these fees had been posted to the client ledger, reducing the balances held nor had a nominal ledger been set up to record the fees taken. The Respondent was instructed to prepare a trial balance for the month ends of September and October 2007 immediately. The Respondent was instructed to prepare retrospectively previous month ends from his records. The Respondent was once again encouraged

to obtain professional assistance with the maintenance of his books and records.

- (g) The Respondent had failed to post his client ledger up to date. The Respondent had failed to post fees to the ledgers. The Respondent had failed as at 30 September 2007 to take all balances held to a list of client balances. The Respondent had failed to post the client cash book in tandem with the client ledgers thereby encouraging further errors to occur. (Rule 8(4))

- (h) The Respondent acted on behalf of the client identified as Mr Q. As at the date of inspection the client ledger for this client had only been posted to 8 October 2007. Sale proceeds of £125,000 were received by the Respondent on 28 September 2007. Upon enquiry the Respondent confirmed that these monies had been paid out. No record of when the payment was made was kept. The inspection revealed that there had been no posting to the client ledger, cash book or daily transaction sheet. The cheque book stub was also left blank. It would be necessary to wait for the returned paid cheque to establish when the cheque was drawn. This practice revealed the absence of an audit trail in the books and records maintained by the Respondent. This was of particular concern to the Complainers given the volume of conveyancing work which the Respondent engaged in.

- (i) The Respondent had failed to maintain the client bank reconciliation of the bank statement balance with the correct cash book balance. From the statement balance to the correct cash book balances. The Respondent had failed to identify and detail any difference in the

reconciliation. The Respondent had failed to post these differences during the next month. Instead the Respondent had carried these forward without detail. (Rule 8(4) and Rule 9)

- (j) The Respondent had failed to maintain an accurate and true statement of surplus. The Respondent had failed to bring his client ledgers up to date or to reconcile the client bank to the client cash book, therefore it was impossible to obtain a true statement of surplus. (Rule 9)
- (k) The Respondent had failed to maintain a separate record in respect of invested funds accounts operated by him on behalf of clients. The Respondent had failed to maintain a list of invested fund balances at the end of each month. No list of invested funds had been prepared. The inspector had to prepare this from statements provided by the Respondent. (Rule 8(4))
- (l) The Respondent had failed to reconcile the firm bank to the firm cash book balance at the end of each month. The Respondent had failed to identify differences between the statement and the cash book balance and therefore failed to note these and have them posted the following month.
- (m) The Respondent failed to reconcile invested fund balances to the statement balances on a quarterly basis. The quarter dates coincided with the dates of the Respondent's Certificate. If the Respondent had carried out this obligation correctly and the funds had been reconciled it would have been noted that the Mr A account had not yet been opened and the surplus

statement produced was incorrect. In addition it would have highlighted the uplift from the same account had not been posted to the client ledger. (Rule 10)

- (n) The Respondent had failed to comply with his obligations in respect of the designation of client cheques. In relation to the affairs of the client J/K, a cheque was noted to have been incorrectly designated with the account number only. (Rule 6(2))

6.6 Guarantee Fund Interview on 17 January 2008

Such were the concerns on the part of the Complainers that the Respondent's repeated failure to comply with his obligations in terms of the Accounts Rules and his lack of understanding as to the precarious manner in which he maintained his books and records, the Respondent was invited to attend a Guarantee Fund interview on 17 January 2008. During the course of that interview, the Respondent made certain assurances to the Complainers that he was obtaining outside professional assistance to bring his books up to date and would make available firm bank and client bank reconciliation. The meeting concluded with the convenor advising the Respondent that he required accounting advice on a regular basis and that he needed to convince the Complainers that he was doing enough to satisfy the requirements expected of him in terms of the Accounts Rules. There then followed a series of correspondence between the Complainers and the Respondent where the Complainers continued to press the Respondent to attend to outstanding issues and to provide evidence that concerns identified at earlier inspections had been resolved by the Respondent. The impression of the Complainers of the replies received from the Respondent was that he had little idea of what was required of him in terms of the Accounts Rules.

The concern of the Complainers was that as a result the Guarantee Fund was being placed at risk. The responses received from the Respondent in relation to the various series of correspondence did not appear to be adequate as insufficient attention was being paid by the Respondent to the outstanding issues. For example, the Respondent had still failed to provide an accurate trial balance as at 31 December 2007, there remained a disparity between the trial balance and the client balance figures, the client balances only appeared to list client credit balances and there was a failure by the Respondent to explain the difference between the December reconciliation figures and the client account ledger for the same period.

6.7 Inspection of 8 April 2008

The Complainers then acting in the course of their statutory duties carried out an inspection on the financial records, books and documentation maintained by the Respondent at his place of business on 8 April 2008. Said inspection arose as a consequence of a number of concerns identified following earlier inspections and correspondence with the Respondent. This inspection identified a number of concerns on the part of the Complainers, in particular a failure on the part of the Respondent to abide by the obligations expected of him in terms of the Accounts Rules. In particular the following was identified:

- (a) The Respondent had failed to keep up to date accurate firm records. No client list of balances was seen as being produced at month ends, therefore the inspectors were unable to verify balances used by the Respondent in the firm trial balance. This was a matter which had been repeatedly brought to the attention of the Respondent previously.

- (b) At previous inspections and in correspondence with the Respondent, it was brought to his attention that the trial balance produced did not accurately reflect the true financial position of the firm. This matter had been discussed at length repeatedly previously with the Respondent. The ledger headed as “client account surplus” was used by the Respondent as a balancing figure to ensure that the firm trial balance was square. The bulk of the sum held there was in respect of fees which had been deducted from the appropriate client ledger. However, the sums had not then been transferred from the client bank account to the firm bank account nor had the fee income ledger been updated. The Respondent required to fully investigate this ledger and ensure that the sums held were placed in appropriate nominal ledgers.
- (c) Separately the figures recorded by the Respondent as at 29 February 2008 in respect of the debit and credit balances were found to be incorrect. It was noted that no formal client list of balances was being prepared by the Respondent at each month end.
- (d) A miscellaneous ledger was seen to be created in respect of small credit balances by the Respondent. A sum of £4.21 was held as at 29 February 2008 and this had not been recorded by the Respondent in the firm trial balance.
- (e) In general although there had been a modest improvement in the record keeping of the Respondent insofar as client ledgers and the client cash book was concerned, the Complainers were still gravely

concerned that the firm trial balance was not being correctly produced by the Respondent as a consequence of which there was no true and accurate reflection of the firm's financial position.

- (f) No formal surplus calculation was being prepared by the Respondent. The inspection revealed that this had been produced historically, but had not been produced for recent months. (Rule 9)
- (g) A separate record for invested funds held at each month end was seen as being recorded by the Respondent by means of a spread sheet. No details of the invested funds sums were seen to be recorded within the client ledger. This was despite advice being offered to the Respondent by inspectors previously to establish a fourth column which could contain details of invested funds to be created in each relevant client ledger.
- (h) No formal invested funds reconciliation had been carried out by the Respondent at least quarterly. Advice was given by the Complainers to the Respondent that this could be achieved by preparing a list of all invested balances held per the firm's records and comparing this with bank statements obtained for each invested funds account as at the quarter end date. Any difference or adjustment would then be noted. The invested fund bank statements were not being received by the Respondent at the correct date therefore this task could not be correctly carried out. (Rule 10)
- (i) The Respondent acted for the client, Mr A. Sums were seen to be paid to the client from an amount held invested by the Respondent since 30 March 2007.

These relatively small sums were uplifted and then paid to the client bank account from which cash was paid to the client. The client ledger maintained by the Respondent did not accurately record the full movement of sums being paid out. In particular it did not contain receipts that payments in cash had been made to the client. (Rule 8(4))

- (j) The inspection revealed that the client bank reconciliation produced by the Respondent each month did not include dates beside each of the unrepresented cheques. This information was necessary to show that out of date or larger unencashed cheques would be investigated promptly and that any payments in respect of the recording dues would be reviewed if unencashed after two/three months rather than having them expire as a consequence of going out of date. Separately it was noted that the income and expenditure columns in the cash book were not being brought to a total each month in order that the figures may be prepared with those produced in the client bank reconciliation. (Rule 9)
- (k) The Respondent acted on behalf of the client, Mr L. On 5 December 2007 the inspection revealed an entry in the ledger as “received from client re deposit £20,400”. The funds were in actual fact received from a Mr R who was the son of the client. The Respondent had failed to accurately narrate the source of funds.
- (l) The Respondent acted for a client, Ms M. A payment was recorded on the client ledger on 13 December 2007 as “paid HSBC loan repayment £68,415.58 by CHAPS”. The file was examined which revealed that

the payment was due to the Nationwide Building Society being a separate institution altogether. (Rule 8)

- (m) The Respondent failed to comply with his obligations in respect of Money Laundering. The Respondent acted for a Mr N and Mr O. Although copies of the passports of the clients were taken, they were dark and barely legible.
- (n) The Respondent acted for a Mr and Mrs P. A payment on 8 February 2008 of £386,600 was received from the clients. The Respondent failed to verify the source of the funds in respect of this payment.
- (o) No formal reconciliation of the firm bank was seen.
- (p) As at 29 February 2008, no cheques were unrepresented and hence the sum held in the firm bank account was the same as the sum held according to the firm's records. This would not occur always. The Respondent required to amend his procedures to ensure that a proper reconciliation of the firm bank account was carried out in future. In addition on 13 November 2007 an authorised overdraft fee was seen to be applied to the firm bank account. This was seen to be reversed on 14 November 2007. The inspection revealed that this fee appeared to relate to two sums of £3,428.17 which was debited. The inspection did not reveal details of the apparent error and correction.

6.8 The Respondent is a sole practitioner. He had only recently entered into business as a sole practitioner. As a result of concerns on the part of the Complainers at the failure of the Respondent to comply with his obligations in terms of the

Accounts Rules, it has been necessary for there to have been two Guarantee Fund Interviews and four Inspections. The Respondent's practice was conveyancing based with a high turnover of transactions with considerable sums of money flowing through the client bank account operated by him. Despite the concerns of the Complainers being articulated to the Respondent in some detail repeatedly following the various inspections, the continuing failure of the Respondent to comply with the Accounts Rules displayed an inability on his part to understand and appreciate the obligations expected of him in terms of these Rules. Not only were the concerns articulated to the Respondent but a great deal of time and effort was spent by the inspectors giving advice to the Respondent as to the systems he should employ to ensure compliance. This advice was ignored by the Respondent.

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

- 7.1 His breach of Rules 6, 8, 9, 10, 11 and 24 of the Solicitors (Scotland) (Accounts) etc Fund Rules 2001.

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

Edinburgh 15 October 2008. The Tribunal having considered the Complaint dated 11 August 2008 at the instance of the Council of the Law Society of Scotland against Desmond William Donoghue, Solicitor, of Ide Legal, 23 Manor Place, Edinburgh; Find the Respondent guilty of Professional Misconduct singly and in cumulo in respect of his breach of Rules 6, 8, 9, 10, 11 and 24 of the Solicitors (Scotland) (Accounts) etc Fund Rules 2001; Censure the Respondent; 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 no later than 30 April 2009 and that such inspection 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)

David 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

A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that the Respondent has been in the profession for 17 years. Since June 2006 he has practised as a sole practitioner and as is the usual practice the Law Society examined his books shortly after he commenced trading. An inspection took place on 8 December 2006 and the Respondent was informed that there were a number of issues that the Law Society was concerned about and these are listed in article 2.1 of the Complaint. Mr Reid advised that what concerned the Law Society was that despite attending training on manual book keeping the inspection disclosed 8 separate breaches of the Accounts Rules.

Mr Reid advised that a further inspection took place on 15 March 2007 and that this disclosed more evidence of the Respondent's failures to address the issues raised at the first inspection. The second inspection disclosed 14 breaches of the Accounts Rules.

Mr Reid advised that a guarantee fund interview took place on 19 April 2007 where advice was given to the Respondent of what was expected of him. At that stage the Respondent gave an assurance that he would comply with the Rules.

Mr Reid advised that a further inspection took place on 6 November 2007 at which 14 breaches of the Accounts Rules came to light. The Law Society found that little progress had been made and that principally the Respondent was failing to keep his records up to date. This was despite an assurance by the Respondent at a second guarantee fund interview in January 2008 that he would get professional assistance. Mr Reid advised that correspondence continued between the Law Society and the Respondent. The Law Society remained concerned because it appeared that the Respondent still failed to appreciate his accounting responsibilities.

Mr Reid advised that a further inspection took place on 8 April 2008 when more breaches of the Accounts Rules were found. Mr Reid advised that in total in less than 2 years of professional practice, 4 inspections and 2 guarantee fund interviews had taken place in relation to the Respondent's practice.

Mr Reid advised that following the service of this Complaint a further inspection took place on 8 October 2008. He advised that the Law Society was now satisfied that the Respondent's books are up to date and although there are certain matters which require to be clarified, the Law Society have decided that the Respondent's practice can now go back into the category of practices inspected on a routine basis by the Society.

Mr Reid advised that there is no inference of dishonesty in relation to the Respondent's failures. Mr Reid acknowledged the cooperation of Mr McCann and the Respondent in entering into a Joint Minute in this case. Mr Reid asked that the expenses of this case be awarded to the Law Society.

In answer to a question from the Tribunal, Mr Reid confirmed that there was no loss to clients as a result of the Respondent's failures.

In response to another question from the Tribunal Mr Reid confirmed that in relation to Article 7.1 (1) that this was purely a book keeping error and that the payment went to the correct building society.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann stated that the inspectors were satisfied that there was no real risk to clients from the Respondent's failures. Mr McCann referred to the Respondent's Answers which admitted that he had been very very slow in becoming proficient with his book keeping but that he has now rectified the position.

Mr McCann stated that the Respondent had had various spells as an assistant and an associate and one spell as a partner for 4 years. Mr McCann submitted that it is relevant that the Respondent had never been involved in cash room work during his

career until he commenced practice on his own account. Mr McCann submitted that the Respondent failed to understand the level of demand required by the Accounts Rules. Mr McCann advised that the Respondent's practice was an extremely small firm and it took him a long time to appreciate that book keeping entries require to be done on a day to day basis.

Mr McCann stated that in the last few months the Respondent had employed an experienced accountant to assist him and is now in regular contact with the Law Society. Mr McCann advised that the Respondent was not a member of the LDU and did not take advice prior to the guarantee fund interviews.

Mr McCann urged the Tribunal to take into account that there was no hint of dishonesty in this case nor any loss to clients. He submitted that if the Respondent's practising certificate was restricted the Respondent would find it impossible in the current financial climate to obtain work with another conveyancing firm. Mr McCann asked the Tribunal to deal with the matter by way of a Censure and a fine and take into account that the firm's records are now up to date and under the supervision of an experienced accountant and backed up by a computerised accounting system.

Mr McCann advised that the Respondent's practice is the smallest legal operation that he has ever been aware of and that the Respondent is genuinely a sole practitioner working from shared offices with shared reception facilities and employing only an administrative assistant to undertake typing and filing. Mr McCann advised that as a result the Respondent's income from the practice is very modest. Mr McCann advised that the Respondent gives the Tribunal an assurance that he will comply with the provisions of the Accounts Rules from now on. Mr McCann stated that he had no motions to make in relation to publicity or expenses.

In response to a question from the Tribunal, Mr McCann confirmed that the accountant's association with the firm was permanent.

In response to another question from the Tribunal Mr McCann stated that the Respondent had had a significant outlay in relation to his computerised accounting system and had been responsible for paying the cost of 3 inspections.

DECISION

The Tribunal was concerned about the numerous breaches of the Accounts Rules and the fact that 4 inspections and 2 guarantee fund interviews had required to take place in the first 2 years of the Respondent's practice. However, the Tribunal noted that a recent inspection had shown that the books of the practice were now up to date. The Tribunal also noted that the Respondent is receiving assistance from an experienced accountant and has installed a computerised accounting system. The Tribunal also noted that there was no question of dishonesty or loss to clients in this case. The Tribunal had some misgivings about the Law Society's decision to put the Respondent's practice back into the normal 2 year routine inspection schedule. Accordingly the Tribunal considered that it would be appropriate for the Law Society to carry out another inspection of the Respondent's books prior to 30 April 2009 to ensure that the progress which has been made recently in bringing the practice's books up to date is sustained. The Tribunal considered that a further additional inspection is required to ensure that the interests of the firm's clients are protected. The Tribunal accordingly Censured the Respondent and ordered that a restriction be imposed on the Respondent's practising certificate to the effect that his books and records must be inspected no later than 30 April 2009. As the Respondent will have to bear the cost 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.

Vice Chairman