

**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

**CHRISTOPHER JOHN SAYER,
Solicitor, 45 Moray Place,
Edinburgh**

1. A Complaint dated 27th June 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Christopher John Sayer, Solicitor, 45 Moray Place, Edinburgh (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 3rd November 2005 and notice thereof was duly served on the Respondent.
4. At the hearing on 3rd November 2005 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and was represented by Grant Knight, Solicitor, Edinburgh.
5. A fresh amended Complaint dated 1 November 2005 was lodged with the Tribunal. Mr Knight on behalf of the Respondent confirmed that the Respondent was pleading guilty to the amended Complaint. No evidence was led.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 25th September 1958. He was admitted as a solicitor on 30th December 1983 and enrolled in the register of Solicitors in Scotland on 26th January 1984. He practiced on his own account at 45 Moray Place, Edinburgh.
 - 6.2 A Guarantee Fund Inspector employed by the Complainers carried out a routine inspection of the books and records of the Respondent's practice on 17th, 18th, and 21st November 2003. *Inter alia* the following matters were noted: -

a. **K F and M F.**

Balances on various ledgers were transferred between these clients to offset sums due by the clients against sums held on their behalf. Despite the fact that these were separate clients, no written authority was held in respect of the transfer from the ledgers of one client to the other.

b. **F M and N Q**

A ledger in the name of F M was opened in relation to the re-mortgage of property at 2 D T, Edinburgh. Another matter was opened under the same client reference relative to the purchase by F M and N Q of 10 O D, Edinburgh. £54,036.35 was transferred from the re-mortgage ledger to the purchase ledger without any written authority so to do.

6.3 **Invested Funds – reconciliation**

The reconciliation of invested funds requires up to date statements to be available as at the date of the reconciliation. Statements are therefore required quarterly at least. In 8 separate cases (recorded as G118.3, H181.1, L101.1, L109.2, L140.1, L147.1, M104.1 and S169.1) the statements were received only six monthly.

6.4 **I M – Executry**

A sum of £13,881.12 had been held uninvested from 23rd October 2003 until the date of inspection.

6.5 A B

A fee of £353.50 was duplicated in this ledger (and refunded to the client after this error was pointed out at the inspection). On 26th September 2002, £25,020 was transferred from Mr. A B's ledger to that of R B. No authority was in existence for this transfer. A subsequent authority, dated 27th November 2003, was obtained retrospectively.

6.6 C G

The Respondent acted on behalf of C G in relation to the sale of property at 4/6 W M B, Edinburgh. The purchaser was C A, a firm of which the client, C G was a Partner. The Respondent also acted on behalf of C A. Separate agents acted for the lenders to C A. The sale price was £224,000. The Purchaser paid only £189,083.75. The Respondent did not hold written authority from C G in relation to the retention by the purchaser of part of the price.

6.7 A M – Re-mortgage of 21 L G, Edinburgh

Mrs. AM gave various authorities in relation to the proceeds of a re-mortgage, all of which were paid to or on behalf of her brother, M K or to companies in which he had an interest. It was noted that the cash account did not include interest on invested funds of £97.24, an entry for £32.44 "paid you" or three transfers to other ledgers amounting to £64.63, £20.43 and £22.40. Recording dues of £283.00 on the ledger were shown as £429.00 in the cash account. The fee in this case was taken on 12th February 2003 but the fee note was not rendered to the client until 14th February 2003.

6.8 S E L – Sale of H V H

Payments of £789,500 on 30th May 2003 and £2,733.29 on 3rd September 2003 were made not to the client but to a company called L G D L. The file indicated that S E L acquired the property in return for taking over a debt of L G D L with a value of £766,000. The sum paid over to L G L was in excess of that sum. No written authority for the payment was held by the Respondent although retrospective authority was obtained.

6.9 AD purchase 199 C Q Dundee

The purchase of this property settled on 20th June 2003 but the deeds were sent for recording only during the days of inspection in November 2003.

6.10 C and S Y-S – Purchase 3 R C, Purchase of 5 C S, Edinburgh

The files stated incorrectly that C & S Y-S purchased these properties as individuals whereas in fact they did so as partners in the Firm of E P. The cash account in relation to the purchase of R C did not accurately reflect the transactions in the ledger, Stamp Duty of £34,600 having been incorrectly recorded as £24,600 resulting in a large balance being on the face of the ledger due to the client whereas in fact the client was due the sum of £1,116.25 being the fee. In relation to 5 C S, £210,000 was provided towards the purchase price by the Firm of Edinburgh Properties. Nothing was noted in respect of verification of the identity of the Partnership as an entity.

6.11 A B

On 15th April 2003, £31,500 was received on behalf of this client. Nothing was recorded regarding the source of the funds. The explanation subsequently provided by the Respondent was that “from memory” the funds were provided by Mr. B’s uncle who was an existing client of the Respondent.

6.12 L & C H G

On 4th December 2003, a sum of £573,000 was received from these clients. There was no indication on the file of how the client had been identified. The Respondent subsequently explained that Mr. and Mrs. H G were pre 1994 clients and close personal friends but nothing had been recorded on the file to reflect this.

6.13 P L – Purchase of W P, Penicuik

Although this transaction had settled on 25th October 2002, as at the date of the inspection, the purchaser’s title remained unrecorded. Another firm of Solicitors, acting on behalf of the lender, were holding the Disposition but appeared to be awaiting delivery of a Standard Security. Although the problem appeared to rest with the other agents, the Respondent had not taken steps as at the date of the inspection to have the Disposition recorded.

6.14 C A

This firm purchased property at K S G with the assistance of a loan from the Royal Bank of Scotland PLC. £64,545.84 of the price was paid by F S L. F S L was a limited company which was also a client of the Respondent. Additional funds were provided by

another client company called P 19 L in the sum of £10,000. No written instruction or authority was in place in relation to applying these funds for the benefit of C A as at the date of the transaction settling. The funds were not transferred via the client ledgers but instead credited directly to this ledger although they were received from third parties who were also clients. All parties subsequently confirmed that the funds had been remitted for the benefit of C A. The Respondent obtained retrospective authority from his Limited Company clients.

6.15 Accounts Certificate

The firm trial balance included the Royal Bank term loan for £70,700 but this was not included within the amounts due by firm on the accounts certificate.

6.16 Guarantee Fund Interview

As a result of the findings of the inspection herein before condescended upon, the Respondent was invited to an interview with the Complainers Guarantee Fund Committee which took place on 22nd January 2004. The Respondent was made aware of the Complainers concerns in relation to the standard of his record keeping, the inter-account transfers and money laundering issues in particular, and having heard the explanations offered by the Respondent, the Committee recommended, and it was subsequently resolved, that the Respondent be re-inspected in May 2004 at the expense of the Respondent.

6.17 Inspection of 1st and 2nd July 2004

The inspection was originally scheduled for 11th May 2004 but could not proceed on that day. A Guarantee

Fund Inspector employed by the Complainers carried out a re-inspection of the books and records of the Respondent's practice on 1st and 2nd July 2004. The following matters were noted: -

a. **C. E - bridging account.**

A bridging account in the name of C. E which had a balance per the Bank Statement on 20th April 2004 of £68,585.22 DR was not included in the reconciliation of invested funds and bridging accounts as at 30th April 2004. On the bank statement there was a hand written note stating "the Royal Bank of Scotland have taken this back in house". The client ledger was subsequently credited with the same narrative and the bridging balance was adjusted to zero. Perusal of the file did not reveal any correspondence with the Royal Bank of Scotland to this effect.

b. **Deficit on Client Account**

A lodgement on 7th May 2004 on the cash book in the sum of £77,244.25 was not received in the client bank account until 10th May 2004. The payment had been lodged in the bank using the quick deposit facility. The bank therefore did not stamp the pay-in book. As a result there was a shortage in the client account between 7th May and 10th May. The respondent undertook not to use the quick deposit facility in future.

6.18 **Late Recording of Deeds**

The following instances were noted: -

- a) Mr. and Mrs. D. T: sale of 70B B S, Edinburgh settled on 31st March 2004, and the clients TSB loan was redeemed on 2nd April 2004.

No recording dues appeared to have been paid and the Discharge remained unrecorded.

- b) L.B.Z purchased 70B B S, Edinburgh on 31st March 2004. Loan funds from Mortgage Express were received on 31st March 2004. No recording dues were paid, and the deeds remained unrecorded until 9th July 2004 i.e. after the inspection.
- c) H S: re-mortgage of 20A R C, Edinburgh, settled on 14th May 2004. A discharge was granted by Northern Rock plc and H S granted a Standard Security in favour of M B TMB. As at the date of inspection, no recording dues appeared to have paid and the deeds remained unrecorded.
- d) J & J M purchased 22B R C, Edinburgh on 4th May 2004. As at the date of the inspection, the Stamp Duty Land Tax had not been paid and the deeds remained unrecorded.

6.19 J.B.T

A payment was made to the above client on 20th May 2004 in the sum of £521,285.68. The payment was made to Mr. T directly from his Royal Bank of Scotland invested funds account and was not recorded in the client's ledger. The ledger still showed funds of £521,286.86 held on deposit. There was no record of the uplift of the funds and the subsequent payment to Mr. T through the client cash book or ledger.

- 6.20 L.B.Z
Fees were taken on 1st April 2004 but not rendered until 2nd April 2004.
- 6.21 R. L
Fees were taken on 18th May 2004 but not rendered until 20th May 2004.
- 6.22 J & J McN
A balance of £3,728.77 had been held in general client account for these clients since 31st March 2004 without being invested.
- 6.23 C B & C E
The transaction pertaining to these clients settled on 20th November 2003. Evidence of identity was not requested from the clients until April 2004.
- 6.24 T. K
The transaction in relation to this client settled on 7th April 2004 but evidence of identity was not requested from the client until 27th April 2004.

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

- 7.1 His transferring funds belonging to clients for the benefit of other clients without written authority so to do in breach of Rule 6(1)(c) of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 (the 2001 Rules).

- 7.2 His failure to comply with the terms of Rules 8, 9 and 10 of the 2001 Rules.
- 7.3 His failure to invest client's funds as required by Rule 11 of the 2001 Rules.
- 7.4 His unreasonable delay in recording deeds.
- 7.5 His failure to comply with the requirements of Rule 24 of the 2001 rules, and with the money laundering regulations.
- 7.6 His failure to submit an accurate accounts certificate in breach of rule 14 of the 2001 Rules.
- 7.7 His operating with a deficit on his client account.
- 7.8 His failure to carry out a quarterly reconciliation of his invested funds.
- 7.9 His taking of fees before fee notes had been raised in breach of Rule 6(1)(d) of the 2001 Rules.

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

Edinburgh 3rd November 2005. The Tribunal having considered the Complaint dated 1st November 2005 at the instance of the Council of the Law Society of Scotland against Christopher John Sayer, Solicitor, 45 Moray Place, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his breach of Rules 6, 8, 9, 10, 11, 14 and 24 of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001, his unreasonable delay in recording deeds, his operating with a deficit on his client account and his failure to carry out a quarterly reconciliation of his invested funds; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of three years from 27th January 2006 any practising certificate held or issued to the Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Committee of the

Council of the Law Society of Scotland; 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 £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alistair M Cockburn

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

A fresh amended Complaint was lodged with the Tribunal on the day of the hearing and the Respondent pled guilty to the whole terms of the fresh Complaint. There was accordingly no requirement for evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch outlined the circumstances of the two inspections of the Respondent's books. There were concerns with regard to the Respondent's record keeping. On a number of occasions the Respondent had failed to obtain written authority from his clients prior to transactions taking place. It was however accepted that verbal authority had been given. In connection with the deficit this was for a period of three days. Mr Lynch accepted that some of the breaches of the Accounts Rules were technical in nature. Mr Lynch also confirmed that the Respondent had co-operated fully with him in respect of this matter and had indicated his intention to plead guilty at an early stage.

SUBMISSIONS FOR THE RESPONDENT

Mr Knight explained that in respect of the matters where the Respondent had failed to obtain written authority from his clients he had verbal authority and obtained retrospective written authority as soon as the problem was drawn to his attention. In connection with the failure to carry out a quarterly reconciliation of his invested funds, Mr Knight explained that the Respondent got statements from the bank on a six monthly basis and that this was corrected to every three months once this was drawn to his attention. In connection with the failure to invest clients funds, the Respondent had calculated the interest due and paid this to the client. In connection with the taking of fees before the rendering of fee notes, Mr Knight explained that the Respondent had a backlog of typing and accordingly it was sometimes one or two days later before the fee notes were actually sent out. In connection with the late recording of deeds Mr Knight explained that in one of the cases the bank had not issued loan papers and accordingly the Respondent held the disposition back to await the security so that both could be recorded at the same time. In connection with the

delay in recording deeds identified in the 2004 inspection Mr Knight explained that two of these involved the same transaction and in one of the cases the delay was caused by an onward sale. In connection with the Money Laundering Regulations, Mr Knight explained that the clients were old friends of the Respondent but it was accepted that he had no note on the file stating that this was the case. In connection with the Accounts Certificate, Mr Knight explained that this was caused by indecision on the part of the Respondent as to whether or not the loan should be put in as a personal loan or a business loan.

In summary Mr Knight stated that the first inspection had highlighted 15 matters and the second inspection 12 matters. The Respondent recognised that he had administrative difficulties as a sole practitioner. Mr Knight explained that the Respondent had two secretaries, one of whom was off on long term sick leave. He had a manual accounting system and did all the accounts and book-keeping himself. He had a book-keeper who came in every 4-6 weeks to reconcile the books. After the inspections the Respondent identified the need for change and Mr Knight advised that there had been another inspection in July 2005 which showed that there had been a big improvement. Mr Knight said that the Respondent realised that he needed to consider his position with regard to being a sole practitioner. He had had discussions with a number of firms and another firm had taken over his business from 1 November 2005. The Respondent was presently working for that firm as an employee. Mr Knight explained the Respondent's family circumstances and emphasised that the Respondent had recognised his difficulties, had sought advice and had fully co-operated with the Law Society and the Fiscal. Mr Knight emphasised that there was no suggestion of any impropriety or dishonesty in this case. Mr Knight referred the Tribunal to the numerous references lodged on behalf of the Respondent. He asked the Tribunal to deal with the matter in such a way as would allow the Respondent to continue to practice in his new firm.

DECISION

The Tribunal considered that a lot of the breaches of the Accounts Rules were technical breaches but was concerned that after matters were identified at the first inspection the Respondent continued to act in breach of some of the same rules. The

Tribunal was also concerned with regard to the delay in recording deeds, this could have resulted in significant loss to the clients. The Accounts Rules are in place to ensure that solicitors' practices are run properly and that clients' money is never put at risk. The Tribunal took account of the numerous references lodged on behalf of the Respondent but given the number of breaches of the Accounts Rules, the Tribunal consider that in order to protect the public the Respondent requires to work under supervision and a restriction on his practising certificate is appropriate. It was clear that the Respondent recognised this himself and had taken steps to obtain employment with a firm. The Tribunal imposed the Restriction for three years to run from 27th January 2006 to give the Respondent time to endeavour to have his employer approved by the Law Society so that he can continue to work. The Tribunal made the usual order with regard to expenses and publicity.

Chairman