

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

D E C I S I O N

in Complaint

by

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

against

**DAVID WILLIAM DICKSON,
Solicitor, 19 Waterloo Street,
Glasgow**

1. A Complaint dated 23 January, 2006 was lodged with the Scottish Solicitors Discipline Tribunal by the Council of Law Society of Scotland (hereinafter referred to as 'the Complainers') requesting that David William Dickson, 19 Waterloo Street, 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 might think 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 the Answers the Respondent raised a preliminary plea in respect of the relevancy of the averments in the Complaint. The matter was accordingly set down for a Procedural Hearing on 11 May, 2006 and notice thereof was duly served on the Respondent.
4. The Complaint called for a Procedural Hearing on 11 May 2006 and the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by George

Moore, Solicitor, Glasgow. The Tribunal heard submissions from the Respondent to the effect that the averments in Article 3.2 and 4.1(b) of the Complaint were irrelevant. The Respondent submitted that if this matter was deleted what remained in the Complaint could not be sufficient to amount to professional misconduct.

5. Having heard submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 11 May 2006. The Tribunal having considered the Complaint dated 23 January, 2006 at the instance of the Council of the Law Society against David William Dickson, Solicitor, 19 Waterloo Place, Glasgow; Find the averments of duty contained in Article 3.2 and the averments of professional misconduct contained in Article 4.1(b) of the Complaint to be irrelevant and delete them from the Complaint. Resolve that a hearing be allowed in respect of the remainder of the averments in the Complaint on a date to be fixed; Direct that the issue of expenses be reserved until the conclusion of this matter and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

A. M. Cockburn

Chairman

6. 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 case was set down for a procedural hearing in respect of the Respondent's preliminary plea with regard to the relevancy of the averments in the Complaint.

The Complainers lodged an Inventory of Productions and it was agreed that the terms of these productions be incorporated into the pleadings.

SUBMISSIONS FOR THE RESPONDENT

Mr. Moore on behalf of the Respondent stated that the Respondent admitted the facts contained in Article 2.1 of the Complaint with the exception of the last sentence. Mr Moore explained that the Respondent was involved at an earlier date with a Power of Attorney at the request of Mr A and Mr B but all he did was provide a blank Power of Attorney and nothing more. He did not give any advice with regard to the Power of Attorney. The Respondent was then re-consulted and the facts were as narrated in Article 2.1. Mr. Moore referred the Tribunal to productions 1 and 2 being letters by the Respondent. The letter of 15 January, 2003 indicated that the Respondent held £7,930 for his client, Mr A and Mr B on behalf of their aunt, Miss C and had expended on her behalf £5,697 leaving a balance of £2,251. In his letter of 13 February 2003 the Respondent enclosed the sum of £1,590 in full and final settlement of any claims which consisted of the sum of £2,251 less £660.35 being the Respondent's fee which was due by Mr A and Mr B to the Respondent. This fee related to work done for Mr A and Mr B in respect of their aunt's affairs.

Article 3.2 of the Complaint asserted that the Respondent's actings were in breach of Rule 6(1) of the Accounts Rules. Mr. Moore submitted that there could not be a breach of Rule 6 because it was accepted that Miss C was not a client of the Respondent and the money was drawn on a client's authority. Mr. Moore further submitted that once this matter was deleted from the Complaint, what was left could not amount to professional misconduct. Mr. Moore submitted that if the Respondent had advised Anderson McArthur that he was instructed by his clients to deduct the bill from what was to be paid to the aunt, there would have been nothing wrong with that, if it had been agreed. In this case, he did deduct it and sent the balance but the firm of

Solicitors who received it, cashed the cheque and then reported the Respondent to the Law Society.

Mr. Moore stated that it was accepted that the Respondent should have looked more carefully into things before carrying out his clients instructions but this was not sufficient to amount to professional misconduct and he pointed out that the Respondent was communicating with another firm of Solicitors and not a private client. Mr. Moore also emphasised that the Respondent had been open with regard to what he had done

SUBMISSIONS FOR THE COMPLAINERS

Mr. Lynch submitted that Solicitors often have funds which they hold for clients in a certain capacity e.g. as an Executor and these funds were held in the same way as clients funds would be. Mr. Lynch submitted that if an Executor asked for funds to be transferred to another firm of Solicitors, the Solicitor would have to comply with this request. Mr. Lynch submitted that Rule 6 of the Accounts Rules was applicable because Miss C was beneficially entitled to the funds and therefore was a client. Mr. Lynch submitted that the client, in terms of the Rules, should include a person for whose benefit the funds were held. Mr. Lynch further submitted that even if the averment with regard to Rule 6 of the Accounts Rules was deleted, what was left was still sufficient to amount to professional misconduct. The Respondent had taken fees from money that he knew did not belong to his client. Mr. Lynch referred to the Respondent's Answers where he stated that the funds belonged to his clients as attorneys which was inconsistent with his letter of 15 January which stated that the sums were held on behalf of the aunt. Mr. Lynch also referred to production 39 being a letter from the Respondent where he accepted that he should not have accepted instructions from his client and that it was inappropriate to deduct monies from the aunt's funds that were not due by her. Mr. Lynch submitted that the Tribunal would require to enquire into whether or not this would amount to professional misconduct and would require to hear evidence in order to decide this.

DECISION

The Tribunal did not see how Rule 6 of the Accounts Rules could be applicable in this case. Rule 6 clearly envisages there being two clients. In this case it is accepted in the Complaint that Miss C was not a client of the Respondent. The Complainers have asked the Tribunal to use a wider interpretation of the word “client” to include a person for whose benefit funds are held. No authority for this proposition however was provided and the Tribunal could see no justification for widening the interpretation of the word “client” in this context. It is clearly set out in Article 2.1 that Miss C was not a client of the Respondent. In these circumstances the Tribunal found the averment with regard to a breach of Rule 6 of the Accounts Rules to be irrelevant and deleted the averment of duty and the averment of professional misconduct in the Complaint which related to this.

The Tribunal however do not accept that it could not be professional misconduct for a Solicitor who receives money from a client and knows that it belongs elsewhere nevertheless to take from it his own fee. The Respondent may or may not have appreciated that he was taking money to which he was not entitled. The Tribunal consider that the matter requires to proceed to a hearing on the merits before a decision can be taken on whether or not the Respondent’s conduct in the particular circumstances of this case amounts to professional misconduct. It was agreed that the question of expenses in connection with this hearing be reserved until the conclusion of the matter.

In terms of Schedule 4 of the Solicitors (Scotland) Act 1980 publicity will be required to given to the decision.

Chairman