

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**PATRICK JOHN ANGUS,
Solicitor, 9 The Square, Huntly,
Aberdeenshire**

1. A Complaint dated 9 April 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Patrick John Angus, Solicitor, 9 The Square, Huntly, Aberdeenshire (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 19 August 2004 and notice thereof was duly served on the Respondent.

4. The hearing took place on 19 August 2004. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor Dunfermline. The Respondent was present and represented by Mr J. McCann, Solicitor, Clydebank.

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

6. The Tribunal found the following facts established
 1. The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 30 May 1953. He was admitted as a Solicitor on 22 November 1977 and enrolled in the Register of Solicitors on 9 December 1977. Since about 1990 the Respondent has been the sole partner in the firm of Messrs McCombie & Angus, Solicitors, Notaries & Estate Agents of 9 The Square, Huntly, Aberdeenshire.

 2. An inspection of the Respondent's firm took place on 6 and 7 June 2000. Many problems were noted with the Firm's Books and records and also the client files. Breaches of the Solicitors (Scotland) Accounts Rules 1997 Rules 6(1), 11, 12(1)(b)(i), 12(1)(b)(ii), 12(3)(b), 12(4), 12(5), 13, 14, 16 and 17 were noted. The 1986 Practice Rules Rule 5(2) was not being complied with, file notes were inadequate or non-existent, stationery still included an Associate Solicitor who had left the practice a year previously and the figures on the

Certificate were wrong and overstated. The Respondent had found himself facing significant arrears with work in the office and with postings and Accounts Rules compliance due to staff problems.

3. The Complainers expressed concern over the apparent lack of supervision by the Respondent and the inaccuracy of the book-keeping procedures. In particular, no proper monthly firm Trial Balances were being prepared, client credit balances included invested funds making the true client balances difficult to ascertain and the Powers of Attorney list was incorrect. The Respondent was appraised of all breaches and requirements for compliance.

4. A re-inspection at the Respondent's expense was conducted on 30 April to 2 May 2001. At the re-inspection, major problems were identified. The Complainers noted the Respondent was taking client funds to fee without authority and failing to disclose the full extent of estates in confirmations and financial statements. There were also concerns about the level of fees and the difficulty in ascertaining the true financial position due to poor record keeping and practices. The Respondent was required *inter alia* to carry out a full review of Executries, and other ledgers, to identify other instances where sums had been debited incorrectly from client's ledgers. Five Executries were identified where sums had been debited without apparent justification namely Executry A, Executry B, Executry C, Executry D and Executry E. The Respondent was asked for a full explanation in each and advised that he may be called in for interview.

5. The Respondent was interviewed at Edinburgh on 21 June 2001. He had been advised in writing that he should take legal advice at an early stage. He was advised that he need not answer and that any responses would be noted and reported on. He advised that his aged Cashier had not implemented changes to comply with the Accounts Rules, that he was taking over himself and with effect from June 2001 the accounting system was being computerised by GB Systems from which point he would receive two days training and would do all postings himself. With only 40 active clients, he expected the system to be up and running by the end of the following week.
6. In respect of the named Executries, he gave explanations for his actions and his omissions.
7. In respect of two overdrafts arranged for Executries without mandates from the Executors, he confirmed that he would ensure these never became a firm liability. As regards the Trial Balance to 31.3.01, he explained that the Cashier had been unable to produce a cumulative trial balance and that he had now instructed named accountants to prepare one and oversee the computerisation of the records.
8. The Complainers re-inspected the Respondent's firm on 18 to 20 September 2001. Further breaches of the Accounts Rules were noted including Rule 12(1). There was evidence of late and incorrect posting, of incorrect narrative; Rule 12(3)(b), an inter client transfer record was in place but was incomplete; Rule 12(4) the firm's Trial Balance was still incorrect,

included an unexplained balancing figure of £4,712.31, contained no cumulative figures for April, May, June or July 2001 and did not include all balance sheet items; the new computer records contained incorrect figures for things such as the equipment and stock and the capital account; Rule 14 entries were not posted timeously or missing.

9. It was noted that a net sum of £49,156.97 had been repaid in respect of fees and commissions. The Respondent had reclaimed some funds by way of fees from the Queens & Lords Treasurer's Rememberancer. The Complainers requested further information regarding these matters, a summary of values of estate and fees charged for certain Executries and updated information on certain current Executries all in their letter of 4 October 2001.
10. The Respondent replied in correspondence dealing with the issues raised and providing documentation where available with his letters of 15 October 2001, 9 November 2001, 22 November 2001 and 26 November 2001. The matter was considered by the Guarantee Fund Committee on 6 December 2001. They resolved that as there were concerns as to how repayments of fees were calculated, and as only approximately 40 files were involved, the Respondent should be asked for specific information on each one. By letter dated 18 December 2001, 23 Executries Trusts and Power of Attorney matters were referred to him for explanation.
11. The Respondent then took legal advice and produced a detailed report through his advisor on 27 December 2001. The Respondent voluntarily went through all files

where he had estimated fees and then arranged for independent audit or taxation certificates to adjust the appropriate figures. All balances were repaid promptly, and the amount then posted by the Respondent was the figure produced by the audit or taxation certificate. The Complainers attended at the Respondent's firm on 7 and 8 May 2002 to review the situation in relation to the matters of concern.

12. **TRUST 'F'**

The Respondent's practice held £2,000 to the benefit of William Steel's trust from at least 1990. The Respondent charged a fee of £900 and remitted the balance to the Queen's and Lord Treasurer's Remembrancer. After the Complainers raised concerns regarding Q & L T R files, the Respondent had the account taxed by the Auditor of Court who assessed the fee at £492, a reduction of 45% on the fee charged by the Respondent.

13. **MISS 'C'**

Miss C died on 17 October 1999 aged 95. The Respondent was Executor nominate on her estate. The Respondent acted as law agent in the executry. The total estate declared for confirmation in Scotland, England and Wales was £605,495.

14. The Respondent charged fees of £3,000 plus VAT on 26 January 2000, £3,000 plus VAT on 18 February 2000, £9,220.29 plus VAT on 3 May 2000 and £18,753.33 plus VAT on 14 September 2000. The fees were not approved by any beneficiary and were all rendered to himself as the Executor at his office address 9 The Square, Huntly.

15. The Respondent failed to disclose estate of £11,930.35 held by him. He prepared a financial statement with the wrong opening figure and omitting all reference to the fees charged by the firm and the Auditor's fee. The opening balance on the financial statement was declared by the Respondent to be £24,365.49 whereas the true figure was £43,610.47. The undisclosed fees, fees of the firm and Auditor's fees amounted to £19,244.98 inclusive of VAT being the difference between the two figures. Said financial statement was inaccurate and misleading. The Respondent also failed to disclose an introducer's fee paid to him in the sum of £1,808.18.
16. The firm's financial records disclosed that on 3 October 2000 shortly after the debiting of the fee of £18,753.33 plus VAT, a firm loan of £13,506 was repaid by the Respondent to his lender. The Respondent was not under financial pressure and was able to reinstate all fees from his personal capital without difficulty. The total fees charged by the Respondent amounted to £39,919.01 plus the undisclosed commission of £1,808.18. The audited fees amounted to a total of £23,347.29. The Respondent refunded fees in the sum of £18,753.
17. **MR 'D'** .
The Respondent's records disclosed funds at credit of this estate in the sum of £3,589 which had been carried forward since November 1997. The gross estate had been £10,783 and the remaining sum was due to an untraced beneficiary. The Respondent was unable to trace the beneficiary and closed the file, charging fees of £1,900 and remitting the balance to the Queen's and

Lord's Treasury Remembrancer. The Complainers queried his actions and the account was submitted to the Auditor of Court for taxation. A fee of £305 was taxed as due. The Respondent accepted that the fee originally charged was an error of judgement.

18. **MISS 'B' AND MISS 'G'**

The Respondent held Power of Attorney for each of the sisters Miss B and Miss G who latterly resided in separate Nursing Homes in Elgin. Miss B died on 11 February 2000. The Respondent was the Executor and acted as law agent in the executry. A sum of £13,435.22 was held by the Firm on behalf of Miss B at the time of her death. The Respondent failed to disclose this in the Confirmation which showed a total Estate of £7,482.67.

19. Miss G died on 17 December 2000. The Respondent was Executor and acted as law agent in the executry. Miss G had been one of the beneficiaries in the Will of Miss B and died prior to the Respondent completing Miss B's estate. The Respondent failed to disclose £14,000 held for Miss G at the time of her death. There were no inheritance tax implications at this level of estate.

20. The estate of Miss B had a gross value of £20,682 and the Respondent charged fees of £4,900 plus vat of £857.50. This accounted for 23.5% of the gross estate. The Complainers queried the Respondent's actions and the papers were submitted to the Auditor of Court for taxation. The taxed account amounted to £1,661, a difference of £3,239.

21. The estate of Miss G had a gross value of £22,809. The Respondent charged fees of £2,000 plus vat of £350 amounting to 8.7% of the gross estate. The Complainers queried the fees and the papers were submitted to the Auditor of Court for taxation. The taxed account amounted to £1,750, a difference of £250.
22. Fees were debited to the estate of Miss B by the Respondent on 28.3.00 and 20.6.00 but fee notes were not rendered outwith his office. Fees were debited to the estate of Miss G by him on 17.1.01 but the fee note was not rendered outwith his office.
23. **MR 'E'** .
Mr E died on 2 December 1993 leaving a gross estate of £5,356. The executy was dealt with by a former associate of the Respondent's firm and initial fees charged of £500. The Respondent thereafter took over responsibility for finalising the estate and tracing the deceased's brother, the sole residuary beneficiary. He subsequently decided that the executy funds should be sent to the Queen's and Lord's Treasurer's Remembrancer and charged a further fee for his work in the sum of £2,900.
24. The Complainers queried the fees charged and the file was submitted to the Auditor of Court for taxation. The taxed account amounted to £1,404. The initial fees charged by the Respondent amounted to 63% of the gross estate.
25. **MR 'H'** .
The Respondent charged fees of £3,600 plus vat for the work in this matter and took fees on 6.12.99, 12.6.00

and 30.11.00 without rendering fee notes to his co-executor. An assessment produced an Audit Certificate for the period covered showing fees due in the sum of £1,919.99 a difference of £1,681. The Respondent advised that the original charges were estimated by him in good faith, based on what had been allowed by the Auditor in previous years.

26. **MS 'I'**

The Respondent acted in the Executry and failed to disclose the full amount held in invested funds in the Account of Intromissions. The balance was stated as £8,750 in stead of £9,343 a difference of £593. After the close of the Executry he took the £593 to fee without rendering a fee note to the Executor.

27. **MS 'J'**

The Respondent acted in the Executry and charged fees of £13,449 which were as in the Auditor's certificate and were disclosed in the Account of Intromissions. The interim fees were taken on 29.3.00, 22.6.00 and 5.9.00 and were not rendered to the executor. On 17th August 2000 closing interest of £806 was credited to the ledger. This sum was not disclosed in the Account of Intromissions. The Executor queried the account and the Respondent issued a cheque to him for the sum questioned namely £537.97 and took the balance to fee.

28. **MS 'K'**

The Respondent took fees from funds held on 20.5.99, 19.5.00, 17.10.00, 8.5.01 and 5.3.02 without rendering the fee notes outwith his office.

29. **MS 'L'**

The Respondent took fees from funds held on 6.11.98, 1.11.99, 7.4.00, 15.9.00, 12.3.01 and 27.7.01 without rendering the fee notes outwith his office.

30. **MISS 'M'**

The Respondent took fees from funds held on 25.3.97, 18.8.98, 3.3.99, 23.3.99, 27.3.00, 15.9.00 and 9.3.01 without rendering fee notes outwith his office.

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

- a) He charged grossly excessive fees in respect of his work on trust 'F'.
- b) He charged grossly excessive fees in the estate of Miss C.
- c) He produced inaccurate and misleading information regarding the financial position of the estate of Miss C and his intromissions therewith.
- d) He charged grossly excessive fees in the estate of Mr D.
- e) He charged grossly excessive fees in the combined estates of Miss B and Miss G.
- f) He produced inaccurate and misleading information regarding the financial position of the Estates of Miss B and Miss G and his intromissions therewith.
- g) He charged grossly excessive fees in the estate of Mr E.

- h) He charged grossly excessive fees in the estate of Mr H.
 - i) He produced inaccurate and misleading information regarding the financial position of the estate of Ms I.
 - j) He produced inaccurate and misleading information regarding the financial position of the Estate of Ms J and his intromissions therewith.
 - k) He breached Rules 6 and 12 of the Solicitors (Scotland) Accounts Rules 1997 in that
 - (i) He took fees from the estates of Miss G, Miss L, Ms I, Ms J, Mr H, Ms K, Miss B, Miss G and Miss M without rendering fee notes in terms of the Solicitors (Scotland) Accounts Rules 1997 (Rule 6(1)(d)).
 - (ii) He did not keep properly written up books and accounts to show his dealings with clients money and the true financial position of his practice as seen at 6th and 7th June 2000, 30th April to 2nd May 2001 and 18th to 20th September 2001. (Rule 12).
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 August 2004. The Tribunal having considered the Complaint dated 9 April 2004 at the instance of the Council of the Law Society of Scotland against Patrick John Angus, Solicitor, 9 The Square, Huntly, Aberdeenshire; Find the Respondent guilty of professional misconduct in respect of his charging grossly excessive fees in respect of a trust and a number of executry estates, his producing inaccurate and misleading information with regard to the financial position of a number of executry estates and his breach of Rules 6 and 12 of the Solicitors (Scotland) Account Rules 1997; Censure the Respondent and Fine him in the sum of £10,000 to be

forfeit to Her Majesty and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of four years 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 an agent and client indemnity basis in terms of Chapter Three of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed) G Fraser Ritchie

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 Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint were admitted subject to certain exceptions. The Complainers alleged that the Respondent had been involved in a course of conduct over a number of executries which was indicative of an element of dishonesty. The Respondent's position however was that although he had acted recklessly, he had not acted dishonestly.

SUBMISSIONS FOR THE COMPLAINERS

Miss Johnston stated that the Complaint against the Respondent showed a pattern of overcharging where he was the law agent and the executor which, coupled with his failure to disclose the funds and failure to keep up properly written up books, was indicative of a deliberate course of action. The Respondent was an experienced solicitor and there was ample information available on how preparation of fees should be approached. There was no excuse for guesswork. Miss Johnston stated that the inspection in 2000 showed bad book-keeping and it was not possible to ascertain the position with regard to client's funds. At the next inspection there were still problems and there were major concerns with regard to some of the executries. The Respondent then produced detailed information in connection with all matters and repaid a substantial amount of money in relation to the cases where there had been an overcharge of fees. Miss Johnston suggested that in the cases where the Respondent was the sole executor, he should have rendered the fee notes to the beneficiaries, to ensure that the situation was monitored. Miss Johnston suggested that the overcharging was not accidental but was systematic and dishonest and was for the Respondent's own financial benefit. There were a number of executries involved and the Respondent's behaviour was inexcusable.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann, for the Respondent, pointed out that in all cases a VAT invoice had been raised and remained in the office. In some cases the fee note had not been rendered

outwith the office because the Respondent was the sole executor. Mr McCann explained that at the time of the overcharging the Respondent was going through a difficult period and his office was in a state of disorder. The Respondent accepted that this was a serious case but there had been no net loss to clients or to the Guarantee Fund. Once the Law Society had drawn matters to the Respondent's attention he got all his files taxed by the local Auditor whose assessment of fees was on the conservative side. Mr McCann stated that the Respondent had no lifestyle problems and although he had lost control of the business for a period, he had now gained this back. Mr McCann pointed out that as soon as the overcharging became apparent the Respondent paid the money back. Mr McCann referred the Tribunal to the case of McCull-v-The Council of the Law Society of Scotland 1987 SLT 534 but indicated that matters had moved on since then. Section 61A of the Solicitors (Scotland) Act 1980 had introduced provision for an agreed fee between a solicitor and client which did not require to be submitted for taxation. It was accepted that the Respondent had not entered into any written fee agreement with the client in these cases but the fact that this was now possible meant that there was a perception that there was more freedom in the setting of fees. Fees that are agreed with the client can be higher than an audited fee. The Act of Sederunt 1992 allowed 100% uplift of fees in a speculative case. Mr McCann referred the Tribunal to the case of Quantum Claims-v-Powell 1998 SLT page 228, where the court had indicated that fees representing a 20% share of the compensation due were enforceable. Mr McCann stated that there was concern and confusion in the profession with regard to what was an acceptable level of fees. Mr McCann pointed out that overall the Respondent had overcharged by around 2½%. Mr McCann also pointed out that different Auditors can set differing levels of fees and that the profession could contract out of these set fees. Mr McCann stated that in this case the Respondent accepted that he had acted recklessly without taking advice when he was under pressure to resolve and finalise a significant number of executries. Mr McCann suggested that the Tribunal could not be satisfied beyond reasonable doubt that the Respondent had acted dishonestly. Mr McCann referred the Tribunal to Dickson on Evidence, page 77 where it was stated that it was not enough in criminal cases for a persons guilt to be a rational and probable inference or the most probable of several inferences but must be the only rational hypothesis and Mr McCann suggested that this was not so in this case. Mr McCann emphasised that there had been no compliance problems for the Respondent

during the last three years and no further inspections by the Law Society since 2002. The Respondent had had this matter hanging over him for a number of years, causing him a great deal of fear and stress. Mr McCann referred the Tribunal to the references provided from local solicitors, his accountant and a Sheriff. Mr McCann stated that negotiations were ongoing between the Respondent and another firm of solicitors with regard to amalgamating and the Respondent had decided that he should not carry on his own and had plans to work as an associate. Mr McCann explained that the sums of money repaid by the Respondent included £8,000 which was commission and should not have been repaid. Mr McCann emphasised that the Respondent had accepted his conduct was reckless but asked the Tribunal to find that it was not dishonest. Mr McCann referred the Tribunal to the Respondent's healthy income from his firm and confirmed that the Respondent had repaid all the money prior to the second inspection. Mr McCann asked that the Tribunal deal with the matter in such a way as to allow the Respondent to continue working as a solicitor.

DECISION

The Tribunal noted that although the Fiscal asked the Tribunal to find that the Respondent was engaged in a systematic scheme of dishonesty to his own financial benefit, this allegation was not contained in the averments of professional misconduct, as set out in the Complaint. The Fiscal suggested that the Respondent had deliberately chosen executries where he was the sole executor and where there was no one to watch what he was doing, but there was no evidence that the Respondent had acted any differently in the executries where there were other executors. The Tribunal accepts that it can be difficult to know what fees will be in an executry estate. There can be a wide variety and range of fees and the margin for error in relation to fees can be greater in executries. However, a solicitor has a duty to be especially careful in an executry, particularly where they are the sole executor. The best course of action is to have the account taxed. The Tribunal were concerned that the Respondent had omitted certain items from the executry accounts. The Respondent explained this by stating that he had not thought it was necessary to include these in the inventory as he already had control of the funds and there was no evidence that these figures had been omitted with dishonest intent. The Tribunal had concerns with regard to the number of executries where the Respondent overcharged fees. The Tribunal had to decide

whether this was merely reckless or was dishonest. The Tribunal did not consider that the only inference from the facts was that the Respondent was acting dishonestly. The Tribunal was not satisfied beyond reasonable doubt that the Respondent acted with dishonest intent. Despite this, the Tribunal viewed this case very seriously given the number of instances of grossly excessive fees taken together with the inaccurate and misleading information regarding the financial position in a number of estates. A solicitor should only charge for work carried out by him, after the work has been carried out and at an appropriate rate. The Respondent's actions were reckless and stupid and the Tribunal was particularly concerned with regard to vulnerable clients. The Tribunal however noted that the Respondent had sorted matters out quickly and repaid all the overcharged fees immediately. The Tribunal further noted that there had been no further inspections by the Law Society since 2002 and no further problems had been identified. The Tribunal also noted that the Respondent had cooperated and entered into a Joint Minute. In the circumstances the Tribunal did not consider it necessary to strike the Respondent's name from the Roll or impose a period of suspension, however, due to the serious nature of the offences and to ensure the protection of the public the Tribunal Censured the Respondent, imposed a fine of £10,000 and imposed a restriction on the Respondent's practising certificate for a period of four years. The Tribunal made the usual order with regard to publicity and expenses.

The Tribunal note that the terms of Rule 6 of the Accounts Rules does not actually state that the fee note has to be rendered outwith the office where the solicitor is the sole executor. The Tribunal does not envisage that it would be universal practice to send the fee note to the beneficiary at the time of rendering it, but all beneficiaries should receive an accounting in due course.

Chairman