

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, Atria
One, 144 Morrison Street,
Edinburgh**

against

**DAVID GRANT RATTRAY, 36
Alma Street, Falkirk**

1. A Complaint dated 5 June 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that David Grant Rattray, 36 Alma Street, Falkirk (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 4 October 2017 and notice thereof was duly served on the Respondent.
5. The hearing took place on 4 October 2017. The Complainers were represented by their Fiscal Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present but was represented by Ian Ferguson, Solicitor, Glasgow.
6. A Joint Minute was lodged admitting the facts and averments in the Complaint. No evidence was led.

7. The Tribunal found the following facts established

7.1 The Respondent's date of birth is 25 March 1956. He resides at 36 Alma Street, Falkirk. He was enrolled as a solicitor on 16 November 1979. Between 1 July 1983 and 31 May 2011 he was a partner in the firm of A & JC Allan & Co, North Bank Chambers, 36 New Market Street, Falkirk. Between 1 June 2011 and 31 October 2014 he was a consultant to the firm of Tait Macleod, Solicitors, Eilean Chambers, 6 Park Street, Falkirk. He has been employed as a paralegal with Tait MacLeod, Solicitors, Eilean Chambers, 6 Park Street, Falkirk, from 1 November 2014.

7.2 A Judicial Factor was appointed to the said firm of A & C Allan & Co on 31 July 2012.

Mr A's Executry

7.3 Mr A died on 12 December 2002. The Respondent was responsible for the administration of his estate. Between 16 December 2002 and 9 March 2010 the Respondent took fees in relation to the estate totalling £32,617.50 inclusive of VAT. The fees were taken as follows:-

	<u>Total</u>	<u>Fee</u>	<u>VAT</u>
24 February 2005	£587.50	£500	£87.50
20 August 2005	£1,762.50	£1500	£262.50
23 July 2007	£2,350	£2,000	£350
26 September 2007	£4,112.50	£3,500	£612.50
29 November 2007	£2,937.50	£2,500	£437.50
27 December 2007 ¹	£7,966.50	£6,780	£1,186.50
31 January 2008 ²	£2,937.50	£2,500	£437.50
29 February 2008	£1,175	£1,000	£175
28 May 2008	£881.25	£750	£131.25
4 August 2008	£963.50	£820	£143.50
30 September 2008	£881.25	£750	£131.25
14 November 2008	£587.50	£500	£87.50
31 March 2009	£575	£500	£75
16 June 2009	£1,150	£1,000	£150
30 June 2009	£1,150	£1,000	£150
31 July 2009	£962.50	£750	£112.50
28 September 2009	£1,150	£1,000	£150
8 February 2010	£587.50	£500	£87.50
TOTAL	£32,617.50	£27,850	£4,767.50

¹ specifically in relation to the sale of a farm.

² specifically in relation to the sale of a field.

- 7.3 On 9 March 2010 the balance on the ledger account for the executry which stood at £274,077.65 was transferred to the ledger of Mrs B deceased. Mrs B had died on 9 October 2004 and was the sister and residuary legatee of Mr A. The same executor was appointed in respect of both estates.
- 7.4 In respect of the fees above, no fee notes at any time were rendered to the executor. Moreover in the account which the Respondent prepared in respect of his intromissions with the estate of the deceased, a number of fee notes were shown not individually, but cumulatively.
- 7.5 Law accountants instructed by the Respondent assessed the fees for the executry due from 12 December 2002 until 13 October 2009 to be £17,250 inclusive of VAT. No work was done after 13 October 2009 to justify the fees subsequently taken. The fee for the sale of the farm (£7,966.50) was not the subject of a separate certificate. The fee in respect of the sale of the field was assessed by the law accountant at £609.50 inclusive of VAT. The Respondent was aware of the law accountant's certification and in particular had this drawn to his attention by a letter sent to him by the law accountant dated 14 October 2009. The total of the fees and VAT taken by the Respondent in relation to the executry excluding the sale of the field and the farm amounted to £21,713.50 inclusive of VAT. The Respondent accordingly overcharged by an amount in excess of seventy per cent. The fee taken in respect of the sale of the field was £2,937.50, whereas the certified fee and VAT was £609.50, resulting in an overcharge of three hundred and eighty per cent or thereby.
- 7.6 None of the fees was re-credited to the client account.

Mrs B, Deceased

7.7 Mrs B died on 9 October 2004. Confirmation was granted on 16 June 2006. During the period between 25 August 2005 and 24 February 2011 fees totalling £31,906.25 including VAT were taken by the Respondent. These were as follows:

	<u>Total</u>	<u>Fee</u>	<u>VAT</u>
25 August 2005:	£4700	£4,000	£700
23 July 2007:	£2350	£2,000	£350
26 September 2007:	£1,762.50	£1,500	£262.50
29 January 2008:	£1,762.50	£1,500	£262.50
27 February 2008:	£2,056.25	£1,750	£306.25
31 March 2008:	£2,350	£2,000	£350
23 May 2008:	£881.25	£750	£131.25
30 September 2008:	£881.25	£750	£131.25
14 November 2008:	£587.50	£500	£87.50
31 March 2009:	£1,150	£1,000	£150
16 June 2009:	£1,150	£1,000	£150
30 June 2009:	£1,150	£1,000	£150
31st July 2009:	£862.50	£750	£112.50
30 September 2009:	£1,725	£1,500	£225
8 February 2010:	£587.50	£500	£87.50
16 June 2010:	£1,762.50	£1,500	£262.50
12 October 2010:	£1,175	£1,000	£175
27 October 2010:	£1,175	£1,000	£175
7 December 2010:	£1,175	£1,000	£175
31 December 2010:	£1,762.50	£1,500	262.50
<u>24 February 2011:</u>	<u>£900</u>	<u>£750</u>	<u>£150</u>
TOTAL:	£31,906.25	£27,250.00	£4,656.25

7.8 No fee notes were rendered by the Respondent to the executor in respect of any of the fees taken.

7.9 By letter dated 14 October 2009 a law accountant instructed by the Respondent assessed the fees due from 9 October 2004 until 13 October 2009 to be £19,250 exclusive of VAT. No work was done after 13 October 2009 to justify the fees subsequently taken. The total

fees taken by the Respondent amounted to £27,250 exclusive of VAT, resulting in an overcharge in excess of forty per cent.

7.10 The Respondent did not re-credit any of the fees to the client ledger.

7.11 The Guarantee Fund subsequently made a payment to the executor of both the Mr A and Ms B executries in the amount of £20,960.75. This included legal fees and a Law Accountant's fee totalling £350.

Mrs C Deceased

7.12 Mrs C died on 9 April 2005. Between 9 April 2005 and 18 February 2010 the Respondent took fees from the executry totalling £4,863.75 inclusive of VAT.

7.13 The Respondent failed to render any fee notes to the executor in respect of the fees charged.

7.14 A law accountant instructed by the Respondent assessed the fees due to the estate during the period from 9 April 2005 until 13 October 2008 at £1,835 exclusive of VAT. The Respondent was aware of the law accountant's certification by virtue of the former's letter of 23 October 2008. After the date of the law accountant's letter the Respondent took two further fees dated 27 November 2009 and 18 February 2010 and for the sum of £575 and £1,057.50, both exclusive of VAT without any work having been done to justify them. There was an overcharge in excess of one hundred and twenty per cent in respect of the fees taken.

7.15 None of the overcharged fees were refunded to the client ledger by the Respondent.

7.16 The Guarantee Fund made a payment to the executor in the amount of £2,707.62.

Miss D Deceased

7.17 Miss D died on 21st November 2006. During the period from 21 November 2006 to 14 February 2011, the Respondent took fees as set out below:-

	<u>Total</u>	<u>Fee</u>	<u>VAT</u>
24 August 2007	£3,525	£3,000	£525
09 October 2007	£1,175	£1,000	£175
28 November 2007	£2,350	£2,000	£350
29 January 2008	£1,175	£1,000	£175
31 March 2008	£1,175	£1,000	£175
28 May 2008	£1,175	£1,000	£175
26 June 2008	£4,112.50	£3,500	£612.50
04 August 2008	£587.50	£500	£87.50
27 August 2008	£587.50	£500	£87.50
02 September 2008	£1,175	£1,000	£175
14 November 2008	£1,175	£1,000	£175
26 November 2008	£1,175	£1,000	£175
23 December 2008	£1,150	£1,000	£150
14 January 2009	£575	£500	£75
27 February 2009	£575	£500	£75
16 April 2009	£1,150	£1,000	£150
27 May 2009	£1,150	£1,000	£150
16 June 2009	£1,150	£1,000	£150
30 June 2009	£575	£500	£75
21 July 2009	£575	£500	£75
28 August 2009	£2,300	£2,000	£300
28 September 2009	£1,150	£1,000	£150
28 October 2009	£575	£500	£75
27 November 2009	£1,150	£1,000	£150
29 December 2009	£1,150	£1,000	£150
11 January 2010	£1,175	£1,000	£175
27 January 2010	£1,175	£1,000	£175
21 June 2010	£587.50	£500	£87.50
12 October 2010	£1,762.50	£1,500	£262.50
27 October 2010	£1,762.50	£1,500	£262.50
07 December 2010	£881.25	£750	£131.25
31 December 2010	£1,175	£1,000	£175
27 January 2011	£1,920	£1,600	£320
<u>14 February 2011</u>	<u>£1,200</u>	<u>£1,000</u>	<u>£200</u>
TOTAL:	£44,251.25	£37,850	£6,401.25

- 7.18 The Respondent did not render any fee notes to the executor in relation to the fees taken.
- 7.19 The fees were taxed by the Auditor of Falkirk Sheriff Court. The Auditor assessed the fees properly due to the Respondent to be £11,080.56 exclusive of VAT. The Respondent participated in the taxation of the fees.
- 7.20 The fees taken were £37,850 exclusive of VAT. The overcharge was in excess of two hundred and forty per cent.
- 7.21 The Respondent failed to re-credit any of these sums to the ledger.
- 7.22 The Guarantee Fund made a payment to the estate of £31,664.66 to include £300 for legal expenses.

Mrs E Deceased

- 7.23 Mrs E died on 24 December 2006. Between 24 December 2006 and 14 February 2011 the Respondent took fees in respect of the executry totalling £85,368.75 inclusive of VAT.
- 7.24 The Respondent failed to render any fee notes to the executor in respect of the fees taken.
- 7.25 The Auditor of Dundee Sheriff Court assessed the fees properly due to the Respondent in respect of the estate at £38,878.60 exclusive of VAT. There was accordingly an overcharge of more than seventy five per cent.
- 7.26 No sums were re-credited to the ledger in respect of the overcharge.

Mr F Deceased

- 7.27 Mr F died on 30 August 2010. Between 30 August 2010 and 25 January 2011 the Respondent took fees of £3,583.75 inclusive of VAT in respect of the executry.
- 7.28 The Respondent did not render fee notes to the executor in respect of the fees taken.
- 7.29 The Auditor of Dundee Sheriff Court assessed the fees properly due as £1,632.53 plus VAT of £285.69 a total of £1,918.22. The extent of the overcharge was over eighty five per cent. The Respondent failed to re-credit the overcharged sums to the edger, but did agree to the assessment condescended upon and later made a refund to the executrix, in the amount of £1,665.53.

Miss G Deceased

- 7.30 Miss G died on 11 February 2004. The Respondent had previously acted for her. Miss G was intestate. The Respondent wrote to Miss G's cousin advising of her death and requesting information on the family tree. A genealogy report was obtained by the Respondent dated 14 February 2006. It revealed that the deceased had a half sister who lived in Australia and who was entitled to be confirmed as executrix dative. The Respondent failed to make contact with her, and the circumstances in where he had no client, rendered fees against the estate between 11 February 2004 and 24 December 2010 in the amount of £7,972.31 inclusive of VAT. Since the Respondent did not have a client, he did not render the fee notes to anyone. After the appointment of the Judicial Factor, an executor was appointed. The Guarantee Fund made a payment to the estate in the amount of £6,124.26 to include legal fees of £180.

Miss H Deceased

- 7.31 Miss H died on 23 March 1987. The former firm of Graham Marr MacLachlan, Solicitors were instructed in connection with the winding up of her estate. The said firm of Graham Marr MacLachlan ceased to exist on 31 October 1995 when it was taken over by the Respondent's firm.
- 7.32 A certificate from the Auditor of Court at Falkirk dated 12 December 1997 indicated that the fee due to the former firm amounted to £1,223.77 exclusive of VAT. Any fees due were due to the former firm of Graham Marr MacLachlan.
- 7.33 On 30 October 2009 the Respondent, who had not worked on the executry, took a fee of £1,092.50 inclusive of VAT. The fee note was not rendered to the executor. The sum involved was never re-credited to the client account, but the Respondent did later make a payment to the executor of £1,092.50.

Mrs I Deceased

- 7.34 Mrs I died on 16th December 2009. The Respondent attended to the winding up of her estate.
- 7.35 Between 16 December 2009 and 29 December 2010 the Respondent took fees from the estate totalling £19,990 exclusive of VAT.
- 7.36 The Auditor of Court assessed the fee properly due as £6,239.30 exclusive of VAT. The overcharge exceeded two hundred per cent.
- 7.37 None of the overcharged fees were re-credited to the ledger of the executry.
- 7.38 The Guarantee Fund made a payment to the estate in the amount of £4,958.77.

Mrs J Deceased

- 7.39 Mrs J died on 30th December 2009. The Respondent dealt with the administration of her estate.
- 7.40 Between 30 December 2009 and 14 February 2011 the Respondent deducted fees totalling £37,350 exclusive of VAT. The Auditor of Court assessed the fees properly due at £10,185.58 exclusive of VAT. The overcharge exceeded two hundred and sixty per cent.
- 7.41 None of the overcharged fees were re-credited to the client ledger.
- 7.42 The Guarantee Fund made a payment to the estate in the amount of £24,487.06 to include legal expenses of £300.

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

- 8.1 He charged for work not done by him;
- 8.2 He charged grossly excessive fees in respect of executry and other matters;
- 8.3 He repeatedly took fees without rendering fee notes or otherwise obtaining authority from clients to do so.

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

Edinburgh 4 October 2017. The Tribunal having considered the Complaint dated 5 June 2017 at the instance of the Council of the Law Society of Scotland against David Grant Rattray, 36 Alma Street, Falkirk; Find the Respondent guilty of professional misconduct in respect that he charged for work not done by him; he charged grossly excessive fees in respect of executry and other matters; and he repeatedly took fees without rendering fee notes or otherwise obtaining authority from clients to do so; Order that the name of the Respondent be Struck Off the

Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying 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, that this publicity should include the name of the Respondent but need not identify any other person, but will be deferred until the outcome of related proceedings before the Tribunal.

(signed)

Eric Lumsden

Acting Vice Chairman

10. 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 **8 NOVEMBER 2017**.

IN THE NAME OF THE TRIBUNAL



Eric Lumsden
Acting Vice Chairman

NOTE

A Joint Minute was lodged in which the facts and averments in the Complaint were admitted. Answers had previously been lodged but the information contained therein had not been incorporated into the Joint Minute. The Tribunal indicated to parties that it could not take cognisance of anything contained in the Answers which contradicted the facts in the Complaint as admitted by Joint Minute and offered them an adjournment to consider their positions. On reconvening after the adjournment, the Respondent's agent indicated that he had spoken to his client on the telephone and that he wished to withdraw his Answers and proceed on the basis of the Complaint and Joint Minute as lodged. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that the Respondent had worked for A & JC Allan. The firm had two partners. At all relevant times, the Respondent's partner, Alastair MacRae, was the designated cashroom manager. The Respondent was the Money Laundering Reporting Officer. The Respondent's wife was the cashier. The Respondent was sequestrated in 2011 and although this was recalled, he left the firm and went to work elsewhere.

The Fiscal described the circumstances outlined in the Complaint. He noted regarding the Mr A executry, that the law accountant had expressed concerns regarding the interim fees which the firm had charged. In relation to the Mrs C executry, the Respondent had taken further fees without doing the work to justify them. In relation to the Miss G case, the Respondent had failed to find a client. He acted without instructions and had taken fees without consent. He said that the rest of the Complaint spoke for itself and invited the Tribunal to make findings of professional misconduct in line with the relevant averments contained at articles 52-55 of the Complaint. The Fiscal noted that as soon as the Complaint was served, the Respondent's agent had contacted him regarding a plea.

The Tribunal queried the Fiscal's assertion that the Respondent was not entitled to charge a fee in the Miss G case. The Fiscal indicated that the Respondent did not have a client. The Tribunal questioned how a solicitor can petition for appointment of an executor dative. The Fiscal responded that in these circumstances, the solicitor can charge once the appointment is made. However, in this case the Respondent took no steps to appoint an executor or contact a relative. The fee was also disproportionately high. The Respondent's agent submitted that the Respondent would be entitled to recompense for the work actually carried out but he could not justify the fee actually taken.

The Fiscal clarified that he averred dishonesty on the part of the Respondent. He said the Tribunal could properly infer dishonesty from the admitted facts and in support of this he referred the Tribunal to Fyfe v Council of the Law Society of Scotland [2017] CSIH 6.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson indicated that he did not want to make submissions at this stage. He did not intend to make a defence and would make a plea in mitigation later.

DECISION

The Tribunal considered carefully the Joint Minute which admitted all the averments of fact, duty and misconduct in the Complaint. The Tribunal had regard to the test for professional misconduct as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In *Sharp* it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint is made.

The Tribunal considered all the circumstances and found that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct. The admitted facts disclosed that the Respondent had pursued a dishonest course of conduct over a significant period whereby he charged for work which was not done by him, charged grossly excessive fees, and repeatedly took fees without rendering fee notes or otherwise obtaining authority from the clients to do so. With regard to the Miss G case, the Tribunal found the Respondent guilty of charging an excessive fee. However, it was not persuaded that to act in an executry without a client was always professional misconduct, or that a solicitor was not entitled to recompense for work reasonably carried out before an executor is appointed.

MITIGATION

Mr Ferguson noted that the Respondent had admitted all the averments of fact, duty and misconduct in the Complaint. He had not wasted the time of the Tribunal.

The Respondent had previously been in partnership with Alastair MacRae's father from 1984. They had enjoyed a good working relationship. However, on his father's retiral, Alastair MacRae began to take cash drawings from the firm. The Respondent had expressed his concern regarding these drawings but they continued. The Respondent's usual practice had been to take one or two interim fees during an executry. His partner had disagreed with this approach and said that the firm should be taking more interim fees on a regular basis. The Respondent knew about these fees and they appeared on the ledger cards. The Respondent accepted that he should have tackled his partner about these. He was not the prime mover in this situation but bears responsibility for it. Mr Ferguson noted that the files had remained open after the Respondent left the firm on 31 May 2011. The final fees could have redressed any imbalance. The Respondent did not take any files with him to his new firm. The Respondent is ashamed that he did not stand up to his partner. He is aware that he has let everyone down. He blinded himself regarding the interim fees. However, he has paid a heavy price. He has lost his business, wealth and reputation. It is humiliating for him to come before the Tribunal.

The firm was sequestrated due to non-payment of debt to HMRC in 2011. He left his firm without his capital which at one stage amounted to £86,000. He repaid a £15,000 loan to the Bank of Scotland. He also settled other sums to the SLCC and the Law Society. The Respondent's last practising certificate expired in 2014. He is resigned to being made bankrupt. He has a strong work ethic and has continued to work in the legal field as a paralegal. His employer is aware of these proceedings. They are happy with his work. He makes no decisions regarding fees. He is supervised.

The Respondent previously worked as an advisor to the Falkirk Samaritans, local Scout groups and local charities. He worked as a Reporter for the local courts. He had significant involvement in the Scottish Law Agents Society and was President of that body in 2006-2007. He served the Church of Scotland at local and national level. He was involved in the Scout Association for many years.

Mr Ferguson highlighted to the Tribunal the many references provided on the Respondent's behalf, in particular, the one from his current employer which described him as dependable, diligent and honest. The Respondent is currently unwell and unable to attend the Tribunal in person.

SANCTION


The Tribunal considered carefully what the Respondent's agent had said in mitigation. It noted that the Tribunal had not made any previous findings of professional misconduct against the Respondent. He

had cooperated with the Fiscal and pleaded guilty at an early stage. The Tribunal considered the many references provided in support of the Respondent.

However, the professional misconduct was very serious. By entering into the Joint Minute in those terms, the Respondent accepted his involvement in a dishonest course of conduct which involved a significant number of transactions. If he continued to practise as a solicitor, it was likely that he would be a danger to the public. The Tribunal also considered the need to maintain public confidence in the profession. Solicitors must be trustworthy and honest and act with integrity. The Respondent by his admitted conduct fell short of these standards in a manner which was likely to affect the reputation of the profession. Therefore, the Tribunal considered that the only appropriate sanction in this case was to order that the name of the Respondent be struck off the Roll of Solicitors in Scotland. It directed in terms of Section 53(6) of the 1980 Act that this order will take effect on the date on which the written findings are intimated to the Respondent.

The Tribunal invited submissions on publicity and expenses. The Fiscal suggested that the names of third parties should be anonymised and that publicity should be deferred until the case against the Respondent's former partner was published by the Tribunal. He made the usual motion with regard to expenses. The Respondent's agent made no submissions in either regard.

The Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal. The Tribunal ordered that publicity should be given to the decision but only the Respondent required to be named because publication of personal data is likely to damage individuals' interests. Publicity will be deferred until the case against the Respondent's former partner is published.



Eric Lumsden
Acting Vice Chairman