

**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, 26
Drumsheugh Gardens, Edinburgh**

against

**JOHN CHARLES NASON
CRAXTON, Solicitor, 16a
Crayford High Street, Dartford**

1. A Complaint dated 2 July 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, John Charles Nason Craxton, Solicitor, 16a Crayford High Street, Dartford (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. A letter raising a preliminary point was lodged with the Tribunal by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 26 November 2013 and notice thereof was duly served on the Respondent.

4. The hearing took place on 26 November 2013. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented himself.
5. The Tribunal heard the Respondent's preliminary submission but found it to have no merit.
6. A Joint Minute was lodged admitting the facts and averments of duty in the Complaint as amended with the addition of certain other facts. No evidence was accordingly led.
7. The Tribunal found the following facts established:-
 - 7.1 The Respondent's date of birth is 2 April 1960. He was enrolled on 18 November 1983. He was an employee then a partner in the firm of Anderson Fyfe, Solicitors until 31 October 1994. From 1 November 1994 he was a partner with Craxton & Mercer, Solicitors then Craxton & Grant, Solicitors. On 24 October 2011 he was sequestrated. He is currently suspended from practice. He is employed as a part time cleaner at Iceland Foods, Crayford. His gross income for the year to 5 April 2013 was £7,631.25.
 - 7.2 On 11 October 2012 the Law Society of Scotland submitted a Complaint Form to the Scottish Legal Complaints Commission. They complained that the Respondent may be guilty of professional misconduct or unsatisfactory conduct by charging fees of £4,320 for work done in the executry of Mrs A when the audited fee amounted to £922.20. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.

- 7.3 By letter dated 31 January 2013 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of the complaint made by the Complainers.
- 7.4 The matter came to the Complainers' attention following the cessation of the firm in or around 24 October 2011 when the Respondent was sequestrated. The Respondent was instructed to act on her behalf by Mrs B, the executrix in her late mother's estate. Mrs A died on 29 November 2009. The administration of the estate passed to Buchanan Dickson Frame, Solicitors, Paisley, after October 2011. They believed that the firm had charged excessive fees in respect of the administration of the estate. They had the file assessed by the auditor at Paisley Sheriff Court. The auditor taxed the account and determined that a fair and reasonable fee for the work carried out by the Respondent's firm was £907.20 plus VAT and outlays. The Complainers proceeded to investigate.
- 7.5 On receiving instructions the Respondent had a meeting with the executrix's son on 13 June 2011. He discussed a fee of up to 3% of the value of the estate. He wrote to the executrix on 15 June 2011, confirming that the charges were £160 per hour for a partner and £145 for an assistant, and enclosing a copy of the firm's Terms of Business. The administration of the estate reached the point where a C1 Form had been prepared but not submitted to the Sheriff Court prior to the cessation of the firm.
- 7.6 The Respondent charged two fees for the executory administration. On 28 July 2011 fee note 11/140 was drawn up in the sum of £3,000 plus VAT of £600. There was no copy of a covering letter rendering the fee note to the executrix for her

information. On 22 August 2011 fee note 11/151 was drawn up in the sum of £1,000 plus VAT of £200. There was no covering letter sending this to the executrix. The firm's ledger card for the administration of the deceased's estate showed the fee note 11/140 for £3,600 as rendered on 2 August 2011 and £1,200 taken in part payment on that same day. The fee note 11/151 was both dated and rendered on 22 August 2011. It was taken in full on that same day. On 9 September 2011 fee note 11/141 was part paid to the extent of £1,920. The executrix was unaware of the fees rendered or taken.

7.7 As the firm had ceased trading a further taxation was instructed on the joint instructions of Buchanan Dickson Frame, Solicitors and the Complainers. The taxation was by the auditor at Glasgow Sheriff Court and an Audit Certificate was obtained on 22 January 2013. Taking into account the firm's terms of business letter, this auditor determined that a fair and reasonable fee for the work carried out by the firm was £985 exclusive of VAT of £197 and outlays of £15. The difference in the taxed fee when compared with the assessment carried out by the auditor at Paisley was due to a 0.5% responsibility element on the value of the deceased's moveable estate.

7.8 On 5 February 2013 the Respondent replied to the Complainers correspondence. He observed that as at the date he ceased practice, although a total fee of £4,000 plus VAT had been rendered only £3,600 plus VAT had been paid. He stated that he had taken advice from an executry specialist about the correct level of fees which the firm ought to be charging in executry matters and that the fee in this instance was based on that. He stated that he had quoted a fee of 3% of the value of the estate, not including any element of estate agency work. He accepted that he "*should have checked in detail that the amount actually taken should have more closely reflected the time and work*

undertaken in connection with the matter". He regretted that he had not done so and emphasised that he had not acted dishonestly. The Respondent's firm had not acted in the sale of the deceased's home at the time the fees were taken.

- 7.9 In correspondence with the Complainers the Respondent stated that he had consulted Messrs Mitchells Robertson Solicitors who had provided guidelines on the amount of fees chargeable in executry matters depending on the values of the estates concerned, which guidelines the Respondent stated to the Complainers he had followed. The gross value of the estate for confirmation was £91,427.29.
- 7.10 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 28 March 2013.
- 7.11 By letter dated 17 April 2013 the Complainers provided a Supplementary Report to the Respondent's Solicitor and intimated that the Complaint would be considered by the Professional Conduct Committee on 9 May 2013.
- 7.12 On 9 May 2013 the Complainers' Professional Conduct Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.
8. Having considered the foregoing circumstances and having heard submissions from both parties as to whether or the Respondent's conduct

amounted to professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 his between 28 July and 9 September 2011 charging excessive fees of £4,000 plus VAT of £800 for the administration of the executry estate of the late Mrs A and taking £3,600 plus VAT of £720 from estate funds towards satisfaction of the fees charged and failing to bring their existence to the attention of the executrix by rendering the fee notes to her.

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

Edinburgh 26 November 2013. The Tribunal having considered the Complaint dated 2 July 2013 at the instance of the Council of the Law Society of Scotland against John Charles Nason Craxton, Solicitor, 16a Crayford High Street, Dartford; Find the Respondent guilty of Professional Misconduct in respect of his between 28 July and 9 September 2011 charging excessive fees of £4,800 including VAT for the administration of an executry estate and taking £4,320 including VAT from estate funds towards satisfaction of the fees charged and failing to bring their existence to the attention of the executrix by rendering the fee notes to her; Censure the Respondent; and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to and being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years; 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 and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Alistair Cockburn

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

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn
Chairman

NOTE

The Respondent referred to his letter of 6 September 2013 and indicated that he had a preliminary issue to raise.

SUBMISSIONS BY THE RESPONDENT IN RESPECT OF HIS PRELIMINARY ISSUE RELATING TO THE TRIBUNAL'S JURISDICTION

The Respondent stated that he was a discharged bankrupt. He explained that he had been sequestrated on 24 October 2011 and was discharged one year later. He referred the Tribunal to the papers he had lodged including an extract which was Section 55 of the Bankruptcy (Scotland) Act 1985. The Respondent referred to Section 55 (1) which states that "a debtor is discharged of all debts and obligations contracted by him or for which he was liable at the date of sequestration". The Respondent then referred the Tribunal to the Solicitors (Scotland) Act 1980 and submitted that the Complaint dealt with actings done when he was a solicitor with a practising certificate and a member of the Law Society. The Complaint had been taken on the basis that rules and regulations were not adhered to by him while he was a solicitor with a practising certificate. The Respondent stated that being on the Roll and having a practising certificate required him to apply to the Law Society and be successful. This was a matter of contract and therefore was covered by Section 55 of the Bankruptcy (Scotland) Act 1985. This meant that he was discharged of the obligations to comply with the rules of the Law Society. The Respondent stated that the conduct complained of occurred when he was a member of the Law Society. The Complaint did not suggest that there was any criminal element or fraud or breach of trust. As a consequence the Complaint was not relevant because it related to the contractual obligations he had to the Law Society as at the date of sequestration.

SUBMISSIONS FOR THE COMPLAINERS IN RESPECT OF THE RESPONDENT'S PRELIMINARY ISSUE RELATING TO JURISDICTION

Ms Johnston pointed out that the Respondent was still on the Roll of Solicitors and had not been removed. His practising certificate was suspended in terms of Section

18(1)(c) of the Solicitors (Scotland) Act 1980 by virtue of his sequestration on 24 October 2011. He however remained on the Roll so that although his membership was affected after sequestration this did not affect his entry on the Roll of Solicitors. The Bankruptcy (Scotland) Act 1985 has no relevance to these proceedings. The Tribunal's jurisdiction to hear conduct complaints is in no way affected by the financial misfortune of a Respondent. Ms Johnston submitted that Section 55 of the Bankruptcy (Scotland) Act 1985 related to the discharge of a debtor from liabilities he had at the date of the sequestration in respect of debts and contractual obligations but did not affect conduct matters. Conduct was not a feature in that legislation and membership of the Law Society did not fall within the contractual obligations referred to in the Bankruptcy (Scotland) Act 1985.

The Respondent stated that even though he remained on the Roll of Solicitors, he did not think he had the legal capacity to write and ask for his name to be removed. His practising certificate was suspended on 24 October 2011 and he had not applied for it to be renewed from 1 November 2011. He emphasised that the relationship between himself and the Law Society was governed by statute and the key component was the contract in connection with his membership of a body corporate. Membership required there to be an agreement, he had applied and had been accepted.

DECISION BY THE TRIBUNAL IN RESPECT OF THE RESPONDENT'S PRELIMINARY PLEA IN RESPECT OF JURISDICTION

The Tribunal was not impressed by the Respondent's submission. A conduct complaint is not covered by the Bankruptcy (Scotland) Act 1985 which is purely about financial obligations. The Respondent is still on the Roll of Solicitors and is within the jurisdiction of this Tribunal. The Bankruptcy (Scotland) Act 1985 has no application to the Respondent's obligations to account for his conduct while he remains on the Roll of Solicitors.

Ms Johnston then referred to the Joint Minute which had been lodged which admitted the facts and duties in the Complaint subject to slight amendment and additions. It was clarified that the Respondent accepted the facts but the issue in dispute was

whether or not his actings amounted to professional misconduct. It was clarified that the Respondent wished the matter to proceed to conclusion today.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston stated that at a meeting with the executrix's son on 13 June 2011, the Respondent had indicated that a fee of up to 3% of the valuation of the estate might be charged. However Ms Johnston referred to Production 1 which was the Respondent's letter to the executrix dated 15 June 2011 which confirmed that the charges to be made were on a time and line basis at £160 per hour for a partner and £145 per hour for an assistant. The Respondent's Terms of Business letter confirmed that the fees would be charged on the basis of an hourly rate. The administration of the estate had reached the stage where application for confirmation had been prepared but not lodged at court. The gross value of the estate was £91,427.29. At this time the Respondent was in financial difficulties and was sequestrated on 24 October 2011.

The case papers were sent to another firm of solicitors to complete the executry. They raised concerns with regard to the level of fees charged. Ms Johnston referred to Production 5, the assessment done in respect of the fees by the Auditor of Paisley Sheriff Court assessing the fees as £907.20 exclusive of VAT. The Auditor of Glasgow Sheriff Court taxed the fees at £985.00 exclusive of VAT. The Respondent charged fees in fee notes 11/140 for the sum of £3,000 plus VAT and fee note 11/151 for the sum of £1,000 plus VAT.

The Respondent explained his position in his letter of 5 February 2013 being Production 7 in the Complainers Productions. He indicated that he had taken advice on fee charging and executry matters on a general basis and he agreed that he should have checked that the work done more closely reflected the fee taken.

Ms Johnston submitted that the Respondent overcharged by more than 300% and referred the Tribunal to two previous cases where overcharging had been considered being MacColl and McQuitty. In this case the fee notes had not been rendered to the executrix. The Respondent ought reasonably to have known that the fees raised and deducted were excessive. He had been a qualified solicitor for 30 years and it was not

a complex executry. The estate comprised a house worth £77,000 plus three accounts. It was a very thin file and the Respondent's conduct at the very least was reckless. Ms Johnston submitted that the public expects solicitors to be persons of utmost integrity to be trusted with client's money. Executries were not monitored as they would if there was a client. Ms Johnston asked the Tribunal to make a finding of professional misconduct and make an award of expenses.

The Chairman enquired as to why the Complaint made no reference to a breach of Rule 6 of the Accounts Rules, Ms Johnston advised that the Commission had only authorised prosecution in respect of overcharging and that to include a breach of the Accounts Rules the matter may have had to be referred back to the Commission to then come back to the Law Society.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that he accepted that the matter had not been conducted well. He explained that he was not experienced in executry work and had done his first one in 1995. He was unsure of the appropriate level of fees. He was in financial difficulties and he accepted that he did take his eye off the ball but emphasised that he had no intent to overcharge the estate. In connection with the other two cases referred to by Ms Johnston, the level of the fees were significantly higher and therefore the percentage would entail a much large sum of money. He explained that he had erroneously considered that the loan on the property of £20,000 should be added on. He emphasised that he had no intention to overcharge. He submitted that a sole practitioner would have a gross income of around £52,000 but his income last year was only £7,600. If the Tribunal found professional misconduct, he asked that any penalty be proportionate to his situation. He appreciated that the rules required the Tribunal not to take account of detriment to himself but he asked the Tribunal to take his whole circumstances into account.

In response to a question from the Chairman, the Respondent stated that he had agreed an hourly rate and that he time recorded on his computer records based on the time spent in meetings and letters sent etc. He confirmed that he understood that a full print of his firm's records was submitted to the Auditors who taxed the account. He

clarified that when he worked out his fee he based it on a percentage basis rather than time and line which was wrong.

DECISION

The Tribunal had no hesitation in making a finding of professional misconduct. In this executry the house had not been sold and all the Respondent had done was engather information in connection with the assets and the debt owed. This would not have involved a lot of work. Solicitors have an obligation to charge fees that are fair and reasonable in the whole circumstances. The Tribunal consider that the Respondent ought reasonably to have known that the fees raised and deducted were excessive. The Tribunal consider that although no dishonesty has been alleged, the Respondent's actings in overcharging by more than 300% put his personal integrity into question. He took the fees on a different basis to that as set out in his Terms of Business letter. The Respondent also took the fees without obtaining authority from the client nor issuing fee notes to the client but the Tribunal note that he has not been charged with a breach of Rule 6 of the Accounts Rules.

The Tribunal also note that this was a one off transaction rather than a repeated course of conduct and that the Respondent has a previously unblemished record. In the circumstances the Tribunal did not consider that the public would be at risk provided that the Respondent is working under supervision. The Tribunal is of the view that there are areas of the Respondent's practice that require review, re-training and supervision and accordingly considered the most appropriate sentence to be an aggregate restriction of three years which will mean that the Respondent must work under supervision for the three year period before he can obtain a full practising certificate. Given the Respondent's financial circumstances the Tribunal saw no point in imposing a fine. Given that there were no dishonesty involved the Tribunal did not consider it necessary to suspend the Respondent from practice or strike his name from the Roll.

Although the Tribunal note the Respondent's limited financial circumstances, it can see no reason to depart from the usual practice of awarding expenses against a

solicitor where he is found guilty of professional misconduct. The Tribunal made the usual order with regard to publicity.

Alistair Cockburn
Chairman