

**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

**NORMAN ALEXANDER FYFE BANSKI, 11
Bridge of Dee Court, Aberdeen**

1. A Complaint dated 8 June 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Norman Alexander Fyfe Banski, 11 Bridge of Dee Court, Aberdeen (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. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 2 October 2018 and notice thereof was duly served upon the Respondent.
5. At the hearing on 2 October 2018, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was neither present nor represented. However, his agent submitted two letters with enclosures to the Tribunal.
6. A signed Joint Minute of Admissions was lodged with the Tribunal agreeing some of the averments of fact, duty and professional misconduct. The Fiscal indicated the

Complainers were willing to proceed on the basis of the admitted averments only. Having regard to said Joint Minute and correspondence, the Tribunal decided to proceed to hear and determine the Complaint in the absence of the Respondent. The Fiscal made submissions.

7. The Tribunal found the following facts established:-

7.1 The Respondent's date of birth is 3rd August 1955. He resides at 11 Bridge of Dee Court, Aberdeen. He was enrolled as a solicitor on 17th May 1979. Between 8th July 1979 and 31st October 2002 he was a partner in W J C Reed & Sons, Solicitors, Laurencekirk, Aberdeenshire. From 1st November 2002 until 1st November 2011 he was the principal of Banski & Co, Solicitors, Royal Bank Buildings, Laurencekirk, Aberdeenshire. He is not currently employed by any legal firm. A judicial factor was appointed to the Respondent's practice on 1st November 2011.

Inspection 22/23 August 2011

7.2 Financial Compliance Inspectors employed by the Council carried out an inspection of the Respondent's books and records on 22nd and 23rd August 2011 which disclosed the following:-

(a) The Respondent's client account was in deficit on various occasions between April 2011 and July 2011 as follows:-

14th April 2011:- £23.24

15th April 2011 to 19th April 2011:- deficit of £1,153.23

20th April 2011:- £2,611.24

26th April 2011:- £2,572.49

27th April 2011:- £6,272.49

28th April 2011:- £4,748.09

3rd May 2011:- £668.09

6th May 2011:- £1,437.13

9th May 2011:- £537.13

10th May 2011:- £2,967.13

11th May 2011 to 16th May 2011:- £5,117.13

16th May 2011 to 18th May 2011:- £8,717.13

19th May 2011:- £9,517.13

20th May 2011:- £10,237.13

23rd May 2011:- £10,257.13

24th May 2011 to 26th May 2011:- £10,392.13

27th May 2011:- £11,532.13

On 18th July 2011 £3,000 was transferred from the client account to the firm account but was not posted until 29th July 2011. This caused further deficits as the surplus on 18th July 2011 was only £82.77.

- (b) The Respondent's cashier left his employment at the beginning of April 2011. Since then the books and records of the firm were generally three months in arrears. All entries for April, May and June were posted during July 2011. Due to the records being in arrears many deficits were noted throughout May 2011 when the entries were eventually posted. The daybook covering all entries from 1st July 2011 to 19th July 2011 was printed on 25th July 2011.
- (c) In relation to the month end reports: the report for 28th April 2011 was printed on 12th July 2011, the report for 31st May 2011 was printed on 15th July 2011, the report for 30th June 2011 was printed on 18th July 2011 and the report for 31st July 2011 was printed on 18th August 2011.
- (d) Many examples were noted whereby cheques were cashed through the bank prior to the entries being posted to the firm's records. Examples are set out in the table below. Due to the postings being in arrears the true financial position of the firm could not be established.

Cheque Number	Amount	Date posted	Date cashed
3320	£10	19 July 2011	11 July 2011
3321	£50	19 July 2011	11 July 2011
3323	£5,000	19 July 2011	12 July 2011

3330	£65,000	19 July 2011	13 July 2011
3332	£116.81	19 July 2011	13 July 2011
3338	£400	27 July 2011	22 July 2011
3339	£20	27 July 2011	22 July 2011
3321	£578	27 July 2011	8 July 2011
3333	£130	29 July 2011	13 July 2011
3334	£135	29 July 2011	13 July 2011

- (e) There were various inaccurate postings, examples of which are set out below:-
- THOW12. This was referred to as a sale although the ledger also included a purchase.
 - VALE5/1. A payment was shown to one party although this should be stated "to S & Co fee". The S & Co fee should have been to Miller & Bryce and the Miller & Bryce fee should be to another firm.
- (f) The firm's bank account was reconciled at 5th April 2011 and again at 29th July 2011 but at no point in between those dates was it reconciled.
- (g) Royal Bank of Scotland business term loan account was evidenced by a statement at 30th June 2011 but no reconciliation was available for this account. A second Royal Bank of Scotland business term loan account was found to be in the same position.
- (h) Two cheques drawn on the client account (3rd June 2010, £50) and (12th February 2010 £400) and one on the firm accounts (15th February 2011 £264.97) were out of date, and were uncashed. None of these had been cancelled, re-credited and re-issued.
- (i) WILL10/1 was in joint names of Mr W and another whereas it ought to have been in the sole name of Mr W; MURR31/1 was in the joint names of Mr J M & Mr A M whereas it ought to have been in the sole name of JM deceased.

- (j) There was a difference of £3,096.25 (£313,416.08 - £310,319.83) between the invested fund listing and the reconciliation.
- (k) The RBS loan account showed a credit of £2,534.33 but the bank statement disclosed an outstanding balance of £654.44.
- (l) Another RBS loan was recorded at £29,975.21 as opposed to the statement which showed a figure of £31,496.41.
- (m) The Universal Leasing account showed a credit of £4,127.50 but the balance outstanding according to the documentation seen by the inspectors was £4,230.00.

7.3 Members of the compliance department met with the Respondent on 26th August 2011. The Respondent was interviewed by the council's guarantee fund sub-committee on 1st September 2011. Three files were identified for assessment by an auditor of court namely DM, NL and JM. Following upon the auditor's report and consideration of explanations put forward by the Respondent, a decision was taken to petition the court for the appointment of the judicial factor. In due course other files were also sent for assessment.

DM/FY/EC

7.4 Mrs FY died on 27 January 2008. Mrs FY was the aunt of Mr DM, who was a long standing client of the Respondent. EC, who ultimately invoked the assistance of the complainers, is Mr DM's cousin and was also a residuary beneficiary in respect of the estate of the late Mrs FY, as was Mr DM.

7.5 The Respondent was instructed to wind up the late Mrs FY's estate.

7.6 There was a considerable delay in the winding up of the estate because the principal will could not be found and it was necessary to raise an action to prove the tenor of the will. The executor named in the will was Mr FR. Confirmation was granted on 30 March 2011.

- 7.7 Mr DM was entitled to one third of the estate of the late Mrs FY which amounted £19,258.84.
- 7.8 The Respondent had carried out work for Mr DM for a number of years at least as far back as 2004. Mr DM suffered from a learning disability.
- 7.9 On 15 July 2009 a continuing and welfare power of attorney was granted by Mr DM in favour of the Respondent.
- 7.10 The sum of £15,600 was transferred from the FY executry to Mr DM's ledger on 31 May 2011. A further sum of £3,658.84 was transferred from the FY executry on 17 June 2011. The total of these sums is £19,258.84, the amount of the legacy.
- 7.11 Also on 31 May 2011 the Respondent took fees from the DM ledger of £15,600 (£13,000 plus VAT). A further fee of £100.80 was taken by him from this ledger on 8 June 2011.
- 7.12 Neither of these fee notes was rendered to Mr DM.
- 7.13 Between 7 April 2010 and 1 September 2011, the Respondent neither prepared accounts in connection with his intromissions under the power of attorney, nor did he ever supply these to Mr DM.
- 7.14 The files contained a Fee Note dated 15 June 2011 showing a sum "taken to fees" on 15 June 2011 of £6,000 (£5000 plus VAT). There was no corresponding entry in the client's ledger and no such sum was debited from the client account.
- 7.15 As a result of the concerns raised, the Respondent's fees charged to Mr DM (and others) were audited by the Joint Auditor of Edinburgh Sheriff Court. In this case, and prior to September 2010 the Respondent regularly took fees in respect of work done on behalf of Mr DM; the auditor was satisfied that these were correctly charged.

- 7.16 The audited fee for the work done for Mr DM between 2 September 2010 and 15 June 2011 was £6,500 +VAT (£7,800). The amount of the fees over charged by the Respondent was £7,900.80, including VAT.

MB; Mrs NL's Executry

- 7.17 The Respondent acted for the late Mrs NL from at least 2002 in connection with her financial affairs.
- 7.18 A continuing and welfare power of attorney was granted by Mrs NL on 30 July 2007 appointing SA as her attorney. Ms SA instructed the Respondent, and he carried out financial work relating to Mrs NL as instructed by the attorney.
- 7.19 Mrs NL died intestate on 19th January 2008. The Respondent took the necessary steps to have MB appointed as executor dative. Decree was granted on 21 February 2008.
- 7.20 On 22 February 2008 the Respondent became aware that Mrs NL held Unit Trusts with Legal and General.
- 7.21 The Respondent sent a terms of business letter to Ms MB on 6 May 2008. The letter advised that fees would be charged on a percentage basis but referred to an alternative method of charging on a time and line basis. The terms of business letter indicated that the executors had the option of seeking a taxation or assessment at the end of the process.
- 7.22 The Respondent was instructed by the executor, in writing, on 22 June, again on 22 September, and again on 26 October, all 2010 to sell shares. He failed to do so. The Respondent failed to include an Alliance & Leicester account, and HSBC shares, in the inventory of estate which he prepared and forwarded for confirmation. As a result he required to prepared an eik. The Respondent was or ought to have been aware of these items of estate from his dealings with the estate of the late Mrs NL prior to her death. In addition the Respondent failed to include in the inventory of the eik a further asset (Legal & General shares) of which he

was or ought to have been aware. These items were referred to in the files which the Respondent held for Mrs NL during her lifetime.

- 7.23 On 1 April 2009 the Respondent advised MB that the estate was almost completely ingathered but on having found additional estate in May 2009 (Alliance & Leicester account and on HSBC shares) the Respondent prepared an eik to include these new items into the estate.
- 7.24 On 9 July 2009 the Respondent paid inheritance tax to HMRC.
- 7.25 A Corrective Inventory for the 2 additional items was completed on 29 July 2009.
- 7.26 By 28 March 2011 the administration of the estate had not been completed. On that date MB enquired whether the Respondent had been able to find out anything about the Legal & General Shares. The Respondent replied that he was still awaiting to hear from Legal & General. No further action was taken by the Respondent until 6 May 2011 when the Respondent emailed the cautionars Royal & Sun Alliance to advise that he had discovered a further asset (the Legal & General shares) which had been referred to in the earlier files with which the Respondent should have been familiar.
- 7.27 The first eik to the confirmation was signed by the complainer on 29 June 2009 (scored out) and again on 10 July 2011.
- 7.28 Confirmation to the additional estate was granted on 4 August 2011.
- 7.29 The Respondent failed to take steps to have the fees assessed.
- 7.30 As at the date of appointment of the judicial factor, the Respondent had not sold the shares. Nor had he sent the files for assessment of fees.
- 7.31 A total of £147,977.58 inclusive of VAT was taken by the Respondent from the NL executry client account by way of fees. 34 separate fees were taken. Of these at least 28 were not rendered to the client. The auditor's assessment was that the

fees properly due to the Respondent in relation to the work done by him in connection with the late Mrs NL was £26,928.96 inclusive of VAT.

- 7.32 A claim was submitted on behalf of MB to the Guarantee Fund operated by the complainers. The claim was paid at an amount of £116,000.

JM

- 7.33 Between 16th September 2010 and 16th April 2011 the Respondent issued nine fee notes in relation to this executry totalling £8,806.25 inclusive of VAT. The auditor found that the sum properly due to the Respondent was £2,160.

GP

- 7.34 Between 25th May 2010 and 19th January 2011 the Respondent took fees from GP's executry totalling £9,622.37. On 26th June 2015 the interim auditor of court at Stonehaven assessed the sum properly due at £540 plus VAT, a total of £648.

ED

- 7.35 Mrs ED died on 6th July 2005. Prior to her death the Respondent administered her affairs in terms of her power of attorney. On 9th September 2005 the Respondent wrote to the executors enclosing a terms of business letter stating that unless otherwise agreed fees would be charged on the basis of time spent on the work with the solicitor's rate being £120 per hour plus VAT. Taxation was mentioned as an option if the client was unhappy about the fee charged. There was provision for a special fee arrangement but the letter stated that this would normally arise in relatively exceptional circumstances.

- 7.36 On 24th October 2005 the Respondent wrote to the executors saying that he proposed to take an interim fee, that he was entitled to charge five per cent for executry work, and that he would take a portion of that in the meantime. In the course of the executry the Respondent took fees of £34,340 which included £13,000 for pre-death work. The auditor assessed the total sum due as £15,614 of which he attributed £7,656 to pre-death work and £7,958 to executry work. All of

these figures in this paragraph are exclusive of VAT. The Respondent's fees were initially approved of by the executors, but residuary beneficiaries raised objections which resulted in the assessment.

7.37 Despite the terms of the auditors certificate the Respondent did not refund fees to the estate.

SX

7.38 Mrs SX died on 13th December 2005. The Respondent was instructed in relation to the administration of her estate. On 19th September 2006 the Respondent raised and took a fee in the amount of £11,700 plus VAT of £2,007.50 totalling £13,747.50.

7.39 The auditor of Stonehaven Sheriff Court assessed the fee at £4,100 plus VAT.

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

- a) He breached Rule 4(1) of the 2001 Accounts Rules by having a deficit on various occasions between April 2011 and July 2011;
- b) He failed to keep written up books of his practice so as to show all his dealings with clients' money in breach of Rule 8(1) of the 2001 Accounts Rules;
- c) He failed to maintain the firm's books so as to show the true financial position of the firm between April 2011 and July 2011 in breach of Rule 8(4) of the 2001 Rules;
- d) He charged grossly excessive fees in relation to various executry estates and to DM; and
- e) He failed to render fee notes in respect of those fees which were taken by him.

9. Having given careful consideration to the content of the correspondence sent to the Tribunal Office by the Respondent's agent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 2 October 2018. The Tribunal having considered the Complaint dated 8 June 2018 at the instance of the Council of the Law Society of Scotland against Norman Alexander Fyfe Banski, 11 Bridge of Dee Court, Aberdeen; Find the Respondent guilty of professional misconduct in respect that he (a) breached Rule 4(1) of the 2001 Accounts Rules by having a deficit on various occasions between April 2011 and July 2011, (b) failed to keep written up books of his practice so as to show all his dealings with clients' money in breach of Rule 8(1) of the 2001 Accounts Rules, (c) failed to maintain the firm's books so as to show the true financial position of the firm between April 2011 and July 2011 in breach of Rule 8(4) of the 2001 Rules, (d) charged grossly excessive fees in relation to various executry estates and to DM, and (e) failed to render fee notes in respect of those fees which were taken by him; 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 and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Kenneth Paterson

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 *26 OCTOBER 2018*.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chairman

NOTE

The Respondent did not attend the hearing on 2 October 2018. The Tribunal had however received a copy of a letter dated 27 August 2018 sent by the Respondent's agent to the Fiscal to be presented to the Tribunal. The Tribunal also had a copy of a letter dated 28 September 2018 from the Respondent's agent to the Tribunal Office with enclosures. It was clear from that correspondence that the Respondent did not intend to attend the hearing personally and anticipated that the matter would be dealt with in his absence. Therefore, the Tribunal decided to proceed to determine the Complaint in the Respondent's absence.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that he wished to record his gratitude to the Respondent's agent, Graham Garden, Solicitor, for his assistance in resolving the matter. The Fiscal indicated that he accepted the position of the Respondent as laid out in the Joint Minute. He noted that five of the eight averments of misconduct were admitted by the Respondent and he invited the Tribunal to find professional misconduct in respect of these five averments only.

The first averment of misconduct related to the deficit on the client account which arose on various occasions in 2011. The second averment of misconduct concerned a failure to keep properly written up records in breach of the Accounts Rules in force at that time. The Fiscal noted that the cashier left the firm in April 2011 and from then the books and records were three months in arrears. There were inaccurate postings. There was a failure to reconcile the firm bank account between April and July 2011. Cheques were out of date and uncashed. The Respondent failed to cancel these, re-credit and re-issue them. The third averment of misconduct related to the failure to maintain the books so that the true financial position of the firm could be ascertained. There were discrepancies in the way loans were recorded. The Fiscal drew the Tribunal's attention to the Respondent's explanation for these as contained in his agent's letters. The Respondent had thought there were sufficient funds in the client account. His cashier had left in April and managed to obtain external cashroom assistance in July to bring matters up-to-date. The Fiscal drew the Tribunal's attention to the fourth averment of misconduct which referred to overcharging. He noted the delay in winding up FY's estate. Mr DM had a learning disability. The Respondent took grossly excessive fees and these were not all rendered to the client. The fees were audited. The Auditor was of the opinion that prior to 2010, the fees were acceptable. However, later fees were excessive. In this case there was an overcharge of over 100%. The Fiscal described the circumstances of the NL executry. £147,977.58 was taken as 34 different

fees. As was noted in the fifth averment of misconduct, twenty eight of these were not rendered to the client. The Respondent was only entitled to charge £26,928.96 for this work. There was an overcharge in the region of £116,000 and the client has been compensated by the Complainer's Client Protection Fund. In the SX case there had been an overcharge of £9,000. In the GP case, only £648 of fees was due but the Respondent took £9,622.37 in fees. The Fiscal submitted that on any view this overcharge was "astronomical". There was also overcharging in the JM and ED cases. The Fiscal submitted that these files demonstrated a course of conduct and this was the basis of his invitation to the Tribunal to find professional misconduct proved.

The Fiscal noted that explanations were made on the Respondent's behalf. However, the Tribunal must be concerned with protection of the public.

SUBMISSIONS FOR THE RESPONDENT

The Tribunal had regard to the letters from the Respondent's agent dated 27 August 2018 and 28 September 2018 with enclosures. It noted that the Respondent had not practised for a number of years. He is not currently working in any capacity. His health is poor. The judicial factor disposed of his assets. The Respondent's agent noted the significant roles the Respondent had played in his community and profession in the past.

DECISION

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.

The Tribunal was most concerned with the outrageous overcharging carried out by the Respondent. The Complaint detailed six cases where the Respondent had taken fees far in excess of those to which he was entitled. The Tribunal had regard to the test for dishonesty described recently in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The Tribunal was satisfied that the Respondent's conduct was dishonest. The overcharging in this case was repeated and of a gross nature. The Respondent must have known that he was not entitled to these fees.

The accounts rules breaches were unacceptable. A solicitor must retain responsibility for the books and records of his/her firm. The absence of a cashier is not an excuse for failing to do so. It is essential that books and records are properly kept and that the Law Society of Scotland can ascertain the true financial position of the firm at any time. The public must have confidence that the profession will comply with the Accounts Rules and can be trusted with their money. Solicitors must also render all fees to clients. Failure to do so demeans the trust the public places in the profession.

The essential qualities of a solicitor are honesty, truthfulness and integrity. It is imperative that if the public is to have confidence in the legal profession that solicitors maintain the standards of conduct expected of competent and reputable solicitors. The Respondent's conduct included serious and reprehensible departures from those standards at the most serious end of the scale. Accordingly, the Tribunal found him guilty of professional misconduct.

The Tribunal had regard to the submissions made in mitigation and had some sympathy for the Respondent's current situation. He had engaged a solicitor and cooperated with the Fiscal. However, the Tribunal considered that the professional misconduct was so serious that the only suitable sanction was strike off. The Respondent was guilty of dishonesty. His behaviour represented a course of conduct over a significant period between 2005 and 2010. The conduct had involved numerous clients. The blatant overcharging was likely to damage the reputation of the profession. This was particularly so when the Respondent had held positions of responsibility within the Law Society. He did not demonstrate any remorse and did not appear to have any insight into his conduct. If he were allowed to continue to practise he would be a significant risk to the public. In view of the all of the foregoing, the Tribunal considered that the Respondent was no longer a fit person to be a solicitor. The Tribunal ordered that the Respondent's name be struck off the roll of solicitors in Scotland. In terms of Section 53(6) of the Solicitors (Scotland) Act 1980 the Tribunal directed that the order shall take effect on the date on which the written findings are intimated to the Respondent.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Tribunal had regard to the request on behalf of the Respondent that he should not be named in these findings. However, the Tribunal considered that paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 bound the Tribunal to publish its decision in full

and that it could not refrain from publishing the name of the solicitor against whom the complaint was made. It was confirmed that there were no Secondary Complainers in this case seeking compensation.



Kenneth Paterson
Vice Chairman