

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

I N T E R L O C U T O R

in hearing on Compensation in Complaint

by

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

Complainers

against

DESMOND WILLIAM DONOGHUE, 1F2, 408
Morningside Road, Edinburgh

Respondent

Edinburgh, 5 May 2023. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh (“the Respondent”) and having previously determined that the Respondent was guilty of professional misconduct; Find that the Secondary Complainer has been directly affected by the Respondent's misconduct and considered that it is appropriate to award compensation to the Secondary Complainer: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to the Secondary Complainer, Mr Trevor Geraghty, the sum of £1988.40 by way of compensation in respect of loss, inconvenience and distress resulting from the professional misconduct within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid; Find the Respondent liable in the expenses 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 Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainer but need not identify any other person.

Kenneth Paterson
Vice Chair

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DECISION

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Complainers

against

**DESMOND WILLIAM DONOGHUE, 1F2, 408
Morningside Road, Edinburgh**

Respondent

1. On 2 December 2022, Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr Trevor Geraghty, 2 The Stables, Stronachlachar, Stirling (hereinafter referred to as “the Secondary Complainer”).
3. On 2 December 2022, the Tribunal allowed the Secondary Complainer 28 days from the date of intimation of the Findings to lodge a written claim for compensation with the Tribunal Office. A written claim for compensation was received and intimated to the Respondent.
4. The Tribunal set the matter down for a compensation procedural hearing on 5 May 2023.
5. At the compensation hearing on 5 May 2023, the Secondary Complainer was present and represented himself. The Respondent was present and represented himself.
6. The Tribunal found the following facts established:-
 - 6.1 Mr Trevor Geraghty was the Secondary Complainer in the Complaint against Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh (“the Respondent”).

6.2 On 2 December 2022, the Respondent was found guilty of professional misconduct in respect that he:-

- a) In breach of his duties as cashroom manager, failed to disperse timeously a client balance held by his firm even once there was no longer any reason to retain it, and failed to properly register a title and standard security;
- b) Failed to respond to, and co-operate with, the Council in respect of its investigation and ignored correspondence and statutory notices from the Complainers;
- c) Failed to pay sums due to Revenue Scotland despite having the funds available in breach of his client's trust and contrary to the Secondary Complainer's best interests, failed to communicate effectively with him, and failed to adequately and completely conclude the work required within a reasonable time or exercise the level of skill appropriate to the matter.

6.3 The Secondary Complainer lodged a written statement of claim with the Tribunal Office claiming compensation of £5,000.

6.4 The Secondary Complainer was directly affected by the Respondent's professional misconduct and suffered loss, inconvenience and distress as a result.

7. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 5 May 2023. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh ("the Respondent") and having previously determined that the Respondent was guilty of professional misconduct; Find that the Secondary Complainer has been directly affected by the Respondent's misconduct and considered that it is appropriate to award compensation to the Secondary Complainer: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to the Secondary Complainer, Mr Trevor Geraghty, the sum of £1988.40 by way of compensation in respect of loss, inconvenience and distress resulting from the professional misconduct within 28 days of the date on which this Interlocutor becomes

final with interest at the rate of 8% per annum from the due date until paid; Find the Respondent liable in the expenses 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 Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainer but need not identify any other person.

(signed)

Kenneth Paterson

Vice Chair

8. 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 and the Secondary Complainer by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Kenneth Paterson
Vice Chair

NOTE

The Secondary Complainer and the Respondent were both present at the compensation hearing on 5 May 2023. Neither party was represented. The Respondent having no objection, the Tribunal received documents lodged by the Secondary Complainer out of time. The Tribunal had before it the professional misconduct decision, the Secondary Complainer's compensation claim form with various supporting documents, and a note and documents lodged by the Respondent.

EVIDENCE BY THE SECONDARY COMPLAINER

The Secondary Complainer gave evidence on oath. He noted that he purchased a property in Dunfermline in July or August of 2019. He had previously dealt with the Respondent's firm, Ide Legal. He had a good relationship with the firm. Funds were provided to the firm timeously for the purchase, fees and LBTT. Access was given to the property and he took possession.

The first "red light" for the Secondary Complainer was a letter he received in October 2019 from Revenue Scotland asserting that he had not paid tax and imposing a penalty and interest. He attempted to engage with the firm to no avail. A mutual friend of the Secondary Complainer and the Respondent reached out to the Respondent. The sum paid in respect of LBTT (£12,100) was returned to the Secondary Complainer in late October 2019.

The Secondary Complainer said he found it very stressful dealing with Revenue Scotland. It had been a "horrific experience". He had to raise a sum from savings to pay Revenue Scotland before the Respondent returned the money. Revenue Scotland eventually refunded the penalties paid (£700) in November 2019.

On 24 December 2019 the Secondary Complainer received a letter from the Judicial Factor appointed to the Respondent's firm. He discovered that he had no title to his property although he apparently had a mortgage secured on it. He tried to contact the Judicial Factor but discovered her offices were closed until the New Year even although he had been told to take urgent action. The Secondary Complainer's business had previously dealt with another legal firm, Wright, Johnston and Mackenzie. He transferred £1500 to that firm and instructed them to do whatever was necessary. This was primarily to sort out the Dunfermline property but was also to cover searches for other properties to ensure there were no other similar issues arising in respect of them. The Secondary Complainer was concerned that his house could be sold by someone else or that the lender might take action since he did not have title to the property.

The new legal firm did all that was necessary and managed the relationship with the lender's agent. They sorted out the title. The Secondary Complainer received £570 from the Judicial Factor.

The Tribunal asked about the problem with the title. The Secondary Complainer said it was not registered. The Judicial Factor said the unregistered deed was in the file. The Tribunal asked whether the Secondary Complainer had lost interest as a result of having to pay the LBTT twice. The Secondary Complainer said this was immaterial. His main panic involved the situation with Revenue Scotland. The complaints process had also had its challenges.

SUBMISSIONS BY THE RESPONDENT

The Respondent said that he has no access to the files, but his recollection was that the money paid to him by the Secondary Complainer did not include fees. The Respondent admitted he was at fault. He had logged the payment to Revenue Scotland on the LawPro system but forgot to make the payment. He was closing down his business and was disillusioned. He was under pressure from his landlord to get out of the premises. By Christmas 2019, the Judicial Factor had cleared the office and the Respondent had nothing. He received an email or a text from the Secondary Complainer after he had repaid the LBTT and the Secondary Complainer had thought this was an end to the matter. He was anxious to have the matter resolved today if possible.

DECISION

The Tribunal considered the terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 which provides that the Tribunal may:-

“Where the solicitor has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct.”

The Tribunal can exercise its powers under Section 53(2)(bb) in relation to a former solicitor under Section 53(3A). A direct effect was one which would not have happened but for the professional misconduct. The standard of proof in connection with a claim of compensation is that of balance of probabilities. The Tribunal has a discretion to award compensation and is not obliged to do so. However, the Tribunal's power to award compensation is limited to £5,000.

The Tribunal carefully considered all the documents before it, the evidence of the Secondary Complainer and the submissions of the Respondent. It also had regard to the Tribunal's compensation tariffs table in relation to inconvenience and distress.

With regard to financial loss, it was clear that some outlays would have been payable by the Secondary Complainer, even if there had been no professional misconduct. The payment from the Judicial Factor to the Secondary Complainer was likely to have been reimbursement for outlays which had not been paid. The Tribunal considered that the financial loss was restricted to Wright Johnston & Mackenzie's fees, and the outlays for searches and registration fees (WJM fee note of 22 January 2020). This amounted to £788.40 including VAT.

With regard to inconvenience and distress, the Tribunal considered that the Respondent's conduct had a significant effect on the Secondary Complainer over a period of time. It caused him significant inconvenience on several occasions. The Respondent's conduct caused the Secondary Complainer worry, concern, anxiety and upset. The Respondent failed to take reasonable steps to rectify matters until contacted by a third party. The Tribunal therefore decided to make an award of £1,200 in relation to the element of the claim relating to inconvenience and distress.

Therefore, in total, the Tribunal awarded the Secondary Complainer £1988.40. Following submissions on expenses and publicity, the Tribunal found the Respondent liable in the expenses of the Tribunal. The Tribunal ordered that publicity would be given to the decision and would name the Respondent and the Secondary Complainer. The Respondent noted that he would arrange payment to the Secondary Complainer through a third party. He also wished it to be noted that he had no intention of appealing the Tribunal's decision.

Kenneth Paterson
Vice Chair