

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

**DECISION**

**in hearing on Compensation in Complaint**

**by**

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

**Complainers**

**against**

**ROSS JAMES PORTER, Basement Flat, 8  
Stormont Street, Perth**

**Respondent**

1. On 6 November 2019, Ross James Porter, Basement Flat, 8 Stormont Street, Perth (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A.
3. On 6 November 2019, 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. The Secondary Complainer indicated that he wished to rely upon the written claim for compensation dated 25 March 2019 he had previously lodged with the Tribunal Office. He submitted an additional statement and documents in support of his claim.
4. The Tribunal allowed the statement of claim for compensation to be received and appointed the Respondent to lodge Answers within 14 days with 14 days thereafter for both parties to adjust. The Tribunal assigned 10 March 2020 as a hearing. Answers were received. On 10 February 2020, on its own initiative under Rule 44 of the Scottish Solicitors’ Discipline Tribunal Rules 2008, the Tribunal adjourned the hearing set for 10 March 2020 to 23 April 2020.
5. On 18 March 2020, due to government advice in relation to the COVID-19 pandemic, the Tribunal cancelled the hearing fixed for 23 April 2020. The Tribunal anticipated that it might be many months before a compensation hearing could be set due to the crisis. According to Rule 40 of the Tribunal’s Rules, the procedure for dealing with a case shall be as the Tribunal may determine.

Rule 56 allows the functions conferred by the Rules upon the Tribunal prior to any hearing of the case to be exercised by the Chair or any of the Vice Chairs. The Tribunal offered the parties the opportunity to have the matter dealt with by the Chair due to hear their case on the basis of the material already lodged together with any written submissions the parties wished to make if both parties were content to proceed in this manner.

6. Both parties confirmed by email that they were content that the compensation matter ought to be determined on the papers by the Chair due to deal with the case. The Tribunal directed that any final written submissions should be lodged with the Tribunal Office by 30 April 2020 and that in order to bring some finality to proceedings, neither party would have a right of reply to the other's latest submissions, since the issues were by now well known and described in the compensation claim form, answers and submissions. Both parties lodged written submissions within the 30 April 2020 deadline.
7. On 20 May 2020, the Chair considered the professional misconduct findings, the compensation claim, answers, supporting documents and written submissions made by both parties.
8. The Chair, exercising the functions of the Tribunal, found the following facts established:-
  - 8.1 Mr A was the Secondary Complainer in the Complaint against Ross James Porter, Basement Flat, 8 Stormont Street, Perth. The Respondent was found guilty of professional misconduct in respect that he (a) sent emails to the Secondary Complainer on 1 April and 2 April 2014 in terms which were inappropriate, derogatory and offensive in their nature and which were capable of bringing the profession into disrepute, (b) sent emails to the Secondary Complainer on 1 April and 2 April 2014 which were inappropriate, derogatory and offensive in their nature which drew the Respondent's integrity into question and thereby constituted a breach of Rule B1.2 of the Law Society of Scotland's Practice Rules 2011, (c) sent emails to the Secondary Complainer's mother on 2 April 2014 which were inappropriate and offensive in their nature towards the Secondary Complainer and which were capable to bringing the profession into disrepute, and (d) sent emails to the Secondary Complainer's mother on 2 April 2014 which were inappropriate and offensive in their nature towards the Secondary Complainer, which drew the Respondent's integrity into question and thereby constituted a breach of Rule B1.2 of the Law Society of Scotland's Practice Rules 2011.
  - 8.2 Mr A lodged a written statement of claim with the Tribunal Office claiming compensation of £5,000 for loss, inconvenience and distress.

8.3 Mr A was directly affected by the Respondent's misconduct when he sent emails to the Secondary Complainer and his mother on 2 April 2014 which were inappropriate, derogatory and offensive in their nature. Mr A experienced a deterioration in his mental health as a direct effect of the Respondent's professional misconduct. Mr A also experienced inconvenience as a result of making his complaint about the Respondent's professional misconduct.

8.4 In 2014, Mr A raised an action against the Respondent under the Equality Act 2010. Said action was directly founded upon the Respondent's email of 2 April 2014 and related to the same conduct which was the subject of the professional misconduct Complaint. The matter was settled in 2016 by the Secondary Complainer accepting a Minute of Tender for £6,000 without the matter going to proof.

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

Thornhill 20 May 2020. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Ross James Porter, Basement Flat, 8 Stormont Street, Perth and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer, Mr A, 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 A, the sum of £750 by way of compensation in respect of inconvenience resulting from the 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; Make no finding of expenses due to or by either party; 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)**  
**Colin Bell**  
**Vice Chair**

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 and the Secondary Complainer by recorded delivery service on 1 JUNE 2020.

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Vice Chair**

**NOTE**

The Chair had regard to the Tribunal's finding of professional misconduct against the Respondent. He also carefully considered the compensation claim form, answers and all documents lodged with the Tribunal Office by the parties.

**SUBMISSIONS FOR THE SECONDARY COMPLAINER**

The Secondary Complainer's compensation claim form claimed £25.80 for financial loss. This related to costs incurred in his appeal under Section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007. He also claimed £5,000 for inconvenience and distress (the statutory maximum), although he said that the value of his claim for distress was actually £103,800 and for inconvenience was £2,400.

In his 12 page submission of 25 March 2019 he described his feelings of panic, anxiety, distress and depression which he said arose as a result of the Respondent's emails. He referred to a medical report by Dr B prepared after an assessment on 17 April 2015, a supplementary report of 24 June 2015, and parts of his medical records and other letters and reports from medical professionals. The Secondary Complainer submitted that he had in the past suffered mild depression for short periods but that his mental health had continually worsened since the professional misconduct. He described the impact this had on his life. With reference to the Judicial College Guidelines, he explained how he had calculated the value of his claim. He described injury to feelings and the effect of tinnitus. He said that he was unable to undertake a course of psychotherapy due to the deterioration in his mental health and had to pay privately for psychotherapy sessions later. He claimed for loss of earnings. He also claimed for the inconvenience in preparing the complaint which he said took many hours and in this regard referred to the Tribunal case of Law Society v Michael Chapman. He submitted that his total loss was £106,225.80.

The Tribunal's decision on professional misconduct was provided to the Secondary Complainer and he submitted a 42 page supporting statement in relation to his compensation claim. He described this as a more complete account of the effects of the Respondent's conduct with medical evidence up to November 2019. He challenged the Respondent's submissions to the Tribunal during the misconduct hearing and claimed that the Respondent had attempted to mislead the Tribunal. He criticised the Tribunal's decision, in particular the lack of reference to Rule B1.15.1 of the Law Society's Practice Rules 2011, and the Tribunal's refusal to allow him to submit a "victim impact statement" before considering sanction. He referred to emails which the Respondent had sent to the Secondary Complainer in March 2014 and other comments made after the conduct which was the subject of the professional misconduct Complaint. The

Secondary Complainer outlined why he believed the Respondent's conduct constituted a criminal offence. He reiterated the impact the professional misconduct had on his life, including panic, anxiety, distress and depression. He highlighted various parts of his medical records and the continuing effects of the misconduct with reference to the Judicial College Guidelines.

In his final submissions provided for the deadline of 30 April 2020, the Secondary Complainer noted that the Respondent had provided incorrect legal advice and did not progress his case. This had been a source of anxiety. He denied that the sum sought was excessive, as the Respondent had claimed in his Answers. He described why he thought he was entitled to the maximum amount of compensation. He noted that it was correct that he had received £6,000 following the Equality Act action in February 2016. However, he believed he was entitled to compensation for the period following that award. He did not consider the professional misconduct case to be a directly related matter. He noted that the email of 1 April 2014 was not part of the pleadings in the original action. There were no averments in the civil case in relation to loss of earnings, psychotherapy or inconvenience and so he considered these were separate to the court settlement. He did not consider £6,000 to be a fair reflection of his loss. He described the injury to his feelings and the exacerbation in tinnitus. He referred to other emails and conduct which were not the subject of the professional misconduct Complaint. He noted the Respondent's failure to apologise or recognise the effect of his conduct. He reiterated the inconvenience of making the claim. He wished to have interest applied to any award from 2 April 2014. He noted that his anxiety and frustration were growing and that he had lost six years of his life due to the Respondent's cruelty, callousness and inhumanity. He submitted that the damage to his health, social life and quality of life was unquantifiable.

## **SUBMISSIONS FOR THE RESPONDENT**

In his Answers to the claim for compensation, the Respondent submitted that the claim for £5,000 was grossly excessive. He noted that the Secondary Complainer had already received £6,000 in compensation in a directly related matter. He claimed that the averments in the compensation claim form were irrelevant and lacking in specification. However, he offered the Secondary Complainer £500 to bring the matter to a close.

In his final submissions produced for the deadline of 30 April 2020, the Respondent argued that the quantifiable loss claimed was not a direct effect of the professional misconduct, and no vouching or receipts were provided in support of this claim. In relation to the non-quantifiable loss, he noted there was no medical evidence of vouching in relation to the claim for £100,000. He claimed the description of the Secondary Complainer's distress was grossly exaggerated. He noted that the Secondary Complainer had a

long history of mental health problems. He drew the Tribunal's attention to Dr B's view that the Secondary Complainer's difficulties currently could not be wholly attributed to the alleged abusive emails. According to the Respondent, there was no current medical evidence that the Secondary Complainer is suffering from distress. He drew the Tribunal's attention to Dr M's view which was prepared for the Equalities Act action. Dr M said that he could not identify any evidence from the records of a significant worsening of the Secondary Complainer's long term symptoms nor the development of any new ones. The Respondent noted the Secondary Complainer's failure to accept the offer of £5,000 to settle the original action in 2014. He suggested that the Secondary Complainer had failed to minimise his loss. He said that since the Secondary Complainer had already received £6,000 in relation to this matter, any further award would result in "double recovery".

## DECISION

Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 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."*

A direct effect is one which would not have happened but for the professional misconduct. The purpose of an award of compensation is to restore the Secondary Complainer to the position he or she would have been in but for the misconduct, subject to the statutory maximum which the Tribunal can award, which is £5,000. The power to award compensation is within the Tribunal's discretion. The standard of proof in connection with a claim of compensation is that of balance of probabilities. The Tribunal can only have regard to the professional misconduct established at the professional misconduct hearing. It cannot take account of any other conduct. Both parties referred to extraneous issues in their submissions but this decision is based solely upon the established misconduct and its direct effects.

The Respondent's financial costs which arose as a result of the Section 21 appeal case were expenses which arose in the context of that litigation. That appeal did not arise as a direct result of the Respondent's misconduct, but rather the way "hybrid" complaints had been dealt with by the Scottish Legal Complaints Commission. In addition, the Secondary Complainer did not provide any receipts or vouching in support of this claim. Therefore, no award of compensation was made under this head.

The Secondary Complainer established on the balance of probabilities that he had suffered distress as a result of the Respondent's conduct. The medical reports referred to by both parties supported the Secondary Complainer's assertion that he had suffered a deterioration in his mental health following the emails on 1 and 2 April 2014. However, the situation was complex. The Secondary Complainer experienced significant mental difficulties for many years prior to this incident and continues to live with poor mental health. Dr B described the Secondary Complainer as being a person who would be extremely susceptible to abuse and any personal attack or abuse would detrimentally affect his mental health "to some extent". It was his view in April 2015 that the emails appeared to have caused the Secondary Complainer a great deal of distress. According to Dr B's supplementary report of June 2015, the evidence in the Secondary Complainer's medical records was that his increased level of anxiety occurred from the incident in April 2014 until early October 2014. However, the extent to which his increased symptoms over this time period were wholly attributable to the emails "is extremely difficult to ascertain". In the light of this objective medical opinion, the Secondary Complainer's account of the impact of the misconduct is exaggerated. However, the Respondent's language and conduct was completely unacceptable and was likely to cause distress to the extent outlined by Dr B, particularly given the Secondary Complainer's pre-existing difficulties. The Tribunal previously noted that the Respondent was aware of the Secondary Complainer's mental health background and this made his comments particularly offensive.

With reference to the Tribunal's guidance on compensation, the Chair determined that the Secondary Complainer's distress fell in the modest to significant category. The effect lasted for a period of time but this has not been a lasting effect. The medical evidence was to the effect that the Secondary Complainer's symptoms were lessening by October 2014. The conduct caused some inconvenience on several occasions. It caused worry, concern and some anxiety and upset. There were competing submissions on whether the Respondent had taken reasonable steps to rectify matters but it was not essential to make a finding on this in order to make a determination on compensation. There was not a sufficient causal link between the professional misconduct and the Secondary Complainer's claims regarding tinnitus, loss of earnings, or the requirement to pay for private psychotherapy sessions. The Secondary Complainer's argument that he ought to receive compensation to reflect his ongoing distress following acceptance of the tender was rejected on the basis that his symptoms were resolving in October 2014 and that he accepted the tender.


The appropriate award of compensation for the Secondary Complainer's distress would have been in the region of £1,500-£2,000. However, when exercising the discretion to award compensation, the Chair had regard to the £6,000 settlement of the Equality Act action. This action was founded on the email of 2 April 2014 and involved substantially the same conduct as that which the Tribunal had found established professional conduct, although it was brought under different legislative provisions. The professional



misconduct complaint also dealt with emails of 1 April 2014. However, these emails were part of a course of conduct and the email of 2 April 2014 contained the most offensive material. The two actions were very similar and failure to take the Equality Act action settlement into account would lead to unfairness as it could result in the Secondary Complainer receiving compensation twice in respect of the same conduct. The Secondary Complainer has already been compensated in relation to his distress arising from the emails in question. He received £6,000 in relation to a matter which this Tribunal would only have awarded £2,000. Therefore, no award is made in relation to the Secondary Complainer's distress following the professional misconduct. In making this decision, regard was had to other decisions of the Tribunal where previous awards of compensation had been taken into account. In Law Society of Scotland v Laura Winton, the Secondary Complainer received money from the Respondent's indemnity insurer and this was considered relevant when the Tribunal considered compensation under its legislative provisions. In Law Society of Scotland v Hugh Neilson, the Tribunal declined to award any further compensation to the Secondary Complainer who had already been awarded compensation by the SLCC. A similar approach was taken in Law Society of Scotland v George Sandilands.

However, it was appropriate to recognise that making a claim had caused inconvenience to the Secondary Complainer. He estimated that he had spent in excess of 60 hours preparing this claim. This was excessive. Taking account of the circumstances of this claim and the Tribunal's approach in Law Society of Scotland v Michael Chapman, a more reasonable amount of time to have spent on this would have been around 15-20 hours. It was inconvenient for the Secondary Complainer to make the complaint of professional misconduct and make a claim for compensation. It must have been very uncomfortable for him to repeatedly go over these events in order to do this. An appropriate award of compensation to reflect the inconvenience element of making the complaint and claim was £750.

The Tribunal made no finding of expenses due to or by either party. The matter had been dealt with on the papers and no award of expenses was appropriate in the circumstances. Publicity will be given to the decision. The Respondent will be named. However, in accordance with his request, the Secondary Complainer will not be identified as publication of his personal data may be detrimental to his interests. The authors of the medical reports referred to by the parties in their submissions will not be identified as publication of their personal data may be detrimental to their interests and may lead to identification of the Secondary Complainer.



**Colin Bell**  
**Vice Chair**