

**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

**PAUL ANTHONY GALLAGHER, Solicitor,
formerly of Raeside Chisholm Solicitors
Limited, Tontine House, 8 Gordon Street,
Glasgow and Curle Stewart Limited, 2nd Floor,
16 Gordon Street, Glasgow and now of Appleby,
33-37 Athol Street, Douglas, Isle of Man**

Respondent

1. On 8 December 2017, Paul Anthony Gallagher, Solicitor, formerly of Raeside Chisholm Solicitors Limited, Tontine House, 8 Gordon Street, Glasgow and Curle Stewart Limited, 2nd Floor, 16 Gordon Street, Glasgow, and now of Appleby, 33-37 Athol Street, Douglas, Isle of Man (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, namely Mr A (hereinafter referred to as “the Secondary Complainer”.)
3. On 8 December 2017, the Tribunal allowed the Secondary Complainer 28 days from the intimation of the findings to lodge a written claim for compensation with the Tribunal Office. A written statement of claim was received on 8 February 2018.
4. On 12 March 2018, the Tribunal issued an interlocutor allowing the statement of claim for the Secondary Complainer to be received and appointing the Respondent to lodge Answers if so advised within 14 days, with 14 days thereafter for both the Secondary Complainer and the Respondent to adjust. The Tribunal assigned 14 June 2018 as a hearing.

5. On 6 June 2018, the Respondent submitted a Motion to the Tribunal to adjourn the hearing set for 14 June 2018. This Motion was opposed by the Secondary Complainer. The Chairman, exercising the powers of the Tribunal under Rule 56 of the Scottish Solicitors Discipline Tribunal Procedure Rules 2008 (hereinafter referred to as “the Rules”), refused the Motion to Adjourn on 7 June 2018.
6. On 12 June 2018, the Respondent renewed his Motion to Adjourn and provided a medical certificate in support of his application. This Motion was opposed by the Secondary Complainer. The Chairman, exercising the powers of the Tribunal under Rule 56 of the Rules, refused the Motion to Adjourn on 12 June 2018.
7. At the hearing on 14 June 2018, the Secondary Complainer was present and represented himself. The Respondent was neither present nor represented. The Tribunal heard evidence from the Clerk regarding service of the Tribunal’s Interlocutor which contained notice of the hearing. The Tribunal considered the position and decided that it was fair to proceed in the Respondent’s absence. Submissions were made by the Secondary Complainer with reference to the documents he had lodged with the Tribunal Office. The Tribunal had regard to the material submitted by the Respondent.
8. The Tribunal carefully considered the submissions of the Secondary Complainer, his compensation claim form and supporting documents, and the material from the Respondent.
9. The Tribunal found the following facts established:-
 - 9.1 Mr A was the Secondary Complainer in the Complaint against Paul Anthony Gallagher, Solicitor, formerly of Raeside Chisholm Solicitors Limited, Tontine House, 8 Gordon Street, Glasgow and Curle Stewart Limited, 2nd Floor, 16 Gordon Street, Glasgow, and now of Appleby, 33-37 Athol Street, Douglas, Isle of Man. On 8 December 2017, the Tribunal found the Respondent guilty of professional misconduct in respect that he acted in breach of the Law Society of Scotland Practice Rules 2011 namely Rule B1.1.2 to the extent that his personal integrity was called into question and Rule B1.1.14 to the extent that he acted with other regulated persons in a manner which was not consistent with persons having mutual trust and confidence in each other and he misled other regulated persons.

9.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 for loss, injury and distress.

9.3 In the knowledge that the Secondary Complainer was considering an action for division and sale, having attempted unsuccessfully to negotiate a prohibition on such an action, and having advised his client to sign the Minute of Agreement regardless, the Respondent contributed to a decision to present a liferent for signature to his client and her sister. The creation of the liferent was designed to allow his client's mother to stay in her home. This had the effect of preventing the Secondary Complainer from gaining the financial benefit the Respondent was aware he intended to realise. The Respondent was aware that the Secondary Complainer's circumstances would materially change as a result of the recording of the liferent. This was contrary to the spirit of the Minute of Agreement which he had negotiated on behalf of his client. His actions called into question his integrity and breached the relationship of trust between the solicitors. The Secondary Complainer suffered loss, inconvenience and distress arising as a direct effect of the Respondent's professional misconduct.

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

Edinburgh 14 June 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Paul Anthony Gallagher, Solicitor, formerly of Raeside Chisholm Solicitors Limited, Tontine House, 8 Gordon Street, Glasgow and Curle Stewart Limited, 2nd Floor, 16 Gordon Street, Glasgow, and now of Appleby, 33-37 Athol Street, Douglas, Isle of Man 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 the sum of £5,000 by way of compensation in respect of loss, inconvenience and distress 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; 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 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.

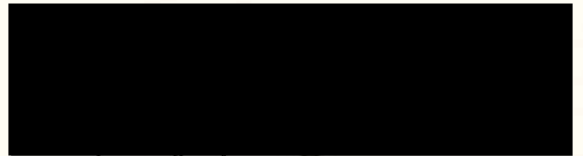
(signed)

Alan McDonald

Vice Chairman

11. 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 5 July 2018.

IN THE NAME OF THE TRIBUNAL



Alan McDonald
Vice Chairman

NOTE

On 6 June 2018, the Respondent submitted a Motion to Adjourn the hearing on 14 June 2018 based on anxiety and stress resulting from Bar Examinations, pressures of work and the present compensation case before the Tribunal. He sought an adjournment to seek medical assistance, take legal advice regarding the compensation claim and meet with his former employers. The Secondary Complainer opposed the motion. The Chair, exercising the functions of the Tribunal under Rule 56 of the Tribunal Rules 2008, refused the motion. The Respondent had been given ample time to consider the case. His examinations were over. If the matter was adjourned he would still be likely to suffer from stress resulting from the present case. The Secondary Complainer had waited a long time to have the matter resolved. Any delay was likely to have a detrimental effect on his wellbeing. The hearing had been arranged for many weeks. A venue had been booked and members arranged to hear the case. The Tribunal balanced the needs, rights and views of the Respondent, the Secondary Complainer and the proper functioning of the Tribunal. The Chairman also had regard to the nature of the hearing. Professional misconduct had already been established. The only issue was whether the Secondary Complainer should be compensated. This was not a complex issue.

On 12 June 2018, the Respondent submitted the same Motion to Adjourn, this time supported by a medical certificate which stated that the Respondent “*is not medically fit to attend the tribunal hearing and to represent himself.*” The Secondary Complainer opposed the Motion to Adjourn. The Chair, exercising the functions of the Tribunal under Rule 56 refused the Motion. The Chair had regard to the factors described in McCallion-v-Apache North Sea Limited [2018] SAC (Civ) 1 as being relevant when a medical certificate was tendered. The Chair noted that the Respondent’s medical certificate was not provided “on soul and conscience”. Although this is no longer an indispensable requirement, the absence is a factor that the Tribunal is entitled to take into account. The medical certificate failed to specify the health condition, how long the Respondent had suffered from it and how long the medical practitioner expected it to continue, or why the condition made the Respondent unfit to attend the Tribunal hearing. A medical certificate is effectively tendered as expert evidence. The Tribunal should have confidence that what is being expressed is an independent opinion after proper examination. The medical certificate did not contain sufficient detail to justify an adjournment. Something more than stress occasioned by the litigation would be required. An adjournment was unlikely to serve any useful purpose because stress would simply reoccur at an adjourned hearing. Therefore, the Chair refused the motion to adjourn on these grounds and those previously stated in relation to the motion of 6 June 2018 which was in the same terms.

At the hearing on 14 June 2018, the Tribunal heard evidence on oath from the Clerk regarding service of the Interlocutor which contained notice of the hearing. The Tribunal considered whether it was fair to proceed in the Respondent's absence. The Tribunal noted that the papers had been served personally on the Respondent. The Respondent's Motions to Adjourn demonstrated that he was aware of the date of the hearing. The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion "*with great caution and with close regard to the overall fairness of the proceedings.*" The Tribunal considered that if it heard the case in absence there would be a disadvantage to the Respondent as he would be unable to give his account of the events. However, he had been given ample notice of the date and his reasons for failing to attend were not sufficiently compelling to adjourn the case. It was noted that the Respondent had made a similar Motion to Adjourn the professional misconduct case in the December 2017. The disadvantage to the Respondent of proceeding in his absence was mitigated to some extent by the provision of written submissions. It was in the public interest and the interests of the Secondary Complainer that the case proceeded on 14 June 2018. The balance lay in favour of proceeding in the Respondent's absence.

The Tribunal carefully considered the compensation claim form dated 8 February 2018, a letter from the Secondary Complainer dated 7 April 2018, and three Productions lodged by him, namely an account of expenses in a court action, a letter from Flanagan & Co Solicitors and a letter from the Secondary Complainer's GP. The Tribunal also had regard to the Secondary Complainer's evidence and submissions made on 14 June 2018 and the Respondent's written submissions sent to the Tribunal Office by email on 13 June 2018.

SECONDARY COMPLAINER

The Secondary Complainer gave evidence on oath. Firstly, he took issue with the Respondent's submission that he had limited involvement with the Secondary Complainer's divorce proceedings for "a few months". The Secondary Complainer said that the Respondent had been engaged in the matter over a much longer period, at least one and a half years before the misconduct.

The Secondary Complainer explained to the Tribunal the circumstances of the professional misconduct. In his submission the Secondary Complainer had not done anything wrong. He had told his solicitor he did not want a share of the house as part of the settlement. He informed his wife through his solicitor that he might sell the property. Alternatives were offered, for example paying it up or giving him a higher share of her pension. The Respondent left a voicemail for the Secondary Complainer's solicitor saying that his wife accepted the terms of the Minute of Agreement and would sign it. She realised she would have to negotiate to buy him out. However, despite the agreement, no disposition has ever been provided

to the Secondary Complainer. He was given a copy of a document registered in Edinburgh and signed after the Minute of Agreement had been signed. The Secondary Complainer is still engaged in litigation to sort the situation out. The Minute of Agreement says that he owns part of a house but he has no disposition. The Secondary Complainer noted that the Tribunal had expressed the view that the Respondent's misconduct had been at the lower end of the scale. However, to him it was the worst possible transgression. It had completely destroyed his life.

The Secondary Complainer's solicitor resigned from acting as he might become a witness in a case for damages. It was very difficult for the Secondary Complainer to get someone to act on his behalf. Many solicitors refused to take on the case.

The Secondary Complainer was forced to raise a court action without legal assistance because he could not get a solicitor to represent him. He has found the whole experience extremely stressful. The case has been delayed over again. The expenses have racked up. The Secondary Complainer feels as if he is not getting anywhere at all. The Secondary Complainer does not believe that he will be successful in his appeal in that case.

His financial position has been affected due to the Respondent's misconduct. The Secondary Complainer was left with significant marital debt and no money to pay it. He was sued. The Secondary Complainer was threatened with bankruptcy but was not made bankrupt. To date the Secondary Complainer has paid £1,750 to Flanagan and Co. for their services in relation to the court case involving his wife and the property in question which arose as a direct result of the Respondent's misconduct. The Secondary Complainer claimed that he had lost count of the money the court case had cost him. In addition, he had spent many hours at court and had also had to pay sheriff officers fees. He has spent hundreds of hours writing letters etc.

The Secondary Complainer claimed that his mental health has deteriorated significantly due to the stress and pressure. Reference was made to the letter from the Secondary Complainer's GP. The letter noted that the Secondary Complainer had joined the practice in May 2013 and was immediately referred to the Community Mental Health Service because of difficulties with anxiety and depression and suicidal ideation. His symptoms had been triggered by divorce proceedings and he had been symptomatic since February 2012. It was noted that the medical certificate explained that the Secondary Complainer had required urgent input from the psychiatric crisis team because of suicidal thoughts in September 2013. The Secondary Complainer confirmed that his despair and indignation at that time was due to the Respondent's misconduct. He told the Tribunal that the "*distress factor was huge*". He has lost complete faith in the process. He has had a very bad experience. He suffers from the effects of that every single

minute of every day. He is extremely stressed today. He was looking forward to the matter being at an end.

SUBMISSIONS BY THE RESPONDENT

The Respondent provided written submissions. He noted that copies of bills had not been provided to the Tribunal. There was no account of expenses or detailed invoices from Flanagan and Co. A specific sum had not been stated. He submitted that the letter from Flanagan and Co. did not provide any link between the finding of misconduct and the legal bills incurred as a result of what appeared to be fresh litigation between the Secondary Complainer and his former client. He said that litigation would have been incurred regardless of the misconduct. In general, there were no receipts, invoices or any other vouching provided to support the Secondary Complainer's claims of financial loss. He said there was no causal link established between the misconduct and any financial loss.

With regard to non-quantifiable loss, the Respondent argued that his involvement did not cause or have any tangible impact on the Secondary Complainer's distress. He noted that the GP's letter said that symptoms had been triggered by the divorce proceedings and he had been symptomatic since February 2012. He therefore contended that the Secondary Complainer's health issues predated his involvement in the case.

The Respondent urged the Tribunal to take a wider view of the dispute. He said that he had limited involvement with the divorce. He was involved for a few months assisting a senior colleague. He was under supervision and newly qualified. He noted that he had been made subject of a finding of misconduct by the Tribunal for actions taking partly by him but partly also by his colleagues. He argued that the implementation of the liferent was not in breach of the Minute of Agreement.

The Respondent said that if the Secondary Complainer had a claim for compensation or other financial remedy it would be found in the courts. It should not lie with the Respondent.

DECISION

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

“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.”

On 8 December 2017, the Respondent was found guilty by this Tribunal of professional misconduct by allowing his personal integrity to be called into question and acting in a way with other regulated persons which was not consistent with them having mutual trust and confidence in each other and he misled other regulated persons. In the knowledge that the Secondary Complainer was considering an action for division and sale, having attempted unsuccessfully to negotiate a prohibition on such an action and having advised his client to sign the Minute of Agreement regardless, the Respondent contributed to a decision to present a liferent for signature to his client and her sister. The creation of the liferent was designed to allow his client's mother to stay in her home. This had the effect of preventing the Secondary Complainer from gaining the financial benefit the Respondent was aware he intended to realise. This materially changed the Secondary Complainer's circumstances. It was contrary to the spirit of the Minute of Agreement.

The Tribunal noted its power to award compensation was limited. It could direct a solicitor pay compensation of such amount which did not exceed £5,000 for loss, inconvenience or distress. A direct effect was one which would not have happened but for the professional misconduct. The loss, inconvenience or distress must result from the misconduct. The standard of proof in connection with a claim of compensation is that of balance of probabilities.

The Tribunal found the Secondary Complainer credible and reliable. He had suffered loss as a result of the Respondent's misconduct. There was financial loss and inconvenience and distress arising as a direct effect of the Respondent's actions. But for the professional misconduct, the Secondary Complainer would have been able to raise an action for division and sale and would have been able to realise the asset. The Tribunal considered that the Secondary Complainer would not have had to raise the court action but for the Respondent's professional misconduct. The Secondary Complainer provided evidence that he had paid his solicitor £1,750 in fees in relation to this court action. The Tribunal thought it appropriate that he was compensated for these fees.

The Secondary Complainer has experienced a great deal of inconvenience as a result of the Respondent's misconduct. He has had to consult other solicitors and when that has not been possible, pursue the action himself. He has had to attend numerous meetings and court hearings to attempt to resolve the situation. Bringing his complaint to the Tribunal was an additional inconvenience.

There was an overlap with regard to anxiety and distress suffered as a result of the divorce and that suffered as a result of the misconduct. However, the Tribunal noted the deterioration in the Secondary Complainer's mental health in September 2013 which was around the time the Minute of Agreement was signed and the liferent revealed. It was clear that a significant proportion of the inconvenience and distress was due to the Respondent's conduct alone. The Tribunal accepted the Secondary Complainer's evidence that he had felt that his life had been ruined by the misconduct and as a result was continuing to suffer psychological difficulties. Independent vouching about his mental state was provided in the form of a letter from his GP. The inconvenience and distress suffered by the Secondary Complainer has had a serious effect over a long period time. It has impacted on his wellbeing over a long period. There was significant inconvenience over a long period of time and on many occasions. The quality of life of the Secondary Complainer has been considerably and noticeably disrupted. He has been caused significant distress and upset. It was obvious that the Secondary Complainer had completely lost confidence in the legal profession. This would have an ongoing effect on any future interactions he required to have with a solicitor.

If the Secondary Complainer had claimed the maximum amount of compensation purely in respect of his inconvenience and distress, the Tribunal would have been willing to make an award in his favour of this amount. However, given that the Tribunal's powers of compensation are limited to £5,000, the Tribunal decided that £1,750 should be awarded in respect of his financial loss and £3,250 should be awarded for his inconvenience and distress.

The Secondary Complainer confirmed that he did not wish to claim any expenses. The Tribunal decided that the Respondent should be liable in the expenses of the Tribunal including expenses of the Clerk. Publicity will be given to the decision and that publicity will include the name of the Respondent. The Secondary Complainer need not be identified as publication of their personal data is likely to be detrimental to their interests.



Alan McDonald
Vice Chairman