

**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, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**WILLIAM BRYDEN CREARIE, 18 Waterloo
Street, Glasgow**

Respondent

1. On 17 November 2015 William Bryden Crearie, 18 Waterloo Street, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct in respect of his acting in a conflict of situation and preparing a Minute of Agreement when the parties thereto had competing interests without tendering any advice as to the meaning or effect of that Minute of Agreement.
2. There was a Secondary Complainer in the Complaint, namely Charles Donnelly, 19 Muirfield Steading, Gullane, East Lothian (hereinafter referred to as “the Secondary Complainer”).
3. On 17 November 2015 the Tribunal allowed the Secondary Complainer until 15 December 2015 to lodge a written note of claim at the office for the Tribunal. A written statement of claim was received on 7 December 2015. On 23 December 2015 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. 1 February 2016 was assigned a hearing.
4. On 15 January 2016 the Tribunal issued an Interlocutor adjourning the hearing to the 14 April 2016, due to the ill-health of the Secondary Complainer.

5. On 14 April 2016 the Secondary Complainer was present and represented himself. The Respondent was present and represented himself. There was no appearance on behalf of the Law Society. The Secondary Complainer gave evidence and led evidence from one witness. Submissions were made on behalf of both parties.
6. The Tribunal found the following facts established:-
 - 6.1 Charles Donnelly, 19 Muirfield Steading, Gullane, East Lothian was the Secondary Complainer in the Complaint against William Bryden Crearie, 18 Waterloo Street, Glasgow (the Respondent) that resulted in the Respondent being found guilty of professional misconduct in respect of his acting in a conflict of interest situation and preparing a Minute of Agreement when the parties thereto had competing interests without tendering any advice as to the meaning or the effect of that Minute of Agreement. The Secondary Complainer gave evidence in the hearing of that Complaint.
 - 6.2 The Secondary Complainer lodged a written statement of claim which in essence fell into four parts:
 - (a) a claim for £2,340 relating to legal fees;
 - (b) £20 for the cost of a medical report;
 - (c) £3.40 in respect of travel expenses; and
 - (d) £1200 for distress and inconvenience.
 - 6.3 Invoices were lodged by the Secondary Complainer for the legal fees under a heading of “possible professional negligence claim against A & S Ireland”. Only a portion of the total fee could relate to the Complaint against the Respondent. The Secondary Complainer was entitled to take independent legal advice regarding the conduct of the Respondent. A reasonable fee for such advice would be £500 plus VAT.
 - 6.4 The Secondary Complainer produced an invoice from the doctor for her report and confirmed he had paid £20.
 - 6.5 The travel expenses of £3.40 claimed related to the Secondary Complainer attending at the hearing as a witness.

6.6 The Secondary Complainer suffered from a pre-existing medical complaint of irritable bowel syndrome. That condition was exacerbated by the stress relating to the events giving rise to the Complaint of misconduct, its formulation and its presentation. The exacerbation of this condition caused the Secondary Complainer to avoid leaving his home on occasion, or make particular preparations to allow him to travel. His condition would be exacerbated two or three times per week particularly when he was in receipt of correspondence relating to his Complaint or preparing to be a witness and attending meetings with the Law Society.

6.7 The Secondary Complainer has been directly affected by the misconduct of the Respondent resulting in him sustaining loss, inconvenience and distress.

7. The Tribunal heard submissions from both parties with regard to expenses for the hearing on compensation. Thereafter, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 April 2016. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against William Bryden Crearie, 18 Waterloo Street, Glasgow 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 was 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 Charles Donnelly, 19 Muirfield Steading, Gullane, East Lothian £1,820 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.

(signed)

Alistair Cockburn
Chairman

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 by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn
Chairman

NOTE

Prior to the hearing on 14 April 2016 the Secondary Complainer had lodged with the Tribunal a completed compensation claim form together with copies of invoices for legal services, a medical report with copy fee note therefore and a copy train ticket. No Answers had been lodged by the Respondent.

The Secondary Complainer had intimated his intention to give evidence in support of his claim himself and to lead the evidence from one witness.

At the commencement of the hearing, parties were asked if they wished to raise any preliminary issues. In response Mr Crearie indicated to the Tribunal that the Secondary Complainer had stated under oath at the hearing that he did not want to claim compensation. He had then changed his mind when asked by the Tribunal. He submitted that to allow the claim for compensation was not fair.

The Respondent went on to submit that in his view the question of compensation should have been dealt with at the start and this additional hearing would not have been necessary. He submitted that expenses for the hearing on compensation should be awarded against the Secondary Complainer.

The Chairman explained to the Respondent that a claim for compensation only arises after a determination of misconduct has been established but the Respondent would have an opportunity to make submissions with regard to the question of expenses at the conclusion of the hearing.

EVIDENCE FOR THE SECONDARY COMPLAINER**Witness One: Charles Donnelly**

The Secondary Complainer confirmed that he is 71 years of age, and lives at 19 Muirfield Steading, Gullane. He asked to be allowed to refer to some notes that he had made and the Respondent indicated that he had no objection to that. The Secondary Complainer referred to his written statement of claim and indicated that he hoped that that had given a clear account of his financial losses. The quantifiable losses related to the fees from Messrs Anderson & Strathern who advised him on the Minute as framed by the Respondent and how to complain. The second element was the fee for the doctor's report and the third was expenses to travel to the hearing as a witness.

He had found it more difficult to deal with the outlining of non-quantifiable losses. It had been difficult to ascertain a figure.

The Secondary Complainer indicated that he had suffered inconvenience over a three year period prior to the Tribunal hearing. This included periods spent with his own solicitor taking advice, and meeting the advocate for the Law Society.

His health had been affected. He suffered from a stress related condition. The letter from his GP, lodged with his claim, indicates the concern that she had for his condition. His condition had been exacerbated no end by the amount of time he had spent in relation to this matter. He suffered from irritable bowel syndrome. Sometimes he had not been able to get out of the house. His condition had been put under control by further medication. This had been a really unhappy and unpleasant time. It probably reached its conclusion last year. The last two months had helped because of his medication.

At the outset he had not expected to have to go to consult another solicitor. He had put his trust in his own solicitor and that trust had gone completely. This had proved to be a costly venture. He is retired and this expenditure was over and above his normal expenditure.

The Respondent confirmed he had no cross examination.

Witness Two: Mrs A

The witness confirmed that she is 63 years of age and is the wife of the Secondary Complainer, they having married three years ago in August.

Her husband suffered from a pre-existing condition of irritable bowel syndrome. During the course of the two or three years of the currency of this case the condition had become worse. He had to be given extra medication. At certain times of anxiety and stress the condition became so bad that the Secondary Complainer could not leave the house. Going out became very unpredictable.

The condition had limited their lifestyle. If the Secondary Complainer received a piece of mail or an email with regard to this case she could see him suffering from stress again. This had occurred over two or three years. These occurrences would make matters worse.

In response to a question from the Tribunal, the witness confirmed that the Secondary Complainer's condition had not been as bad before the commencement of this case. The Secondary Complainer had

not even been on medication for the condition and he had been able to go outside. The condition is only a problem when the Secondary Complainer is under stress for one reason or another. When something to do with this case came to the surface, an email or a letter or a request to speak to the Law Society, the Secondary Complainer was unable to sleep for several days. He would not be able to leave the house before 12 noon. He would require frequent stops as he was not in control. This would result in him not wanting to go out for a period of days until the condition passed. This would happen two or three times a week.

As an example, if they were travelling to her parents' home on the west coast they had to make particular preparations. They would have to keep extra clothes and toiletries in the car as they never knew if they could make the journey without stopping.

With regard to the legal fees, she had pushed him to go and see the solicitors. She knew things were not quite right. The Secondary Complainer could not get answers from his own solicitors. They had both needed answers as what they felt was wrong was indeed wrong.

The Respondent confirmed he had no cross examination.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer explained that he had put his trust in his solicitor. At the end of the day he had not expected to have to go to another solicitor for advice. He felt let down. Beyond his evidence he had nothing further to say.

SUBMISSIONS FOR THE RESPONDENT

The Respondent submitted that the medical evidence was speculative as to whether or not the stress of these proceedings caused the Secondary Complainer's difficulties. He would have expected the Tribunal to require two independent medical reports to substantiate the claim.

With regard to the legal fees, these invoices were headed **professional negligence** claim not **professional misconduct**. The Secondary Complainer had just given his solicitors a copy of the Minute of Agreement and said that the Respondent had advised him. In fact the Respondent had not advised him and in evidence the Secondary Complainer had accepted that the Respondent did not advise him.

With regard to the issue of stress, it was the Respondent's position that the Secondary Complainer had brought this on himself. The original Complaint had raised matters which were not upheld by the Tribunal. The Secondary Complainer had withdrawn the allegation of misconduct under paragraph a) in the course of giving evidence and so it did not proceed. This had been a waste of the Respondent's time.

Paragraph b) and parts of paragraph c) of the allegations of professional misconduct had not been upheld by the Tribunal.

The stress of that was caused by the Secondary Complainer alleging something that was not the case and where there was no supporting evidence.

DECISION

The Tribunal found both the Secondary Complainer and his wife to be reliable and credible witnesses.

The standard of proof in connection with a claim for compensation is that of the balance of probabilities.

The Tribunal looked at the individual elements of the Secondary Complainer's claim. The evidence was clear that the Secondary Complainer had paid fees of £2,340 to Anderson Strathern. These fee notes were headed "possible professional negligence claim against A & S Ireland". In all probability not all of the time spent by Anderson Strathern would have related to the Complaint against the Respondent. It was probable that in part the fees related to the investigation of the question of negligence. The Secondary Complainer was however clearly entitled to take advice from an independent solicitor with regard to the matters resulting in the Complaint and the finding of misconduct. In the circumstances the Tribunal determined that a reasonable assessment of the time in all probability taken by the firm of Anderson Strathern to deal with the question solely relating to the Complaint would have resulted in a fee of £500 plus VAT.

The Secondary Complainer required to obtain the medical report from his GP for the hearing of his compensation claim and the fee of £20 was clearly stated in the invoice.

The claim for travelling expenses was not well-founded. These expenses appear to relate to the Secondary Complainer's attendance at the hearing, where he was required to give evidence. Witness expenses would fall to be paid by the party calling the witness.

With regard to the claim for inconvenience and distress, the Tribunal found Mrs Donnelly to be an extremely helpful witness. Albeit the irritable bowel syndrome was a pre-existing condition, the evidence pointed to the anxiety and distress of the events leading to the Complaint and then the hearing clearly exacerbating the Secondary Complainer's condition to a significant degree and over a considerable period of time. The claim by the Secondary Complainer of £1,200 was in the Tribunal's view at the lower end of the scale appropriate for this.

With regard to the Respondent's submission that the claim for compensation was not fair and should not be allowed, the Secondary Complainer had not entered into any binding agreement to dispense with his claim and was entitled to change his mind prior to the Tribunal finally disposing of the whole case. It was perfectly appropriate for the tribunal to confirm with the Secondary Complainer what his position was as regards any claim for compensation. The Respondent had had fair notice of the claim.

The submissions that the stress suffered by the Secondary Complainer was caused by the allegations which were not upheld was not backed up by any evidence. The Secondary Complainer made a Complaint. The Council of the Law Society of Scotland framed the Complaint. But for the Respondent's misconduct there would have been no Complaint before the Tribunal.

The Tribunal considered that the Secondary Complainer had been directly affected by the misconduct of the Respondent. That misconduct caused the Secondary Complainer to incur fees of £600(including VAT) to independent solicitors and £20 for the medical report. The misconduct caused the Secondary Complainer to suffer inconvenience and distress and the Tribunal determined that the figure claimed of £1,200 was reasonable in the circumstances.

The Tribunal invited the Respondent to make submissions with regard to time to pay the compensation. The Respondent sought clarification of his right to appeal.

The Tribunal invited both parties to make further submissions with regard to expenses. The Secondary Complainer confirmed he had no additional expenses for his attendance at the hearing on compensation.

Given that there had been an apparent change of heart on the part of the Secondary Complainer, and in theory if he had lodged his claim at an earlier stage there may have been time at the last hearing to consider the claim, the Tribunal determined that the fair approach was to make no award of expenses due to or by either party.

Alistair Cockburn
Chairman