

**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

**IAN GORDON DAVIDSON, 45 Clovis Duveau
Drive, Dundee**

Respondent

1. On 24 June 2022, Ian Gordon Davidson, 45 Clovis Duveau Drive, Dundee (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr Alan Davidson (hereinafter referred to as “the Secondary Complainer”).
3. On 24 June 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 hearing on 2 November 2022. The Respondent’s representative lodged written submissions and productions on 24 October 2022. He indicated that neither he nor the Respondent would attend the compensation hearing.
5. The compensation hearing on 2 November 2022 proceeded in the Respondent’s absence. The Secondary Complainer made submissions.
6. The Tribunal found the following facts established:-
 - 6.1 Mr Alan Davidson was the Secondary Complainer in the Complaint against Ian Gordon Davidson, 45 Clovis Duveau Drive, Dundee (“the Respondent”).

6.2 On 24 June 2022, the Respondent was found guilty of professional misconduct singly and *in cumulo* in respect that he:-

- (a) failed to inform The Royal Bank of Scotland of the death of the deceased;
- (b) failed to disclose to the Secondary Complainer the existence of the Standard Security;
- (c) failed to make the payments to the lender;
- (d) failed to disclose that the Aviva death benefit had been paid out;
- (e) failed to obtemper the agreement in relation to the Aviva policy and misappropriated the policy proceeds;
- (f) falsely stated that he was in correspondence with Aviva and the Financial Ombudsman Service;
- (g) encashed National Savings Bonds contrary to the agreement with his co-executor;
- (h) failed to disclose to the Secondary Complainer the value of the National Savings bonds;
- (i) failed to ensure that appropriate Buildings Insurance cover was in place for the property at 21 Sherbrook Gardens, Dundee;
- (j) failed to settled gas and electricity bills in relation to said property;
- (k) failed to account for sums totalling £44,563.00 paid into accounts held in the joint names of his mother and the deceased over which he had control;
- (l) acted inappropriately and in breach of Rules B6.12.1 and B6.2.3 in relation to the Aviva policy proceeds;
- (m) failed to act appropriately and in breach of said rules in relation to the Tesco Bank transfer;
- (n) induced Tesco Bank by fraud to write off a debt of £6,663.32;
- (o) embezzled payments received from Tesco Bank;

- (p) failed to disclose to the Secondary Complainer the existence of a Tesco Bank credit card account; and
 - (q) destroyed copies of correspondence and failed to maintain any file in order to conceal his own fraudulent actings;
- said findings of misconduct being found singly in respect of (a), (b), (c), (d), (e), (f), (i), (k), (l), (m), (n), (o) and (q) and *in cumulo* in respect of (g), (h), (j) and (p).

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

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:-

By Video Conference, 2 November 2022. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Ian Gordon Davidson, 45 Clovis Duveau Drive, Dundee ("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 Alan Davidson, the sum of £5,000 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 *22 NOVEMBER 2022*.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chair

NOTE

The Respondent was not present or represented on 2 November 2022. The Clerk gave evidence on oath regarding service of the letter intimating the date of the hearing to the Respondent. That letter dated 20 September 2022 had been sent by Royal Mail “signed for” service and the online “track and trace” facility showed that it had been delivered shortly afterwards. The Tribunal had also received a letter from the Respondent’s representative dated 24 October 2022 indicating that neither he nor the Respondent would be present at the compensation hearing on 2 November 2022. The Tribunal was therefore satisfied that intimation of the compensation hearing had been duly given to the Respondent. The Tribunal considered whether it was fair to proceed in the Respondent’s absence. The circumstances made it plain that the Respondent had made a deliberate choice not to appear and anticipated that the hearing would take place in his absence. It was in the Secondary Complainer’s interest and the public interest that the case was concluded. The Tribunal was content therefore to proceed in the Respondent’s absence.

At the compensation hearing on 2 November 2022, the Tribunal had before it the professional misconduct decision and the Secondary Complainer’s compensation claim with supporting documents. The Secondary Complainer had no objection to the late lodging of documents on behalf of the Respondent. The Tribunal had regard to the email and letter from the Respondent’s representative both dated 24 October 2022 and the productions lodged for the Respondent.

SUBMISSIONS BY THE SECONDARY COMPLAINER

The Secondary Complainer invited the Tribunal to consider his written compensation claim. Everything he wished to draw to the Tribunal’s attention was contained there but he was happy to answer the Tribunal’s questions.

The Tribunal asked the Secondary Complainer about the claim for quantifiable loss. The Secondary Complainer confirmed that he was claiming for the difference between the legal expenses he had to pay and the judicial expenses he recovered following the court actions he took against the Respondent. He drew the Tribunal’s attention to the fee notes he had lodged. He said he had been very careful to only include the fee notes which related to the court actions, and not any fee notes which related to the winding up of his father’s estate. Some preparatory work had been done prior to the actions. As was well known, a litigant never recovers full expenses, even if successful. Solicitors charge more than can be received in judicial expenses. All invoices by the Secondary Complainer’s solicitors were audited by the court.

The Tribunal asked the Secondary Complainer to elaborate on his claim for non-quantifiable loss. The Secondary Complainer said he had suffered years of anger, upset and sleepless nights. The situation affected him, his wife and his children. He was constantly bombarded with “nonsense and lies” from the Respondent who did everything he could to delay the process. This caused huge upset over the years, and it is still continuing. The letter of 24 October 2022 affected him again. His stomach was sore. He was angry at the lies and nonsense contained within it. The Secondary Complainer never sought medical advice regarding his symptoms. He was aware he was suffering from stress. He did not want to bother a doctor with this, particularly during the pandemic.

The Secondary Complainer indicated that he wished to address the issues raised in the letter of 24 October 2022 submitted on behalf of the Respondent. He highlighted that the letter did not address the actual claim for financial loss. It did not deal with the question of non-quantifiable loss. It attacked the Secondary Complainer, saying that he received a windfall. However, in truth, there was a shortfall. The notion that funds the Secondary Complainer received should have been shared with the Respondent’s wife was false. It was clear the Secondary Complainer was acting as an individual. The Respondent’s wife was an opponent in one of the court actions. He said the idea that he should pay her half of what was duly his was nonsense. She benefitted from the increase in the value of the house. The situation was covered by a Minute of Agreement. She was a party to that Minute.

The Secondary Complainer noted that it was correct to say that his mother disowned him. This was a result of the Respondent’s actions and is part of the Secondary Complainer’s non-quantifiable loss. The Respondent lied to their mother. He preyed on her age and lack of common sense. Eventually she was diagnosed with dementia. The Secondary Complainer sorted out their mother’s financial position and paid loans. There was no reason for her to disown him. The Secondary Complainer went to the police in 2019 when the Respondent started to take over their mother’s affairs again. The Secondary Complainer said he went to the police to protect his mother. Her account was overdrawn and bills were unpaid. The Social Work Department became involved. The Respondent was removed from their mother’s financial affairs.

The Secondary Complainer noted that the Respondent complained that he believed things were going to be sorted out amicably following their meeting. However, the Secondary Complainer highlighted that the Respondent lied to him at that meeting. Repossession of the house was already underway. The Respondent told many lies. He took a lot of money from their parents over the years. When he was trying to sort things out, the Secondary Complainer had his solicitors write many times to the Respondent.

However, the Respondent would not respond or do anything. This was what led to the Secondary Complainer raising actions against him. The Secondary Complainer said he had no alternative. The expenses in the actions were unduly increased by the abuse of process in both actions.

The Secondary Complainer said he was disgusted by the letter of 24 October 2022 and said that it demonstrated what he felt he had put up with over the years. The letter showed the Respondent's attitude. The Secondary Complainer asked the Tribunal to note that the settlement was as craved.

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.

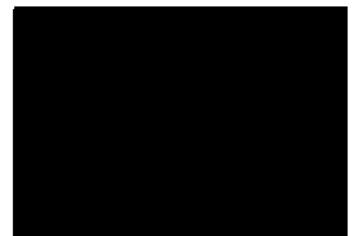
The Tribunal carefully considered all the documents before it and the oral submissions of the Secondary Complainer. The accounts of the Secondary Complainer and the Respondent were diametrically opposed. It was difficult for the Tribunal to test or clarify the Respondent's version of events given he had chosen not to attend the compensation hearing. The submissions made on his behalf were confusing and did not tackle the bases for the claim. Overall, the Tribunal preferred the account of the Secondary Complainer. His submissions were straightforward, he had lodged appropriate supporting documents and his position was consistent with the Tribunal's findings in the misconduct case.

The claim for financial loss related to the difference between the judicial expenses recovered in two actions against the Respondent and the legal fees which the Secondary Complainer paid. The Tribunal was satisfied that the court actions were raised as a direct result of the Respondent's misconduct. The

difference between the legal fees and judicial expenses constituted a financial loss to the Secondary Complainer and it was appropriate he was compensated in respect of this. The Secondary Complainer's financial loss was £5,529.13.

The claim for non-financial loss related to the inconvenience and distress experienced by the Secondary Complainer. The Tribunal was satisfied that this arose as a direct result of the Respondent's misconduct. Although the Secondary Complainer had not sought medical assistance, it was clear that the misconduct had a serious effect over a long period of time affecting his wellbeing over a significant period. It caused a lot of inconvenience over a long period. The Secondary Complainer's quality of life and that of his family was noticeably disrupted. The distress was significant. The misconduct affected the Secondary Complainer's relationship with the Respondent as well as their mother and other wider family relationships. The Respondent entered into a Minute of Agreement but otherwise, did not take steps to rectify matters. The Tribunal considered that the appropriate award of compensation in relation to non-financial loss was £2,000.

The total value of the claim for loss, inconvenience and distress exceeded the statutory maximum which the Tribunal can award. Therefore, the Tribunal directed the Respondent to pay £5,000 to the Secondary Complainer. After giving the Secondary Complainer an opportunity to make submissions on publicity and expenses, the Tribunal found the Respondent liable in the expenses of the Tribunal only. Publicity will be given to this compensation decision. The Respondent and the Secondary Complainer will be named in this decision but no other person need be identified.



Kenneth Paterson
Vice Chair