

**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

**GRAEME C MILLER, McGregor MacLeod
Ltd., 3 Donaldson Crescent, Kirkintilloch,
Glasgow**

Respondent

1. On 6 February 2023, Graeme C Miller, McGregor MacLeod Ltd., 3 Donaldson Crescent, Kirkintilloch, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Stephen Geddes, 3 Highland Avenue, Blantyre, Glasgow (hereinafter referred to as “the Secondary Complainer”).
3. On 6 February 2023, 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. At the compensation hearing on 11 May 2023, the Secondary Complainer was present and represented himself. The Respondent was neither present nor represented.
5. The Tribunal found the following facts established:-
 - 5.1 Mr Stephen Geddes was the Secondary Complainer in the Complaint against Graeme C Miller, McGregor MacLeod Ltd., 3 Donaldson Crescent, Kirkintilloch, Glasgow (“the Respondent”).
 - 5.2 On 2 December 2022, the Respondent was found guilty of professional misconduct in respect that:-

- a) the Firm's Terms of Business stated that prior to any complaint being made to the SLCC or the Law Society, the matter must be raised with the Firm's client relations manager and that failure to comply would result in the Firm charging £500 + VAT;
- b) the Firm's Terms of Business stated that for any complaint made to the SLCC which was not upheld or not accepted for investigation by the SLCC, the Firm would charge a levy of £2,500 per head of complaint.

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

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

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

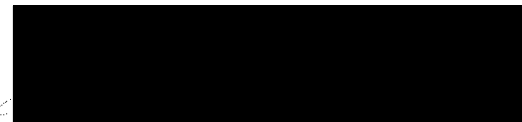
By Video Conference, 11 May 2023. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Graeme C Miller, McGregor MacLeod Ltd., 3 Donaldson Crescent, Kirkintilloch, Glasgow ("the Respondent") and having previously determined that the Respondent 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 Stephen Geddes, the sum of £750 by way of compensation in respect of 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 no 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 and the Secondary Complainer but need not identify any other person.

(signed)

Catherine Hart
Vice Chair

7. 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 6 JULY 2023.

IN THE NAME OF THE TRIBUNAL



Catherine Hart
Vice Chair

NOTE

The Secondary Complainer was present at the compensation hearing on 11 May 2023 and represented himself. The Respondent was neither present nor represented. The Tribunal had before it the professional misconduct decision, the Secondary Complainer's compensation claim form with various supporting documents, and a letter of 9 May 2023 from the Respondent's representative.

SUBMISSIONS BY THE SECONDARY COMPLAINER

The Secondary Complainer expressed his disappointment at the submissions made on the Respondent's behalf about Trustpilot at the misconduct hearing. He suggested that the Respondent would have a good rating on that website because others would have been put off giving a negative review because of the Respondent's terms of business.

The Secondary Complainer was frustrated that he still does not have his files from the Respondent. He also said that he did not realise how long the complaints process would take.

The Secondary Complainer said his transaction was concluded by another firm. The lady who dealt with it was "speechless" when she saw the Respondent's terms of business. The Secondary Complainer had previously revised terms of business for work but had not read the Respondent's terms of business until he was contemplating a complaint.

The Secondary Complainer said the Respondent's attitude took its toll on him. It was stressful. He was facing a £6,000 fine from the Respondent for making a complaint.

The Secondary Complainer wished to claim compensation of £2,300 for a new boiler. There was no heat or hot water in the property when he moved in. He contacted the firm about this within five days of moving in. He raised a complaint after finding out the boiler had previously been condemned. The Secondary Complainer believed that the whole thing could have been resolved if the Respondent had responded to him. He said the Respondent did everything he could to avoid replying to the Secondary Complainer's new solicitors. He asked for £100+VAT to respond. The Secondary Complainer did not pay this. The Respondent's delay meant that the Secondary Complainer's case was time barred.

The Tribunal asked the Secondary Complainer to address how the problem with the boiler was connected to the professional misconduct which had been established. The Secondary Complainer said that he saw this as all part of one big issue.

The Secondary Complainer said that the Respondent had offered him a couple of hundred pounds but wanted the Secondary Complainer to sign a confidentiality agreement. He refused to do this. The Secondary Complainer said it was very stressful dealing with the Respondent. He was at his computer every day. He hurt his back. He had to deal with the SLCC and the Law Society of Scotland. The Respondent threatened to take him to court.

The Secondary Complainer said when his previous solicitor retired, he searched online for another one. The Respondent had the best reviews online. He assumed his terms of business would be the same as other solicitors. He only read them when a problem arose. He said he wanted his problem resolved. Before he made the complaint, the Respondent threatened him with the terms of business. The Respondent had a superior attitude. He was aggressive and bullying.

The Secondary Complainer said he wanted the Tribunal to make a fair award. The Secondary Complainer confirmed that the SLCC had ordered the Respondent to pay £850 as compensation for poor service.

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.”

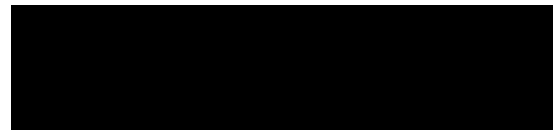
The Tribunal can exercise its powers under Section 53(2)(bb) in relation to a former solicitor under Section 53(3A). A direct effect was one which would not have happened but for the professional misconduct. The standard of proof in connection with a claim of compensation is that of balance of probabilities. The Tribunal has a discretion to award compensation but 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 submission of the Secondary Complainer.

The Tribunal carefully considered the Secondary Complainer's submissions about the replacement boiler. It had sympathy for the Secondary Complainer. However, it decided that the Secondary Complainer's claim for compensation related to financial loss was not a direct effect of the professional misconduct which had been established. Therefore, no award could be made for this.

The Tribunal had regard to its compensation tariffs table in relation to inconvenience and distress. The Tribunal considered that the Secondary Complainer had suffered inconvenience and distress because of the Respondent's professional misconduct and that this was between the "modest" and "significant" categories. The Secondary Complainer had been concerned that he might have to pay the Respondent a significant amount of money for making a complaint. This had weighed on his mind when making the complaint. Pursuing the complaint had taken a long time and had caused him inconvenience and frustration. The misconduct had a serious effect over a period. It caused significant inconvenience on several occasions. It caused worry, concern, some anxiety and upset. The Respondent failed to take reasonable steps to rectify matters. Taking all of that into consideration, the appropriate award of compensation was £750.

Following submissions on publicity and expenses, the Tribunal found no expenses due to or by either party. It directed that publicity would be given to the decision. The Respondent and the Secondary Complainer would be named. However no other person need be identified.



Catherine Hart
Vice Chair