

**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

**QUINTON MUIR, D & J Dunlop Solicitors, 2
Barns Street, Ayr**

Respondent

1. On 28 September 2018, Quinton Muir, D & J Dunlop Solicitors, 2 Barns Street, Ayr (hereinafter referred to as "the Respondent") was found guilty of professional misconduct
2. There was a Secondary Complainer, Mr A.
3. On 28 September 2018, the Tribunal allowed the Secondary Complainer 28 days from the intimation of the Findings to confirm he wished to proceed with his written claim for compensation.
4. On 27 November 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 11 February 2019 as a hearing. Answers for the Respondent were lodged. On 13 December 2018, of consent, the Tribunal granted the Respondent's motion to adjourn the hearing assigned for 11 February 2019. On 14 December 2018, the Tribunal issued an interlocutor adjourning the hearing previously assigned for 11 February 2019 and assigning 22 February 2019 as a hearing.
5. At the hearing on 22 February 2019, the Secondary Complainer was present and represented himself. The Respondent was neither present nor represented. He had indicated by letter of 20 February 2019 to the Tribunal Office that he was not able to attend but was

content for the matter to proceed in his absence. The Tribunal decided that it was fair to proceed in the Respondent's absence.

6. The Tribunal carefully considered the evidence and submissions of the Secondary Complainer, his compensation claim form and supporting documents, and the Answers lodged by the Respondent.

7. The Tribunal found the following facts established:-

7.1 The Secondary Complainer was the Secondary Complainer in the Complaint against Quinton Muir, D & J Dunlop Solicitors, 2 Barns Street, Ayr. On 28 September 2018, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his breaches of Rules B1.2, B1.4, B1.9.1, B1.9.2, B1.10 and B1.14 of the Law Society of Scotland Practice Rules 2011 (and the corresponding paragraphs of the Code of Conduct for Scottish Solicitors 2002 and corresponding Rules of the Solicitors (Scotland) Standards of Conduct Practice Rules 2008). He allowed his integrity to be called into question (B1.2); he did not act in the best interests of his client (B1.4); he did not communicate effectively with his client (B1.9.1); he failed to advise his client of significant developments in the case (B1.9.2); he failed to act competently and carry out the matter adequately and completely within a reasonable time exercising the appropriate level of skill (B1.10); and failed to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other (B1.14).

7.2 Mr A lodged a written statement of claim seeking £5,000 for loss, inconvenience and distress.

7.3 The Respondent failed to progress a court action for his client for over twelve years. He did not apply for legal aid. He failed to communicate with the Secondary Complainer and to act in his best interests. As a consequence, the Secondary Complainer lost his opportunity to pursue a case against his former employer. He suffered inconvenience and distress. The loss, inconvenience and distress arose as a direct effect of the Respondent's professional misconduct.

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

Edinburgh 22 February 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Quinton Muir, D & J Dunlop Solicitors, 2 Barns Street, Ayr 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 £4,200 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 as publication of personal data is likely to damage individuals' interests.

(signed)

Alan McDonald

Vice Chairman

9. 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 MARCH 2019*.

IN THE NAME OF THE TRIBUNAL



Alan McDonald
Vice Chairman

NOTE

At the hearing on 22 February 2019, the Tribunal had before it a compensation claim form dated 7 May 2018 which enclosed two Law Society of Scotland reports dated 19 December 2017 and 23 January 2018, and the Respondent's Answers to the compensation claim. The Tribunal noted that the Respondent was aware of the date of the hearing and had indicated that he was content for the hearing to progress in his absence. The Tribunal decided it was fair and appropriate in all the circumstances to proceed.

EVIDENCE OF THE SECONDARY COMPLAINER

The Secondary Complainer gave evidence on oath. In the main, his evidence was given in response to questions posed by members of the Tribunal.

The Secondary Complainer told the Tribunal that he has consulted solicitors regarding a civil claim against the Respondent but has not progressed this yet. The Scottish Legal Complaints Commission (SLCC) are also investigating the service issues arising out of the circumstances of this case. The Respondent did not charge any fees. The Secondary Complainer has suggested to the SLCC that he would like the matter resolved by the Respondent paying him £44,000. This is the sum the Secondary Complainer's former employer offered but which he turned down. He also wishes to have interest paid on that sum. He said that the £44,000 was made up of an offer of £39,000 and a "settlement fee" of £5,000. The Secondary Complainer and the Respondent decided to reject that offer and take the matter to court as they were concerned about a proposed restrictive covenant. The Secondary Complainer believed that the sum sued for in the initial writ was £30,000. The Secondary Complainer received a redundancy payment of £17,000.

The Secondary Complainer said that the Respondent had indicated that he had a very strong case. However, the Secondary Complainer now realises that the Respondent's expertise was not in this area and suspects that if he had gone to "a proper employment lawyer" he would have received advice to accept the offer and not worry about the terms of the restrictive covenant. The Secondary Complainer highlighted that any communication from the firm was always in response to him chasing the Respondent. However, he said he only received "one line letters" from the Respondent.

The Tribunal asked the Secondary Complainer about the thinking or advice behind the rejection of the offer and the decision to start court proceedings. The Secondary Complainer said that the Respondent thought the redundancy had not been handled particularly fairly by the employer. He said that the

Secondary Complainer had a strong or very good case. The Secondary Complainer said that he would not have decided on litigation if he had no chance of success. He recently discussed the case with a solicitor who reassured him that if a solicitor accepts instructions, they are confident they are taking on a case with prospects of success. The Secondary Complainer accepted that any litigation has a degree of risk of an uncertain outcome. He also knew that his former employer was being purchased by a German conglomerate and would be removed from the Register of Companies. He told the Respondent but he did not do anything and now the company no longer exists.

The Secondary Complainer explained that his redundancy "came totally out of the blue". A friend recommended the Respondent. The Respondent thought the Secondary Complainer had a good case and could get a good outcome. The Tribunal asked whether there were ongoing negotiations or if a counter-offer was made. The Secondary Complainer said he was asking the Respondent all the time if he had ever met with the former employer or their representatives but was not given any information.

The Respondent had told the Secondary Complainer he would get legal aid because he was unemployed. The Secondary Complainer said he was never informed that he might have to pay a contribution. He was not surprised that he did not receive a bill from the Respondent, because he thought he was in receipt of legal aid.

The Secondary Complainer said that if the Respondent had told him at the beginning that he was struggling, he would have consulted another solicitor. People recommended solicitors to him, but he thought the Respondent was dealing with the case.

The Secondary Complainer explained that he was 49 when he left his job in international logistics. It had a big effect on his life. He took the first job he could, but it only lasted a short time. He had to take on sales executive roles. He had two transient ischaemic attacks in his early 50s. Part of this was he believed due to the uncertainty surrounding the case. Also, he did not have steady employment and was under a lot of stress. The Secondary Complainer said that his nature has changed, possibly because of the medication he now has to take. He has experienced problems in his relationships and his personality has changed. He said these issues could also be due to "age or life", but he thinks it is partly due to the Respondent's misconduct. He thought he had a good settlement coming. When he realised it was not going to happen, he felt down. He found it difficult to sleep. He did not consult his GP regarding the psychological effects of the Respondent's misconduct.

The Tribunal asked the Secondary Complainer about the likelihood of success of his claim for unfair dismissal. They asked him what he thought would be the result if the court case had completed or come

to a settlement. The Secondary Complainer said that he asked the Respondent if he was looking potentially at a six-figure settlement and the Respondent had agreed. The Secondary Complainer did not know why the sum sued for was only £30,000. That was not done on his instruction. Now, he said he wanted what was originally offered (£44,000) less the redundancy payment (£17,000). This comes to £27,000. However, he was aware that the maximum amount of compensation which the Tribunal could award was £5,000. The Tribunal asked whether the Respondent was going to pursue a court action against the Respondent. The Secondary Complainer advised that he was still to decide. He consulted a no-win-no-fee firm but they were not interested in taking the case on.

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.”

The Tribunal noted its power to award compensation was limited. It could direct a solicitor to 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 the claim for compensation is that of the balance of probabilities.

On 28 September 2018, the Respondent was found guilty by this Tribunal of professional misconduct by allowing his integrity to be called into question, failing to act in the best interests of his client, failing to communicate effectively with his client, failing to advise his client of significant developments in the case, failing to act competently and carrying out the matter adequately and completely within a reasonable time exercising the appropriate level of skill and failing to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other.

The Secondary Complainer claimed that as a result of the misconduct, he had suffered loss, inconvenience and distress. In the Answers to the compensation claim, the Respondent noted that the Secondary Complainer rejected the settlement agreement and a court action was raised at Ayr Sheriff Court. The Respondent notes that the complaint is that the case was not properly progressed. The Respondent indicated that *“this would appear to be, at best, a loss of opportunity claim”* and referred to

Kyle v P & J Stormonth Darling WS 1993 SC 57. He also noted that the Secondary Complainer's case is still sisted but live. The Respondent highlighted the lack of a causal connection between his misconduct and the Secondary Complainer's ill health and suggested that the maximum award of compensation would be inappropriate.

The Tribunal considered the guidance provided by the Court of Session in the case of Iain Robertson v Council of the Law Society of Scotland [2015] CSIH 95. The Court said that in cases like this one, the Tribunal should take account of the fact that any loss sustained by the Secondary Complainer was merely a loss of opportunity to pursue a claim for a larger sum. The Tribunal should consider the prospects of success when approaching its valuation of the appropriate amount of compensation.

The Tribunal found the Secondary Complainer credible. It relied on the previous Tribunal's findings of fact in relation to misconduct. Loss of opportunity to pursue a claim arose as a direct effect of the Respondent failing to act. A court action for unfair dismissal was raised and then sisted. The Respondent did very little thereafter for many years to progress the claim to a conclusion or negotiated settlement before the company was dissolved. But for the professional misconduct, the Secondary Complainer would have pursued his claim. The Secondary Complainer had lost a real chance, which was not merely speculative, to pursue a claim which might have been successful. There was some prospect of success.

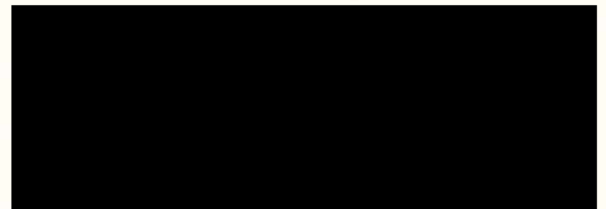
The Tribunal considered how to value the loss of that opportunity. There was little evidence regarding the prospect of success. The Tribunal took into account the Secondary Complainer's evidence that the Respondent had indicated that he had a strong case and was potentially very valuable. The Respondent accepted instructions to act and lodged an initial writ so must have thought there was some chance of success. However, by his own admission, the Respondent was not particularly experienced in this area of law. The Secondary Complainer said that he would not have pursued litigation if he had not thought he had a good chance of winning. The Tribunal took into account that the sum sued for was only £30,000 despite the Secondary Complainer's hopes that he would receive a six-figure settlement. It also had regard to the fact that so far, the Secondary Complainer has been unable to engage a solicitor to sue the Respondent which could suggest that the original case did not have a huge likelihood of success.

Based on that limited information, the Tribunal did not think there was a high likelihood of success. There was a chance of success but this was likely to have been low. If there had been a negotiated settlement, it was likely to have been for less than the sum sued for. The Secondary Complainer was also likely to have had to pay some fees. The Tribunal took as its starting point the £44,000 settlement the Secondary Complainer said he was offered, as this was likely to have been about the sum achieved after negotiation or litigation. The Tribunal deducted £17,000 which represented the redundancy

payment the Secondary Complainer was awarded. This left £27,000 which is slightly less than the sum sued for in the initial writ. The Tribunal assessed the likelihood of success in the claim to be about 10%. Therefore, it assessed the loss of opportunity to pursue the claim to be worth £2,700. This reflects the Tribunal's assessment that there was likely to have been some merit in the original action, but it was by no means bound to succeed.

The Respondent's professional misconduct also caused the Secondary Complainer significant non-quantifiable loss. The Secondary Complainer's health issues were likely to have been caused by several factors, including age, lifestyle and the stress of being made unemployed. However, the Tribunal accepted that the misconduct had also contributed. The misconduct took place over a very long period and caused significant inconvenience. The Respondent failed to communicate effectively with the Secondary Complainer for twelve years and this caused him concern and distress. When the Secondary Complainer realised that he could no longer pursue his claim he was upset, worried and anxious. The Respondent did not take steps to rectify matters. Bringing his claim before the Tribunal and having to explain the situation to the Tribunal created additional inconvenience. It was clear from his demeanour when giving evidence that the whole experience had taken its toll on the Secondary Complainer. In all these circumstances, the appropriate award for non-quantifiable loss was £1,500.

Therefore, in total, the appropriate award of compensation was £4,200. Following submissions from the Secondary Complainer, the Tribunal decided that publicity should be given to the decision although only the Respondent need be named as identifying others, including the Secondary Complainer, may be detrimental to their interests. The Tribunal decided that the Respondent should be liable in the expenses of the Tribunal including the expenses of the Clerk. The Secondary Complainer indicated that he did not wish to claim for any expenses.



Alan McDonald
Vice Chairman