

**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

**DANIEL ANTHONY McGINN, whose last
known home address as intimated to the
Complainers was 68 Sannox Drive, Motherwell
Respondent**

1. On 4 September 2019, Daniel Anthony McGinn, whose last known home address as intimated to the Complainers was 68 Sannox Drive, Motherwell (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Mr A.
3. On 4 September 2019, the Tribunal issued an Interlocutor allowing the Secondary Complainer 28 days from the intimation of the Findings to lodge a written claim for compensation with the Tribunal Office.
4. The Secondary Complainer lodged a written statement of claim. The Tribunal issued an interlocutor on 12 November 2019 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 the Secondary Complainer and the Respondent to adjust. The Tribunal assigned 6 December 2019 as a hearing.
5. Sheriff Officers were instructed to serve a copy of the Interlocutor of 12 November 2019 together with a copy of the Secondary Complainer’s statement of claim at the address held for the Respondent.

6. At the hearing on 6 December 2019, the Respondent was absent. The Tribunal heard evidence from the Clerk regarding service of the Tribunal's Interlocutor which contained the notice of hearing. The Tribunal concluded that it was fair to proceed in the Respondent's absence. The Secondary Complainer gave evidence under oath.

7. The Tribunal found the following facts established:-

7.1 Mr A was the Secondary Complainer in the Complaint against Daniel Anthony McGinn, whose last known home address as intimated to the Complainers was 68 Sannox Drive, Motherwell. The Respondent was found guilty of professional misconduct *in cumulo* in respect that he (a) failed to undertake any work on behalf of the Secondary Complainer in relation to his divorce having received from the Secondary Complainer the sum of £500 in fees; (b) failed to provide the Secondary Complainer with a fee note, invoice or receipt in respect of the sum of £500 paid by him into the Respondent's firm bank account; (c) failed to refund the said sum of £500 to the Secondary Complainer having advised him that he would do so; and failed to advise the Secondary Complainer that he was ceasing to act on his behalf.

7.2 The Secondary Complainer lodged a written statement of claim with the Tribunal claiming in the region of £3,000 for stress and inconvenience caused.

7.3 The Secondary Complainer was directly affected by the Respondent's failure to undertake any work on his behalf and by the failure to refund the fees paid and suffered inconvenience and distress resulting from that misconduct.

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

Edinburgh 6 December 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Daniel Anthony McGinn, whose last known home address as intimated to the Complainers was 68 Sannox Drive, Motherwell 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 consider that it is appropriate to award compensation to the said 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 £1,000 by way of compensation in respect of 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 and his firm but need not identify any other person.

(signed)

Kenneth Paterson

Vice Chair

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 14 JANUARY 2020.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

The hearing set down for 6 December 2019 was set to consider the claim for compensation made by the Secondary Complainer, Mr A. No appearance was made on behalf of the Respondent.

The Tribunal heard evidence from the Clerk that sheriff officers had served a copy of the Tribunal's Interlocutor, containing the Notice of this hearing, at the last known address for the Respondent. The Tribunal was satisfied that the hearing had been intimated to the Respondent in accordance with the Tribunal Rules. Thereafter, the Tribunal required to consider whether it was fair to proceed in the Respondent's absence. The Tribunal had before it all of the information previously before the Tribunal at the hearing on 4 September 2019. It appeared that the Respondent had no intention of participating in these proceedings. The only equitable way forward was to hear the claim for compensation in the absence of the Respondent.

The Secondary Complainer had submitted a written claim for compensation prior to the hearing. He then gave supplemental evidence under oath.

EVIDENCE FOR THE SECONDARY COMPLAINER

The Secondary Complainer described how he and his ex-wife had fallen out. He had identified the Respondent and it seemed that the Respondent had been the cheapest option. He paid the Respondent £500 upfront. Thereafter, the Respondent did nothing to proceed the divorce. The Secondary Complainer began to be "hassled" by his ex-wife. She was complaining that her solicitor was sending correspondence and the Respondent was not replying. She was being charged for more and more correspondence that was not progressing anything. When the Secondary Complainer raised this with the Respondent the Respondent told him lies.

The Secondary Complainer's ex-wife began to believe that the Secondary Complainer was deliberately delaying the divorce and believed that the Secondary Complainer still had feelings for her. This caused his ex-wife's then boyfriend and the Secondary Complainer's then girlfriend also to have doubts.

The Secondary Complainer was not able to afford to instruct a new lawyer whilst the Respondent held on to the fee paid.

The Secondary Complainer was repaid the fee by the Law Society. He himself proceeded with the divorce online, with the advice of a former solicitor. The divorce was concluded only this year.

His ex-wife made a claim to the Child Support Agency. The Secondary Complainer has had to change employment in order to be able to satisfy the CSA claim.

The Secondary Complainer's ex-wife has custody of the children. The Secondary Complainer had required to pay off loans that were in his name. He had been left with the lease for the private rented four bedroomed house.

He had not attended his doctor in relation to the stress suffered. He was wary that this could affect his employment.

At the time he received abusive text messages from his ex-wife's then fiancé. She took the fiancé's side. The Secondary Complainer had tried to explain that it was not his fault that there had been such delay but this was not accepted.

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 to a Secondary Complainer for loss, inconvenience or distress resulting from the misconduct. 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.

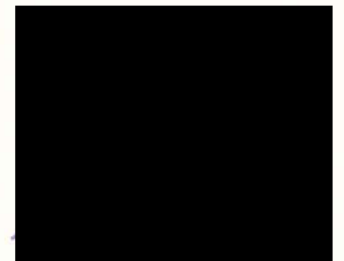
The Tribunal gave careful consideration to the content of the statement of claim and the Secondary Complainer's evidence. The Secondary Complainer had only lodged a claim for inconvenience and distress. The Tribunal was restricted to only having regard to inconvenience and distress directly caused by the misconduct found at the previous hearing.

It was clear that the Secondary Complainer had been inconvenienced. Not only had the Respondent failed to progress the Secondary Complainer's divorce, he had failed to take any steps whatsoever to rectify the situation. The Secondary Complainer had been put in a position where he had to make a complaint for matters to be resolved. Additionally, the Secondary Complainer had been faced with his ex-wife, her then partner and the Secondary Complainer's then girlfriend believing that the delay was his fault and dealing with these issues must have caused distress. From the date of instruction of the Respondent to the repayment of the fee was a period of approximately 16 months.

The Tribunal considered that the inconvenience and distress suffered was significant, causing worry, concern, anxiety and upset. The Respondent had failed to take any steps to rectify matters. In the circumstances, the Tribunal considered that the appropriate award reflecting the inconvenience and distress suffered was one of £1,000, which includes any expenses for attending this hearing.

The Tribunal considered that the expenses of the Tribunal should be met by the Respondent.

With regard to publicity, clearly the matters before the Tribunal involved not just the Secondary Complainer but his children and ex-wife. To identify the Secondary Complainer in these proceedings would be to identify these parties. In the circumstances, the Tribunal considered that the appropriate order was to name only the Respondent.



Kenneth Paterson
Vice Chair