

**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

**DEREK WOOD, 14 McCallum Grove, East
Kilbride, Glasgow**

Respondent

1. On 18 December 2017 Derek Wood, 14 McCallum Grove, East Kilbride, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct in respect that he failed to act in the best interests of his client and he made false, misleading, inaccurate and dishonest statements to his client on a number of occasions.
2. There was a Secondary Complainer in the Complaint, namely MS (hereinafter referred to as “the Secondary Complainer”).
3. On 18 December 2017 the Tribunal allowed the Secondary Complainer 28 days from the intimation of the Findings to lodge a written claim for compensation with the Tribunal Office. A written statement of claim was received on 26 February 2018.
4. On 8 March 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 9 May 2018 as a hearing.
5. At the hearing on 9 May 2018, the Secondary Complainer was present and represented herself with assistance from her husband. The Respondent was neither present nor represented. Submissions were made by the Secondary Complainer with reference to the documents she had lodged with the Tribunal Office. The Tribunal had regard to the letters submitted by the Respondent’s agent, Mr McCann.

6. The Tribunal carefully considered the submissions of the Secondary Complainer, her compensation claim form and supporting documents, and the Respondent's agent's letters.
7. The Tribunal found the following facts established:-
 - 7.1 MS was the Secondary Complainer in the Complaint against Derek Wood, 14 McCallum Grove, East Kilbride, Glasgow. On 18 December 2017, the Tribunal found the Respondent guilty of professional misconduct in respect that (a) he failed to act in the best interests of his client in regard to the raising and pursuit of a claim for medical negligence in that he either failed to raise the appropriate court action or unduly delayed the progress of the claim or court proceedings over the period from March 2008 to January 2015; and (b) he provided his client with false, misleading, inaccurate and dishonest information about the progress of a court case on a number of occasions by informing his client of the purported progress of the court proceedings knowing that no such court proceedings had been instigated or raised on behalf of the said client.
 - 7.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 for loss, injury and distress.
 - 7.3 The Respondent failed to raise the appropriate court action on behalf of the Secondary Complainer between March 2008 and January 2015. As a consequence, the Secondary Complainer lost her opportunity to pursue her dentist for medical negligence. The Respondent provided false, misleading, inaccurate and dishonest information about the progress of said court case. This occurred on a number of occasions. When the Secondary Complainer discovered this, she 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 9 May 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Derek Wood, 14 McCallum Grove, East Kilbride, Glasgow and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer, MS, 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 MS the sum of £5,000 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; Direct 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 but need not identify any other person.

(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 *25 MAY 2013*.

IN THE NAME OF THE TRIBUNAL

A handwritten signature in black ink, appearing to read 'Alan McDonald', written in a cursive style.

Alan McDonald
Vice Chairman

NOTE

The Tribunal carefully considered the submissions of the Secondary Complainer, her compensation claim form and supporting documents, and the Respondent's agent's letters.

SUBMISSIONS BY THE SECONDARY COMPLAINER

The Secondary Complainer confirmed that the SLCC dealt with the service elements of her complaint. The SLCC awarded £800 to compensate her for the Respondent's inadequate professional services.

The Secondary Complainer indicated that her civil case against the Respondent is still under investigation. The medical evidence in her case is complex and her solicitor has instructed another expert report from a neurologist. The civil case is not near the stage of going to court. No writ has been served. Her solicitor has not provided her with a calculation with regard to the potential damages in the civil claim. The Respondent had said to her that damages would be "substantial". However, her current solicitor has indicated that any calculation is dependent on the neurologist's opinion and they could not even give a "ballpark" figure.

The Secondary Complainer's solicitor advised her to complain to the SLCC. His view was that if her civil claim was unsuccessful, at least she would get closure from the legal complaints process. She might receive a small amount of compensation but that was better than nothing. The Secondary Complainer said that her solicitor had advised her that if she received compensation from the SLCC or the SSDT, this would be deducted from any damages awarded by the court.

The Secondary Complainer said she had put total trust in the Respondent. She had liked him. She had built up a nice rapport with him. He was a "lovely guy". She said it was very sad that he had acted in the way in which he did. It was shocking to her to be let down in that manner. She could accept that genuine mistakes happen in every job. However, the Respondent had breached trust which had been built up over several years. She had believed the Respondent when he told her about her case. He had seemed plausible. He always had an answer. She thought perhaps he was a bit inundated with work. However, she did not think that he would have failed to raise the claim and then lie to her about it. For example, the Respondent had told her that the proof had been "hard fought" in court and that counsel was keeping things close to his chest. She suffered a great deal of stress and anxiety as a result of the Respondent's misconduct. Coming to the Tribunal to present her claim was another source of added stress.

The Secondary Complainer said that Mr Rafferty, the Respondent's partner, sent her a very basic letter indicating that his firm could no longer act for her and that she needed to find new lawyers. When she received this news, the Secondary Complainer was "devastated" and "in bits". Her husband had to come back from work to see her. He could not leave her alone that day when he had to return to work and had to get their son to come and sit with her. Her reaction was physical and emotional. She was in tears. She found it difficult to talk. Her husband and son put her to bed. Everything was "rolling around in her head". She could not sleep. Mr Rafferty phoned her the following day and apologised. He undertook to provide all files to the Secondary Complainer's new solicitor.

Despite her distress at receiving Mr Rafferty's letter and telephone call, the Secondary Complainer said that she did not fully realise that she lost her opportunity to pursue the medical negligence case until she saw a solicitor at Harper Macleod. She said it took two hours for her to understand what her new solicitor was telling her. The Respondent told her that the proof hearing had been arranged. The Secondary Complainer had thought the case was going to end soon. When she heard that the court case had not even started, she did not want to face it. She did not want to think about starting all over again and having to tell her whole story to another lawyer. She "did not want to relive the whole sorry story". This was not just for her but also for her family and her good friends who supported her.

The Secondary Complainer said that her health has not been good since the circumstances which led to the original claim. The dental treatment was the cause of her original ill-health. She experiences a variety of medical symptoms as a result. Due to her health condition, she reacts strongly to stress. When she discovered the Respondent's professional misconduct, she was worried she was going back to the point where she might need admitted to hospital. She required physical and emotional support from her husband and son. She did not need any additional medication and did not consult the doctor at the time of discovering the Respondent's professional misconduct as she was already seeing medical professionals at that time. She did lose weight but her weight fluctuates anyway due to the problems she experiences with her jaw. It took her quite a few months to get over the news that the Respondent had failed to raise the court action and had repeatedly lied to her about it. It has had an ongoing effect because she finds it difficult to trust any new professional.

The Secondary Complainer said that she tries to remember that life does go on. She tries to forget about the professional misconduct but feels that the issue always returns to her mind. She feels that she and her husband have "talked it to death". She questions herself. She wonders how she allowed this to happen. It is easy in hindsight to see the things that they could have recognised as warning signs. However, at the time it was not apparent. Everything the Respondent said was plausible.

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.”

On 18 December 2017, the Respondent was found guilty by this Tribunal of professional misconduct by failing to act in the best interests of his client and making false, misleading, inaccurate and dishonest statements to his client on a number of occasions. These conduct issues were separate to the service issues considered by the SLCC, namely failure to communicate effectively with her and his failure to attend meetings.

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.

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 and reliable. She had suffered the loss of opportunity to pursue her medical negligence claim. The Tribunal was of the view in the present case, the loss of opportunity to pursue the medical negligence claim arose as a direct effect of the Respondent failing to raise the appropriate court action and failing to act in the best interests of the Secondary Complainer, his client. But for the professional misconduct, the Secondary Complainer would have been able to pursue her claim for damages, whatever the result of that might be. The Respondent's professional misconduct had also caused her significant inconvenience and distress.

When considering the valuation of the appropriate amount of compensation the Tribunal did not have any evidence before it as to value of the medical negligence claim or the prospects of success. The Tribunal took account of the fact that the Respondent had said that damages were likely to be “substantial”. The eventual value of the medical negligence claim will be dependent upon many factors including the neurologist’s opinion yet to be obtained. An appropriate award of compensation to the Secondary Complainer in respect of her being unable to pursue the medical negligence claim herself, is well in excess of the statutory maximum which the Tribunal can award.

The Secondary Complainer has experienced a great deal of inconvenience as a result of the Respondent’s misconduct. She has had to consult other solicitors and make a claim against the Respondent rather than her dentist. She gave evidence that she has had to attend numerous meetings to try to resolve the situation. She has many files of information at home regarding this case. Bringing her claim before the Tribunal was an additional inconvenience.

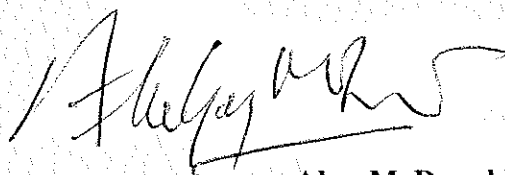
There was an overlap with regard to the anxiety and distress suffered as a result of the original medical complaint, the inadequate professional service and that suffered as a result of the misconduct. The Secondary Complainer has already received an award of £800 compensation from the SLCC. However, it was clear that a significant proportion of it resulted from the Respondent’s conduct alone. The Tribunal accepted the Secondary Complainer’s evidence that she had been devastated by the misconduct and as a result suffered physical symptoms and emotional difficulties. Independent vouching with regard to her mental state was provided in the form of a psychiatric report. The author supports the Secondary Complainer’s assertions that she has experienced feelings of anger, sadness and resentment. It is the psychiatrist’s opinion that the ongoing legal case may prolong these symptoms. The length of time the case is taking to resolve is a direct effect of the Respondent’s professional misconduct.

The inconvenience and distress suffered by the Secondary Complainer had a serious effect over a long period of time. It impacted her wellbeing over a significant period. There was significant inconvenience over a long period of time and on many occasions. The quality of life of the Secondary Complainer and her family was considerably and noticeably disrupted. She was caused significant distress and upset.

The value of the loss of opportunity, inconvenience and distress suffered by the Secondary Complainer is far in excess of the maximum award of compensation available to the Tribunal, which is £5,000. The Tribunal therefore agreed that the Secondary Complainer should be awarded compensation in the sum of £5,000 to represent the loss, inconvenience and distress which arose as a direct result of the Respondent’s professional misconduct.

The Tribunal had regard to letters received from the Respondent's agent, Mr McCann. In those letters the Respondent conceded that the Secondary Complainer's claim against her dentist became time barred after three years. However, it was noted that she would then have a claim available to her against the firm of Rafferty Wood Solicitors. The Tribunal ascertained that no award had yet been made in this regard. The Tribunal did not consider that it could resist the Secondary Complainer's claim for compensation merely because there was a possibility of a separate award of compensation through the master policy or claim for compensation in the civil courts.

The Tribunal made a finding of no expenses due to or by either party and directed that publicity would be given to the decision and that publicity should include the name of the Respondent but need not identify any other person as publication of third party details would be likely to damage their interests.

A handwritten signature in black ink, appearing to read 'Alan McDonald', with a horizontal line underneath the name.

Alan McDonald
Vice Chairman