

**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, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**JANE ELIZABETH STEER, Messrs Allan
McDougall, 3 Coates Crescent, Edinburgh**

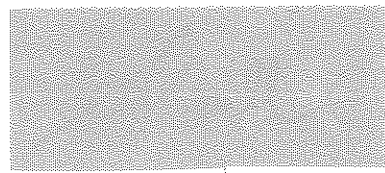
Respondent

1. On 16 August 2016 Jane Elizabeth Steer, Messrs Allan McDougall, 3 Coates Crescent, Edinburgh (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct in respect of her failure to act with trust and personal integrity in connection with the preparation of an affidavit which she purported to notarise on 29 October 2012; submission to the court of an affidavit which contained false or misleading information on 5 November 2012; and subsequent failure on 29 June 2014 to provide a full and candid explanation to the Law Society in connection with the preparation of the affidavit and its sending to the Secondary Complainer.
2. There was a Secondary Complainer in the Complaint, namely Sharon McAllister, 3 Michael Bruce Court, Forestmill, Clackmannanshire (hereinafter referred to as “the Secondary Complainer”).
3. On 16 August 2016 the Tribunal allowed the Secondary Complainer until 6 October 2016 to lodge a written note of claim at the office for the Tribunal. A written statement of claim was received before 6 October 2016. On 24 October 2016 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 January 2017 as a hearing.

4. On 22 December 2016 on the Secondary Complainer's motion and of consent, the hearing fixed for 9 January 2017 was discharged and the Tribunal assigned 11 January 2017 in place thereof.
5. On 11 January 2017 the Secondary Complainer was present and represented herself. The Respondent was present and was represented by Hugh Neilson, Solicitor, Airdrie. There was no appearance on behalf of the Law Society. The Secondary Complainer gave evidence. Submissions were made on behalf of both parties.
6. The Tribunal found the following facts established:-
 - 6.1 Sharon McAllister, 3 Michael Bruce Court, Forestmill, Clackmannanshire was the Secondary Complainer in the Complaint against Jane Elizabeth Steer, Messrs Allan McDougall, 3 Coates Crescent, Edinburgh (the Respondent) which resulted in the Respondent being found guilty of professional misconduct in respect of her failure to act with trust and personal integrity in connection with the preparation of an affidavit which she purported to notarise on 29 October 2012; submission to the court of an affidavit which contained false or misleading information on 5 November 2012; and subsequent failure on 29 June 2014 to provide a full and candid explanation to the Law Society in connection with the preparation of the affidavit and its sending to the Secondary Complainer.
 - 6.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 compensation for non-quantifiable loss for her inconvenience and distress as a result of the professional misconduct.
 - 6.3 The Secondary Complainer was upset and distressed by the result of the Respondent's professional misconduct. The Secondary Complainer believed her credibility and reliability was affected before the court. When explaining the Respondent's conduct with regard to the affidavit, the Secondary Complainer was disbelieved by other solicitors. Rumours circulated about her honesty and her reputation was tarnished. She was embarrassed.
 - 6.4 The Secondary Complainer was directly affected by the misconduct of the Respondent resulting in her experiencing inconvenience and distress.

7. The Tribunal heard submissions from both parties with regard to expenses for the hearing on compensation. Thereafter, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 11 January 2017. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Jane Elizabeth Steer, Messrs Allan McDougall, 3 Coates Crescent, Edinburgh 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 was 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 Sharon McAllister, 3 Michael Bruce Court, Forestmill, Clackmannanshire £700 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 Secondary Complainer to the extent of £50 and 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.



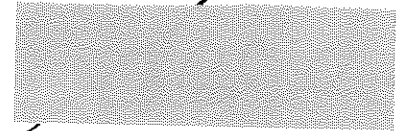
(signed)

Alistair Cockburn

Vice Chairman

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 by recorded delivery service on *20 FEBRUARY 2017.*

IN THE NAME OF THE TRIBUNAL



Alistair Cockburn
Vice Chairman

NOTE

Prior to the hearing on 11 January 2017 the Secondary Complainer lodged with the Tribunal a completed compensation claim form. Answers were lodged on behalf of the Respondent.

At the commencement of the hearing, parties were asked if they wished to raise any preliminary issues. Mr Neilson noted that the parties had attempted to agree a joint minute of admissions but that this had not been possible. Mr Neilson noted that the Respondent had started temporary maternity leave cover employment since the professional misconduct case called.

Mr Neilson sought to lodge additional productions on the morning of the compensation hearing. The first of those productions was an email narrating the terms of the Respondent's current employment. The second was the judgement of Sheriff Tait referred to in the professional misconduct case. The Secondary Complainer objected to the late lodging of these productions on the grounds that there was nothing to have prevented the Respondent lodging them on time, and that as an unrepresented party, she felt ambushed by late lodging on the morning of the compensation hearing. Following some discussion with the Chairman, the Secondary Complainer clarified that her objection was to the late lodging of the second production and she consented to the lodging of the first production. The Tribunal retired to consider whether to allow the productions to be lodged on the morning of the compensation hearing.

The Tribunal of consent allowed the first production to be lodged. The Tribunal refused to allow the second production to be lodged. The Tribunal had some sympathy for the secondary complainer as an ordinary member of the public being presented with this document at the last minute without a lawyer to interpret it for her. Having heard both parties, the Tribunal was also of the view that the Respondent's representative had provided no adequate explanation as to why the judgement should be lodged late, particularly when this might put the Secondary Complainer at a disadvantage.

EVIDENCE FOR THE SECONDARY COMPLAINER

Witness: Sharon McAllister

The Secondary Complainer confirmed that her full name was Sharon Marie McAllister, that she was 41 years of age and that she lived at 3 Michael Bruce Court, Forrestmill, Clackmannanshire. The Secondary Complainer indicated that the only issue the Tribunal could have in mind was the false

execution of the affidavit. At the time the Sheriff was writing the judgement, the affidavit was before her. The Secondary Complainer submitted that great weight is placed on notarised documents and it was clear that the Sheriff believed the affidavit important evidentially. The Secondary Complainer believed that the affidavit affected the Sheriff's view of the Secondary Complainer's credibility and reliability. The notarised document conflicted with the Secondary Complainer's evidence. On learning of the error which related to the date and place of execution of the affidavit the Secondary Complainer believes that the Respondent did not try to resolve the issue quickly enough.

The Secondary Complainer spoke about how the professional misconduct had affected her. It had undermined her belief in the justice system. It had been a big relief for her to find out that the Respondent had been found guilty of professional misconduct by the Tribunal because before that point, people did not believe what had happened to her because a solicitors' word is held in such high esteem. She had been the subject of rumour and speculation in her community. The Secondary Complainer asked the Tribunal to consider the Respondent's email of 6 November 2013 which was contained within the Secondary Complainer's first inventory of productions. In this email the Respondent acknowledged that the Secondary Complainer had been very upset. The Secondary Complainer said that she had been placed under extreme pressure by the Respondent's misconduct.

During cross examination the witness conceded that Mr Neilson had appeared at Perth Sheriff Court on 15 November 2013 and explained to the Sheriff that the issue with the affidavit was the Respondent's error alone. During cross-examination the Tribunal allowed Mr Neilson to put limited parts of Sheriff Tait's judgement to the witness for the purpose of challenging her credibility by testing evidence she had given during the compensation hearing.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer explained that she was seeking the maximum amount of compensation. In response to a question from the Chairman, the Secondary Complainer submitted that in her view the result of the contempt case might have been different if the affidavit had been presented as a simple statement, or if it had been sworn before and signed by a Commissioner for Oaths in England.

SUBMISSIONS FOR THE RESPONDENT

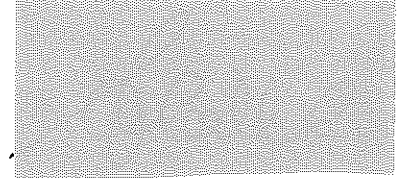
Mr Neilson submitted that it would be very difficult for the Tribunal to know if compensation were due, and if so, how much. He conceded that the Respondent had done something she should not have done. However, a compensation hearing was not about punishment. It was about the Secondary Complainer's suffering and loss, if any, and whether this was as a result of the professional misconduct. It was Mr Neilson's submission that the Secondary Complainer had not told the Tribunal very much about the extent to which she had suffered as a result of the affidavit. He could see that she was badly upset but it was not known to what extent that was due to the affidavit. Mr Neilson said it was probable that the Secondary Complainer was upset but that all her misfortunes could not be laid at the Respondent's door. The Respondent accepted that she contributed to the Secondary Complainer's distress but the extent of the contribution was difficult to establish. The Chairman clarified that by the time the sentence was imposed, the Sheriff was aware of the irregularity with the affidavit.

DECISION

The Tribunal noted that the standard of proof in connection with a claim for compensation is that of the balance of probabilities. The Tribunal carefully reflected on the evidence from the Secondary Complainer and the submissions made by both parties. The Tribunal considered to what extent the Secondary Complainer's inconvenience and distress flowed from the Sheriff's reliance on the affidavit. The Tribunal were satisfied that the Secondary Complainer believed that it was a significant contributory factor in the Sheriff's assessment of her. However, the Tribunal also had regard to the section of the Sheriff's judgement quoted at paragraph 8.12 of the Tribunal's findings in the misconduct case, where the Sheriff refers to the affidavit as only one of several issues going against the Secondary Complainer's credibility and reliability. The Tribunal also noted that within one month the situation was explained to the Sheriff and the Sheriff was aware of the misconduct before sentencing the Secondary Complainer for contempt of court.

The Tribunal considered that the consequences of the misconduct on the Secondary Complainer were modest given the evidence that was provided in order for the Tribunal to base its decision. It was limited in terms of effect and duration but had caused some worry and concern. The Tribunal decided that the appropriate figure of compensation was £700. This was appropriate given the Secondary Complainer's continuing perception that her contact case was irreparably lost as a consequence of the Sheriff's belief that the affidavit was correctly executed and there was an inconsistency between the affidavit and the evidence given by her. The Tribunal accepted that she was distressed when rumours about the case circulated in her locality.

Following submissions on publicity and expenses, the Tribunal was of the view that publicity should be given to the decision and that the Respondent should be liable to the Secondary Complainer in expenses to the extent of £50 and also the expenses of the Tribunal, including the expenses of the Clerk.



Alistair Cockburn

Vice Chairman