

**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

**HUGH SCOTT NEILSON, Glendevon, 13
Grahamshill Street, Airdrie, Lanarkshire**

Respondent

1. On 21 November 2018, Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A (hereinafter referred to as “the Secondary Complainer”).
3. On 21 November 2018, 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 statement of claim was received.
4. On 28 February 2019 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 Complainers and the Respondent to adjust. The Tribunal assigned 16 May 2019 as a hearing.
5. On 7 March 2019, the Tribunal issued an interlocutor adjourning the hearing previously assigned for 16 May 2019 and assigning 27 May 2019 as a hearing.

6. At the hearing on 27 May 2019, the Secondary Complainer was not present. The Respondent was not present but was represented by Ronald Conway, Solicitor, Glasgow. It was ascertained that Mr Conway had written to the Secondary Complainer at a different address to that contained on his compensation claim form, making an offer of compensation. On the basis that an offer had been made but potentially not received, the Tribunal adjourned the compensation hearing and fixed another compensation hearing on 9 September 2019 at 10am.
7. On 26 June 2019, the Tribunal issued an interlocutor assigning 9 September 2019 as a hearing.
8. At the compensation hearing on 9 September 2019, the Secondary Complainer was present. The Respondent was not present but was represented by Ronald Conway, Solicitor, Glasgow. The Secondary Complainer gave evidence on oath. The Tribunal carefully considered the submissions of both parties.
9. The Tribunal found the following facts established:-
 - 9.1 Mr A was the Secondary Complainer in the Complaint against Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie (the Respondent). On 21 November 2018, the Tribunal found the Respondent guilty of professional misconduct. He repeatedly misled his client thereby acting contrary to the common law principle of honesty, truthfulness and integrity and allowed his personal and professional integrity to be called into question. He also failed to respond to correspondence and statutory notices from the Law Society.
 - 9.2 Mr A instructed the Respondent to act on his behalf in connection with an insurance claim he was pursuing following a fire at heritable premises which occurred on 24 January 2009. The Respondent agreed to act on behalf of Mr A. Mr A was disappointed at the manner in which the Respondent acted on his behalf and he appointed another solicitor to represent him. A review of the file maintained by that solicitor revealed at the outset of the relationship between Mr A and the Respondent, the Respondent intimated correspondence to a firm of solicitors acting on behalf of the insurers Hiscox. It was alleged by the insurers after forensic investigation that the fire at the property had been started deliberately. At that time Mr. A was bankrupt and a trustee in sequestration had been appointed. A firm of solicitors was appointed to act on behalf of the insurers. It wrote a number of items

of correspondence to the Respondent requesting clarification of certain factual events both prior to and on the night of the fire. On 26 August 2009, Mr A was exasperated and e-mailed the Respondent advising that if Hiscox did not co-operate then court action should be threatened. In particular he concluded the e-mail with a request that a Writ be served upon the insurers as he felt this was the only way they were going to take any notice. Thereafter the file is silent as to any progress being advanced by the Respondent on behalf of Mr A. There is an e-mail from solicitors acting on behalf of the insurers dated 12 February 2010 to the Respondent advising that they had not heard from him since 18 June 2009. No reply was received from the Respondent. On 18 May 2010 the solicitors for the insurers sent a copy of their letter of 18 June 2009 to the Respondent. Having been advised by Mr A to raise a court action the Respondent did not accept these instructions. In particular during the currency of their relationship, Mr A requested that the Respondent raise a court action and enquired about progress on a number of occasions being 26 August 2009, 23 September 2010, 4 March 2011, 9 May 2011, 17 November 2011, 9 December 2011, 24 January 2012, 15 February 2012.

- 9.3 The Respondent had some contact with the representatives from Hiscox and with IMG, but he failed to prosecute any claim. Further having regard to the communications with Mr. A as above, it was clear that Mr. A was under the misapprehension that proceedings had been raised, and the respondent repeatedly failed to disabuse him of this misapprehension.
- 9.4 Having received a complaint at the instance of Mr A, the Complainers wrote to the Respondent at his home address seeking a reply. No reply was received as a consequence of which Formal Statutory Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were intimated by recorded delivery and first class post to the Respondent on 10 December 2014. No reply was received by the Respondent. Examination of the track and trace system revealed that a letter was signed for on 15 December 2014.
- 9.5 The Secondary Complainer lodged a written statement of claim seeking £5,000 in relation to financial loss, inconvenience and distress.

10. The Tribunal heard submissions from both parties with regard to the expenses and publicity. Thereafter, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 9 September 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie 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 Mr A the sum of £2,500 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; Finds no expenses due to or by any party; and Directs 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 Chair

11. 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 23 OCTOBER 2019 .

IN THE NAME OF THE TRIBUNAL



Alan McDonald

Alan McDonald
Vice Chair

NOTE

At the compensation hearing on 9 September 2019, the Tribunal had before it the findings in the professional misconduct case against the Respondent, the Compensation Claim Form lodged by the Secondary Complainer, Answers lodged on behalf of the Respondent and three Inventories of Productions for the Respondent.

Mr Conway noted that the Respondent had made an offer of compensation to the Secondary Complainer but this had been rejected.

EVIDENCE OF MR A

Mr A gave evidence on oath. He explained that in 2009 there was a fire at his house. He contacted the Respondent for assistance and met with him. Over the next four years he had two or three meetings a week with the Respondent. Over 700 emails passed between them. On two occasions the Respondent told him that the insurer was going to settle. The Secondary Complainer travelled to Glasgow twice for meetings which the Respondent had said were due to take place with the insurers' representatives, but which were cancelled at short notice. Eventually the Secondary Complainer's wife contacted the insurers' agents and was informed that the Respondent had only sent them two letters. No meetings had taken place. When the Secondary Complainer challenged the Respondent, he said that the other side were lying. All this occurred at a very difficult time for the Secondary Complainer. As well as the house fire, he was made bankrupt. Eventually he contacted the Respondent's firm and arranged a meeting with other solicitors from the firm. He was told that the Respondent had not progressed his case. At that time, the Secondary Complainer still wanted to sort things out with the Respondent. When he met with him, the Respondent admitted that he had lied to the Secondary Complainer for four years. The Secondary Complainer explained that he suffered from depression following this incident. He had been prescribed anti-depressants. He lost his friendship with the Respondent. He trusted him completely.

During cross-examination, the Secondary Complainer confirmed that he was sequestered on 8 October 2008 and that he was released from the trustee on 13 November 2013. The fire at his house was on 24 January 2009. At that time he was an undischarged bankrupt. Mr Conway asked the Secondary Complainer if he was aware that any fruits of the claim against Hiscox would vest in the Trustee. The Secondary Complainer said that the Respondent had authority from the Trustee to pursue the action. He accepted that the insurer refused to pay out but said that this was due to the Respondent's failure to send them evidence. The Secondary Complainer agreed that he did not pay any fee in respect of this matter to the Respondent's firm. He explained that he was not well during the period and was unable to chase the Respondent for answers and the Respondent lied to him repeatedly. The Secondary Complainer

rejected Mr Conway's suggestion that communication with the Respondent stopped in February 2012 and that he was aware that proceedings had not been raised. The Secondary Complainer was having meetings with the Respondent. He consulted lawyers about other matters but not about this claim. He accepted that by 2013 he knew that "the claim was gone". The Secondary Complainer had to write off his losses. Mr Conway suggested that the Secondary Complainer would have had five years from 24 January 2009 to raise proceedings for breach of contract. The Secondary Complainer said that the insurer had sent back what he had paid in premiums. Once it was paid back the contract was null and void. The Secondary Complainer considered the matter to be time barred. Mr Conway challenged the Secondary Complainer regarding the lack of documentation to support his claim. The Secondary Complainer said that lots of documents, including receipts were destroyed in the house fire.

In answer to questions from the panel, the Secondary Complainer confirmed that he had not claimed against the Respondent's professional indemnity insurer, made a claim to the SLCC or raised any court proceedings against the Respondent. The Secondary Complainer said that the whole loss is not about money. His childhood home was burned down and he was unable to recover any money due to the Respondent's failures.

SUBMISSIONS BY THE SECONDARY COMPLAINER

The Secondary Complainer posed the question, "If you can't trust your lawyer, who can you trust?" He explained that he had a good friendship with the Respondent. They socialised together with their wives. The Secondary Complainer did not want to believe that the Respondent had betrayed him. The Respondent made a fool of him. He lied to the Secondary Complainer's former wife and children and put them in danger. The Secondary Complainer said he suffered from depression as a result of the Respondent's conduct. He had trouble sleeping. He was worried about having to come to the Tribunal. He did not know whether he can trust lawyers again. He submitted that "If the devil comes back, he's coming back as a lawyer."

SUBMISSIONS ON BEHALF OF THE RESPONDENT

Mr Conway said there was no suggestion that the Secondary Complainer had started the fire at his own home. The question for the Tribunal was the connection between the finding of misconduct and the Secondary Complainer's actual loss. He submitted that there was no financial loss. The Secondary Complainer's reasons in this regard were unsatisfactory. He provided no evidence in support of his claim. He failed to raise proceedings against the insurer. The claim would not have prescribed until January 2014. Whatever the Respondent's failings, this cannot be laid at his door. Mr Conway accepted

that the Secondary Complainer did suffer some inconvenience and distress as a result of the misconduct. However, there must be a limit to which the Secondary Complainer's difficulties can be said to be the Respondent's responsibility. He accepted that the Secondary Complainer thinks these were caused by the Respondent but there is no objective evidence to support that, for example, a medical report.

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.”

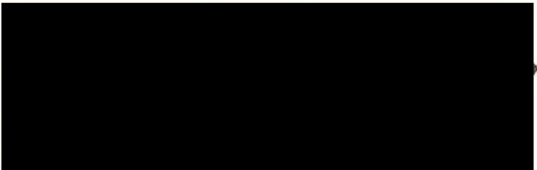
The Tribunal noted its power to award compensation was limited. It could direct a solicitor to pay compensation of such amount which did not exceed £5,000 for loss, inconvenience or distress. A direct effect was one which would not have happened but for the professional misconduct. The loss, inconvenience or distress must result from the misconduct. The standard of proof in connection with a claim for compensation is that of the balance of probabilities.

On 21 November 2018, the Respondent was found guilty by this Tribunal of professional misconduct. The Secondary Complainer believed that an action had been raised and did not become aware that this had not been done for some time. However, when he became aware of the true position, he still had time to raise a claim. The Secondary Complainer's claim for financial loss was therefore bound to fail. Even if this was not the case, the Secondary Complainer provided no evidence regarding the value of the property or the likelihood of success of any action against the insurer.

The Tribunal accepted that Secondary Complainer's evidence regarding his mental health difficulties, although it was difficult to assess the extent of these without a medical report. The Secondary Complainer was compelling when describing his depression. It was clear that there were a number of issues ongoing at that time in his life which were all likely to have contributed to his ill health. However, the Respondent's conduct was likely to have been a significant factor and an award of compensation was appropriate. The effect of the misconduct was serious. It had taken place during a period which lasted over two years. It affected the Secondary Complainer's well-being. It caused significant inconvenience on many occasions. The Secondary Complainer's quality of life was noticeably disrupted. The Respondent failed to take reasonable steps to rectify matters. The Secondary Complainer

expressed that he had difficulty trusting solicitors now. He had also been inconvenienced by making the complaint. In all these circumstances, the Tribunal considered that the appropriate award of compensation was £2,500.

The Tribunal invited submissions on expenses and publicity. The Secondary Complainer did not seek expenses against the Respondent. The Secondary Complainer requested that he should not be identified in the findings. Mr Conway accepted that the statutory position meant that the Respondent had to be named. The Tribunal found no expenses due to or by either party. Publicity will be given to this decision and 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.



Alan McDonald
Vice Chair