

**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**

**ROY WILLIAM ANDREW MILLER, formerly  
trading under the firm name of Miller & Co.,  
latterly as a sole practitioner at 6 St Ninian  
Terrace, Crown Street, Glasgow**

**Respondent**

1. On 18 May 2018, Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Ms A.
3. On 18 May 2018, 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. The Secondary Complainer also provided a letter from her GP dated 19 June 2018.
4. On 30 July 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 the Secondary Complainer and the Respondent to adjust. The Tribunal assigned 10 September 2018 as a hearing.
5. At the hearing on 10 September 2018, neither the Respondent nor the Secondary Complainer were present or represented. The Tribunal heard evidence on oath from the Clerk with regard to service of the Tribunal’s Interlocutor which contained Notice of the Hearing on both the Respondent and the Secondary Complainer. The Secondary

Complainer had invited the Tribunal to deal with the compensation claim on the basis of the material she had submitted as she was unable to attend the Tribunal hearing. The Tribunal was satisfied that the hearing had been intimated to both parties and that it was fair to proceed in the absence of the parties.

6. The Tribunal carefully considered the evidence and the Secondary Complainer's compensation claim form and the letter from her GP.

7. The Tribunal found the following facts established:-

7.1 Ms A was the Secondary Complainer in the Complaint against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow. On 18 May 2018, the Tribunal found the Respondent guilty of professional misconduct individually and *in cumulo* in respect that (a) he failed to respond to the SLCC's correspondence including a formal statutory notice, and (b) he failed to respond to the Complainers' correspondence including formal statutory notices relating to the Secondary Complainer and its own complaint.

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

7.3 The Respondent had a duty to cooperate with the SLCC and the Law Society of Scotland and provide full and accurate explanations in respect of any matter that is the subject of a complaint. He failed to do so. The Respondent's lack of cooperation frustrated the complaints process and pursuing a complaint through the SLCC and the Law Society of Scotland caused inconvenience and distress to the Secondary Complainer.

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

Edinburgh 10 September 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner at 6 St Ninian Terrace, Crown Street, Glasgow and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer, Ms 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, Ms A, the sum of £500 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.

**(signed)**

**Eric Lumsden  
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 3 OCTOBER 2018.

**IN THE NAME OF THE TRIBUNAL**



**Eric Lumsden**  
**Vice Chairman**

**NOTE**

At the hearing on 10 September 2018, the Tribunal heard evidence on oath from the Clerk regarding service of the Interlocutor which contained Notice of the Hearing. The Tribunal noted that the papers had been served by recorded delivery on the Respondent and the Secondary Complainer. The Secondary Complainer had provided a written statement of claim and a letter from her GP. The Secondary Complainer had intimated to the Tribunal Office that she did not intend to attend the compensation hearing and was content for the matter to be dealt with in her absence on the basis of the documents provided.

The Tribunal considered whether it was fair to proceed in the absence of the parties. There would be a disadvantage to the Respondent in proceeding in his absence. However, he was given ample notice and there was no reason to think he would attend on any other date. The Respondent had also failed to attend the professional misconduct hearing. It was in the public interest and in the interests of the Secondary Complainer that the case proceeded on the date set down. The balance lay in favour of proceeding in the Respondent's absence.

**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 May 2018, the Respondent was found guilty of professional misconduct. He had failed to respond to the SLCC's correspondence including formal statutory notice. He had also failed to respond to the Law Society's correspondence including formal statutory notices relating to the Secondary Complainer and its own complaint.

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 Secondary Complainer indicated that she wished to claim compensation of £5,000. The Tribunal had regard to her compensation claim form and the stress and inconvenience she said she had suffered. However, the Tribunal considered that the GP's letter was of limited assistance when considering compensation. The letter noted that the Secondary Complainer was treated for anxiety–depression symptoms from May 2007 and for a period of at least four years subsequently. These symptoms could not therefore be attributed to the Respondent's professional misconduct which took place in 2016 and 2017. The Tribunal noted that the findings of professional misconduct were related to the Respondent's failures to cooperate with regulatory bodies. There was no finding of professional misconduct in relation to the subject matter of the Secondary Complainer's original complaint. It could therefore have no regard to the circumstances which led to the complaint. However, the Tribunal recognised that pursuing a complaint through the SLCC and the Law Society of Scotland causes Secondary Complainers inconvenience and distress. The Respondent's lack of cooperation frustrated and delayed the complaints process. The Tribunal was of the view that this had a modest effect on the Secondary Complainer. The effect had been limited and would cause minor inconvenience. It would have caused the Secondary Complainer some worry and concern. The Respondent did not rectify matters. Ms A had to pursue her complaint through the SLCC and Law Society which would have taken time and effort. Therefore, the Tribunal determined that the appropriate award in these circumstances was £500.

Neither party made any submissions with regard to expenses or publicity. The Tribunal decided the Respondent should be liable in the expenses of the Tribunal including the expenses of the Clerk. Publicity will be given to the decision and that publicity will include the name of the Respondent. The Secondary Complainer need not be identified as publication of her personal data is likely to be detrimental to her interests.



**Eric Lumsden  
Vice Chairman**