

**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

**STEVEN ARCHIBALD MURRAY, The
MMFW Partnership, 917 Shettleston Road,
Glasgow**

Respondent

1. On 1 February 2021, Steven Archibald Murray, The MMFW Partnership, 917 Shettleston Road, 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 1 February 2021, 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 claim for compensation was lodged. No Answers were lodged by the Respondent. The Tribunal set down a virtual procedural hearing for 22 June 2021. Notice of the virtual procedural hearing was served on the parties.
4. At the virtual procedural hearing on 22 June 2021, the Secondary Complainer was not present but was represented by Simran Panesar-Saggu, Solicitor, Glasgow. The Respondent was present and represented himself. The Tribunal set down a virtual compensation hearing for 14 September 2021. Parties indicated that they did not intend to call any witnesses at the hearing which would proceed on the basis of submissions.
5. At the virtual compensation hearing on 14 September 2021, the Secondary Complainer was present and represented herself. The Respondent was present and represented himself. On

the unopposed motion of the Secondary Complainer, the Tribunal received additional documents submitted by the Secondary Complainer after the time limit for lodging. Parties made submissions.

6. The Tribunal found the following facts established:-

- 6.1 Ms A was the Secondary Complainer in the Complaint against Steven Archibald Murray, The MMFW Partnership, 917 Shettleston Road, Glasgow.
- 6.2 On 1 February 2021, the Tribunal found the Respondent guilty of professional misconduct *singly* in respect that (a) In the period between 1 January 2014 and 17 July 2015 he unduly delayed in obtaining confirmation in the estate of the late RW; (b) In the period between 8 December 2015 and 12 July 2016 he unduly delayed and/or failed to timeously implement a mandate sent by the Secondary Complainer's new agents seeking all papers and documents in relation to both the Trust and the Executry despite repeated requests from the Secondary Complainer's new agents; and (c) He failed to comply with his responsibilities as client relations manager of the firm by failing to send a response to the Secondary Complainer in relation to her letter of complaint dated 10 February 2017 and *in cumulo* in respect that (a) In the period between 1 January 2014 and 8 December 2015 he failed to exercise the appropriate level of skill required to deal with the administration of the said estate in that he incorrectly advised the Secondary Complainer that the late RW's share of the Trust capital should be excluded from the application for confirmation and thereafter submitted an application for confirmation excluding said capital; whereas a capital sum of approximately £90,000 should have been included thus bringing the whole value of the estate above the threshold for inheritance tax purposes; and (b) In the period between 1 January 2014 and 8 December 2015 he failed to exercise the appropriate level of skill required to deal with the administration of the said estate in that he incorrectly paid the late RW's share of the income from the Trust to the Secondary Complainer's aunt, whereas said share of the Trust income should have been paid to the late RW's children.
- 6.3 Ms A lodged a written statement of claim seeking £3,000 in relation to financial loss. She did not make a claim in relation to inconvenience and distress.

6.4 Ms A was directly affected by the Respondent's misconduct. She suffered financial loss because of his actions.

6.5 In January 2021, the Respondent agreed to pay £12,000 to the Secondary Complainer in full and final settlement of all claims against him but not including any claims arising from or any award made in respect of or in connection with the present Complaint.

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

By Video Conference, 14 September 2021. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Steven Archibald Murray, The MMFW Partnership, 917 Shettleston Road, Glasgow ("the Respondent") and having previously determined that the Respondent was guilty of professional misconduct: Having considered whether it was appropriate to award compensation to the Secondary Complainer, Ms A; Make no award of compensation; Make no finding of 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)

Kenneth Paterson

Vice Chair

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 and the Secondary Complainer by recorded delivery service on *6 October 2021* .

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chair

NOTE

At the virtual compensation hearing on 14 September 2021, the Tribunal had before it a copy of its decision in the professional misconduct case against the Respondent; the Secondary Complainer's compensation claim form; the minute of agreement between the Secondary Complainer and the Respondent; and three fee notes from Turcan Connell dated 24 June 2016, 23 November 2016 and 14 March 2017.

According to her written claim for compensation, the Secondary Complainer sought £3,000 for financial loss arising from the Respondent's professional misconduct. She noted that £7,829.18 had been overpaid to one of the trust's beneficiaries. The Secondary Complainer had to pay £16,000 to Turcan Connell to have the situation resolved. Her view was that payment of these fees ought to be split evenly between the Respondent and his former partner. She did not make any claim for inconvenience or distress. She submitted that the total amount of compensation due was £15,829.18 (which was the sum of £7,829.18 and £8,000). She had already received £12,000 from the Respondent. She therefore claimed £3,000.

SECONDARY COMPLAINER'S SUBMISSIONS

The Tribunal told parties that it had considered the documents before it and the Secondary Complainer was asked if she had anything to add to those by way of oral submission. She noted that her claim was originally for £38,132.93. This was the amount she said she was "out of pocket". She had made some judgements about the amount for which the Respondent was responsible. She relied on the compensation claim form which was lodged and had been seen by the Respondent.

RESPONDENT'S SUBMISSIONS

The Respondent noted that the sum of £7829.18 had been overpaid from the period when the Secondary Complainer's mother died (12 October 2012). He drew the Tribunal's attention to its findings in the misconduct case at paragraph 6.5 where it was noted that from 1998, the trust was administered by another partner in the firm. The Respondent did not carry out any work on it until 1 January 2014.

The Respondent disagreed that fees of £16,000 should be split equally between himself and his partner. He invited the Tribunal to examine the narrative on the fee notes. There was reference, for example, to Turcan Connell drafting and adjusting tax papers and preparing the schedule of assets from 2008 to 2015. The fee notes refer to tax returns from 2009, 2010, 2012 and 2013. The Respondent reminded the

Tribunal that he was not responsible for the trust until after 1 January 2014. For much of this period, the trust was administered by the Respondent's partner.

In all the circumstances, the Respondent submitted that the appropriate division of fees was not one half as for most of the relevant years, the Respondent's partner was responsible for the file. In addition, he had already paid £12,000 to the Secondary Complainer. This was the appropriate total sum of compensation for quantifiable loss due by the Respondent.

ADDITIONAL SUBMISSIONS FOR PARTIES

The Secondary Complainer noted that the Respondent's partner had said at his professional misconduct hearing that the Respondent was responsible for tax returns. There was some doubt about who did what. However, the overpayment was raised with the firm several times, and specifically with the Respondent.

The Respondent said he was not aware of any submissions made at his former's partner's hearing. He referred the Tribunal to its findings in his own case. The Tribunal had found that the trust was administered by his partner until 1 January 2014.

In answer to a question from the Tribunal, the Respondent accepted that Turcan Connell had carried out a great deal of restorative work. He noted that he located the deed box for them. Most of the missing paperwork was from 2005 to 2013. The work done by Turcan Connell mainly related to the time when his former partner was dealing with the trust. The split should not be equal. He had already paid £12,000 and an element of this was to cover fees. He suggested that he should only be liable for 25% of the fees.

DECISION

The Tribunal carefully considered the papers before it and the parties' submissions. According to Section 53(2)(bb) of the Solicitors (Scotland) Act 1980, the Tribunal may:-

"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 considered that 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 has a discretion to award compensation and is not obliged to do so.

The minute of agreement between the Secondary Complainer and the Respondent did not exclude the Secondary Complainer seeking additional compensation through the Tribunal process. Although the Respondent had paid the Secondary Complainer £12,000, it would be competent for the Tribunal to make a further award if appropriate in the circumstances.

The Tribunal carefully considered the findings of professional misconduct. The Tribunal found the Respondent guilty of Professional Misconduct in that he had unduly delayed in obtaining confirmation from 1 January 2014 to 17 July 2015. He had unduly delayed in implementing a mandate from 8 December 2015 to 12 July 2016. He had not responded to a complaint letter of 10 February 2017. He had also failed to exercise the appropriate level of skill in dealing with the estate between 1 January 2014 and 8 December 2015. He had provided incorrect advice and had incorrectly overpaid money to a beneficiary. The misconduct findings therefore referred to various aspects of professional misconduct occurring between 1 January 2014 and 8 December 2015.

The Tribunal was satisfied that the Secondary Complainer had been directly affected by the firm's handling of the trust, and in particular, the Respondent's actions between 1 January 2014 and 8 December 2015. Rectification of the problems had been expensive and had taken some time. The Secondary Complainer had suffered financial loss but had received £12,000 from the Respondent.

The Tribunal examined the fee notes from Turcan Connell. The fee notes referred to rectification work for periods outwith that between 1 January 2014 and 8 December 2015. Without a detailed time and line account, or evidence from the solicitor at Turcan Connell, it was impossible for the Tribunal to ascertain what proportion of fees arose as a result of the Respondent's professional misconduct. The Secondary Complainer suggested that the Respondent should be responsible for 50% of the fees. The Respondent's said he should only be responsible for 25% of the fees and that this portion was covered by the payment he had already made. There was insufficient evidence available on the balance of probabilities to award any additional sum to the Secondary Complainer as the fee notes were not detailed enough to support an award beyond that which had already been negotiated between the parties. Therefore, in these circumstances, the Tribunal declined to make any award of compensation.

The Tribunal invited submissions on expenses and publicity. The Tribunal decided it was appropriate in the circumstances to make no award of expenses due to or by either party. Publicity will be given to this decision. The Respondent will be named. The Secondary Complainer will not be identified as these

findings and the misconduct decision contain personal and sensitive details publication of which might be detrimental to her interests.



Keneth Paterson

Vice Chair