

**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

**WILLIAM LAWSON CRIGGIE, formerly at
Carlton Building, 63 Carlton Place, Glasgow
and now at 137 (2nd Floor) Sauchiehall Street,
Glasgow**

Respondent

1. On 5 August 2020, William Lawson Criggie, formerly at Carlton Building, 63 Carlton Place, Glasgow and now at 137 (2nd Floor) Sauchiehall Street, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Frank Galbraith (hereinafter referred to as “the Secondary Complainer”).
3. On 5 August 2020, 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. The Tribunal allowed the statement of claim to be received. No Answers were received from the Respondent. The Tribunal assigned a virtual procedural hearing to take place on 4 December 2020.
5. At the virtual procedural hearing on 4 December 2020, the Secondary Complainer was present and represented himself. The Respondent was present and represented himself. The Tribunal fixed a virtual hearing on compensation to take place on 9 February 2021.

6. At the virtual hearing on compensation on 9 February 2021, the Secondary Complainer was present and represented himself. The Respondent was present and represented himself.
7. The Tribunal found the following facts established:-
 - 7.1 Frank Galbraith was the Secondary Complainer (“FG”) in the Complaint against William Lawson Criggie, formerly at Carlton Building, 63 Carlton Place, Glasgow and now at 137 (2nd Floor) Sauchiehall Street, Glasgow (“the Respondent”). On 5 August 2020 the Tribunal found the Respondent guilty of professional misconduct. The Respondent in his capacity as client relations manager and complaints partner:-
 - i. Failed to act in the best interests of the Secondary Complainer, in that having undertaken at a mediation meeting on 22 April 2015, a further meeting on 29 April 2015, and in subsequent email correspondence, to raise an action in the Court of Session to seek reduction of an interdict that had been erroneously granted, failed or delayed unduly in doing so;
 - ii. Failed to act on the instructions of the Secondary Complainer; and
 - iii. Failed to keep the Secondary Complainer updated as to the progress with the action of reduction of the said interdict in the Court of Session, and that in breach of his duties in terms of Rules B1.9.1 and B1.9.2 of the Law Society of Scotland Practice Rules 2011.
 - 7.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 for loss, inconvenience and distress arising as a result of the Respondent’s professional misconduct.
 - 7.3 The Secondary Complainer was directly affected by the Respondent’s professional misconduct and experienced inconvenience and distress as a result.
8. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 9 February 2021. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against William Lawson Criggie, formerly at Carlton Building, 63 Carlton Place, Glasgow and now at 137 (2nd Floor) Sauchiehall Street, Glasgow and having previously determined that the

Respondent was guilty of professional misconduct; Find that the Secondary Complainer, Frank Galbraith, 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 the Secondary Complainer the sum of £1,000 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; 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 and the Secondary Complainer.

(signed)

Colin Bell
Vice Chair

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 MARCH 2021**.

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chair

NOTE

At the virtual compensation hearing on 9 February 2021, the Tribunal had before it the Findings in the misconduct case, the compensation claim form from the Secondary Complainer and the supporting documents he had submitted.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer's claim was for loss of earnings as well as inconvenience and distress. In answer to a question from the Secondary Complainer, the Chair clarified that the maximum award the Tribunal could make was £5,000. With reference to the documents he had submitted, the Secondary Complainer set out the background to the complaint. He explained how the interdict came to be granted and how he attempted to resolve the situation. He gave details about his Employment Tribunal case. He described his dealings with the Respondent and the Scottish Legal Complaints Commission ("SLCC").

On 22 April 2015, the Respondent attended a mediation meeting with the Secondary Complainer in his capacity as client relations partner. He undertook that his firm would have the interdict reduced. He did not do this. The Secondary Complainer had to go back to the SLCC and ask them to investigate. The Secondary Complainer emailed and telephoned the Respondent's firm on numerous occasions regarding progress. He was a party to Employment Tribunal proceedings and required a resolution to the interdict issue. He also needed information from the Respondent's firm. This was not forthcoming. The SLCC upheld the Secondary Complainer's service complaint. The Secondary Complainer was awarded £5,000 compensation and the firm was directed to pay for another solicitor to deal with reduction of the interdict. The compensation was eventually paid but this took almost two years and the involvement of the SLCC, their solicitors and sheriff officers. By the time money was paid to cover the fees of his new solicitor, the matter could no longer be pursued as it was out of time. The Secondary Complainer raised another complaint with the SLCC. He repeatedly asked for files and information from the firm which were not provided. He described the experience as a "total nightmare of a time".

In respect of actual loss, the Secondary Complainer submitted he was unable to work for a year as a result of the misconduct. He therefore lost earnings for that period. He also suffered inconvenience and distress as a result of the misconduct.

SUBMISSIONS FOR THE RESPONDENT

The Respondent noted his involvement in the case stemmed from his role as a complaints partner. He only became aware of the Secondary Complainer when he agreed to attend a mediation in April 2015. He agreed to attempt to rectify the difficulties caused by the interdict and confusion around the Minute of Agreement. The Respondent confirmed the Secondary Complainer's description of what happened in 2015 was accurate.

The Respondent is not a civil lawyer. Responsibility for attending to the reduction was left to a solicitor advocate in the firm. The Respondent said that "for whatever reason" that person did not rectify the situation. Relations with the Secondary Complainer broke down in January 2016. The Respondent accepted that following mediation, between April and December 2015, "the buck stopped" with him. The Tribunal had already found his inaction constituted professional misconduct with regard to the handling of the complaint.

The Respondent apologised to the Secondary Complainer. He noted the impact the case had on him. The Secondary Complainer was caught in a "perfect storm". The consequences all flowed from a paragraph in the wrong place in a Minute of Agreement. The Respondent said he was sorry he was not able to rectify the situation because he did think the Secondary Complainer had been badly treated by his former employers and others.

However, the Secondary Complainer had already been compensated. The Tribunal's ceiling is £5,000 and that amount had already been paid in respect of the same matter. The award was enforceable against the former partners jointly and severally. The Respondent paid a lump sum and his wages were arrested. Another partner also made a contribution. In any case, the period of misconduct was restricted to April to December 2015 and the Respondent's responsibility only extended to a failure to supervise the rectification process which was delegated to someone else.

FURTHER SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer disagreed that the compensation paid related to the same matter. He said they were separate issues. In answer to a question from the Tribunal, the Secondary Complainer said he had suffered no mental or physical effects as a result of the misconduct. He had, however, suffered from stress-related eczema which he attributed to the misconduct.

DECISION

The Tribunal had regard to its statutory powers to award compensation. Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 provides that 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 can only have regard to the professional misconduct established at the professional misconduct hearing. The facts found by the Tribunal on the last occasion were set out at paragraphs 9.23 to 9.27 of its Findings. It also noted the terms of the finding of misconduct at paragraph 10(j) of its Findings. The Respondent in his capacity as client relations manager and complaints partner failed to act in the Secondary Complainer’s best interests by failing to raise an action in the Court of Session to seek reduction of an interdict, failed to act on the Secondary Complainer’s instructions, and failed to keep him updated as to progress, in breach of the rules on effective communication. Although the Secondary Complainer had been badly treated at almost every turn, the Respondent’s professional misconduct was limited to a period from April 2015 onwards and related to his role as client relations partner and complaints partner. The Respondent failed to supervise and ensure the delegated work was carried out. He failed to communicate with the Secondary Complainer.

A direct effect is one which would not have happened but for the professional misconduct. The purpose of an award of compensation is to restore the Secondary Complainer to the position he or she would have been in but for the misconduct, subject to the statutory maximum which the Tribunal can award, which is £5,000. The power to award compensation is within the Tribunal’s discretion. The standard of proof in connection with a claim for compensation is that of balance of probabilities.


The Secondary Complainer claimed for actual financial loss. He submitted that due to the Respondent ignoring SLCC instructions and his requests to have the interdict reduced, several companies that wanted to employ him were unable to do so. He claimed he was likely to have received a salary of £40,000 per year. However, in the circumstances, he made a claim for £17,076.80 which he said represented 12 months’ salary at national minimum wage. The Tribunal had regard to the various emails from potential employers lodged by the Secondary Complainer. However, it noted that there was no evidence of

specific loss. No independent evidence about hours or earnings was produced. There was no explanation or evidence relating to other work the Secondary Complainer could have undertaken for other employers. The Tribunal was of the view that the Secondary Complainer's unemployment was not a direct effect of the misconduct. There was no basis upon which the Tribunal could quantify this loss even if it thought it was appropriate to make an award. Therefore, the Tribunal decided to make no award in respect of financial loss.

The Secondary Complainer also claimed for distress and inconvenience. The Tribunal had great sympathy for the Secondary Complainer. He appeared to have been treated very badly. An interdict was granted against him. An error occurred when he arranged for the situation to be resolved by Minute of Agreement. This ought to have been a relatively simple matter to rectify. However, it was not done, and this had significant consequences for the Secondary Complainer. He repeatedly chased the Respondent and his firm regarding the matter to no avail. He had to pursue two complaints to the SLCC, and he took part in mediation, but resolution of the matter took a very long time. The Tribunal was of the view that the Secondary Complainer had suffered significant inconvenience and distress as a result of the misconduct. Inconvenience occurred on several occasions. It caused worry and concern although the effect was not lasting. The Respondent failed to take reasonable steps to rectify matters for a significant period.

The Tribunal took into account the award of £5,000 compensation made by the SLCC in relation to the service element of this case. However, it was of the view that an additional award of compensation was appropriate in respect of the Respondent's misconduct. The Secondary Complainer was stressed and inconvenienced by the Respondent's ongoing conduct beyond that for which he was compensated by the firm as directed by the SLCC. The Tribunal was pleased the Respondent acknowledged his wrongdoing and made an apology to the Secondary Complainer. This was appropriate in the circumstances but did not detract from the requirement to award compensation.

Having considered all the circumstances, the Tribunal was of the view that the appropriate award was £1,000 to reflect the inconvenience and distress caused to the Secondary Complainer over a long period of time as a result of the Respondent's professional misconduct. Having heard submissions on expenses and publicity, the Tribunal decided to make no award of expenses. Publicity will be given to the decision but only the parties need be named.



Colin Bell
Vice Chair