

**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

**GRAHAM R BRYSON, formerly of MMFW
Partnership, Solicitors, Glasgow and now of
Bryson's Legal Services, 13 Killermont Road,
Bearsden, Glasgow**

Respondent

1. On 16 April 2018, Graham R Bryson, formerly of MMFW Partnership, Solicitors, Glasgow and now of Bryson's Legal Services, 13 Killermont Road, Bearsden, 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 16 April 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.
4. On 17 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 17 September 2018 as a hearing. Answers were received.
5. At the hearing on 17 September 2018, the Secondary Complainer was neither present nor represented. The Respondent was not present but was represented by Stuart Munro, Solicitor, Glasgow. 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 the

Secondary Complainer. The Tribunal was satisfied that it was fair to proceed in the Secondary Complainer's absence.

6. The Tribunal carefully considered the Secondary Complainer's compensation claim form, her emails to the Tribunal office, the Respondent's Answers, a Determination Report lodged by the SLCC and submissions made by Mr Munro.

7. The Tribunal found the following facts established:-

7.1 Ms A was the Secondary Complainer in the Complaint against Graham R Bryson, formerly of MMFW Partnership, Solicitors, Glasgow and now of Bryson's Legal Services, 13 Killermont Road, Bearsden, Glasgow. On 16 April 2018, the Tribunal found the Respondent guilty of professional misconduct in that he failed to communicate in an effective manner with the Secondary Complainer.

7.2 Ms A lodged a written statement of claim seeking £2,067 of legal fees which she had to pay as expenses incurred by the successful party in a court case in which the Respondent had been instructed. She also made reference to her distress occasioned by the Respondent's professional misconduct.

7.3 The Respondent had a duty to communicate effectively with his client and failed to do so. Specifically he failed to (1) seek legal aid or communicate problems in progressing that and its implications for Ms A; (2) update on progress of the court action; (3) advise of proposals to resolve the action and to seek or obtain instructions in relation to the two proposals contained on a file; (4) notify her of his withdrawal from acting; and (5) provide any information to protect her interests given he had withdrawn from acting for her.

7.4 The Secondary Complainer was directly affected by the Respondent's misconduct. She had already received compensation from the Scottish Legal Complaints Commission (SLCC).

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

Edinburgh, 17 September 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Graham R Bryson, formerly of MMFW Partnership, Solicitors, Glasgow and now of Bryson's Legal

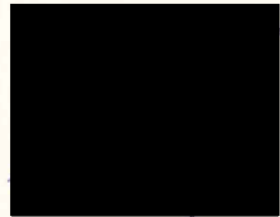
Services, 13 Killermont Road, Bearsden, Glasgow; Having considered whether it was appropriate to award compensation to the Secondary Complainer; Make no award of compensation; Make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

(signed)

Kenneth Paterson
Vice 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



Kenneth Paterson
Vice Chairman

NOTE

At the hearing on 17 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 letter and two emails in support of her claim. The Tribunal decided it was fair to proceed in the Secondary Complainer's absence. She had been given ample notice of the hearing and no reason had been given for her failure to attend.

The Tribunal considered the Secondary Complainer's correspondence. She claimed £2,067 compensation in respect of the money she had be liable to pay the pursuer's solicitors in expenses following a court case she had been involved in. She also made reference in her emails to her distress which she said was as a result of the Respondent's professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Munro noted that the conduct matter which had come before the Tribunal was originally categorised as a hybrid issue by the SLCC, as comprising both conduct and service elements. He referred to the SLCC Determination Report. In his submission the SLCC Committee had awarded £800 compensation to the Secondary Complainer in respect of service issues which were very closely aligned to the professional misconduct, namely that the Respondent had withdrawn from acting with communicating with the Secondary Complainer and had failed to take or return telephone calls or contact her about court hearings. It in his submission it would be inappropriate for the Tribunal to compensate the Secondary Complainer in respect of the same issues.

Mr Munro noted that the SLCC had declined to compensate the Secondary Complainer for the court expenses she was claiming before the Tribunal. The SLCC had indicated that these were expenses which were incurred when the action was raised and then throughout the action and were not attributable to the inadequate professional service provided by the firm. He indicated that the Respondent had never asked the Secondary Complainer for any fees. The services "such as they were" were for no remuneration.

The SLCC awarded £800 to compensate the Secondary Complainer for her worry, anxiety and upset over a period of time and the significant inconvenience due to the inadequate professional service. The Respondent paid this sum to the Secondary Complainer. The Secondary Complainer did not appeal the SLCC's decision. According to Mr Munro, no further compensation was due or appropriate as the matter had been properly and fully determined by the SLCC. He said that the Tribunal had no power to award

compensation when another competent authority had awarded compensation as a result of the same conduct. He said that the present proceedings were *res judicata*. However, if the Tribunal considered that it could consider the Secondary Complainer's application on its merits, the Respondent adopted the rationale and conclusions of the SLCC in their Determination Report.

Mr Munro reminded the Tribunal that following Anderson Strathern v Scottish Legal Complaints Commission [2016] CSIH 71 (which was decided after the SLCC had awarded compensation in this case) it was decided that a single issue could only relate to service or conduct, not both. He referred to paragraph 20 of that judgement where it was noted that the SLCC requires to have regard to the interests of the consumer, not least given the much larger amount of compensation (£20,000 as opposed to £5,000) which could be ordered by the Commission. From the consumer's perspective, a services complaint offers greater relief and in that sense is more important for the consumer. He submitted that Parliament had chosen to give the SLCC greater powers of compensation. There was no need for the Tribunal to look behind the SLCC's decision.

A Tribunal member noted that the SLCC considers services complaints and the Tribunal considers conduct and these are not the same concepts. Mr Munro submitted that the issues in this case were the same from the Secondary Complainer's perspective. The Tribunal had sanctioned the Respondent for his misconduct but the Secondary Complainer's loss had already been compensated.

DECISION

The Tribunal considered the terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 which 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 has a discretion whether to award compensation. The standard of proof in connection with a claim of compensation is that of balance of probabilities. A direct effect was one which would not have happened but for the professional misconduct. On 16 April 2018, the Respondent was found guilty of professional misconduct by failing to communicate effectively with the Tribunal in various ways. The Tribunal's power to award compensation is limited to £5,000 for loss, inconvenience or distress resulting


from the misconduct. The Secondary Complainer wished to claim compensation of £2,067 for legal fees. She also referred to her inconvenience and distress.

The Tribunal rejected the Respondent's first argument that the compensation claim was *res judicata*. Such a plea can only be successful if the same matter has already been determined by a competent tribunal between the same parties on the same grounds. The Tribunal did not consider that the plea had been properly made out. This case involved two different subjects, namely service and conduct cases and their separate statutory powers of compensation.

The Tribunal proceeded to consider the Secondary Complainer's claim for compensation. It agreed with the SLCC that the expenses of £2,067 were incurred by the pursuer when the action was raised and throughout the action. The Secondary Complainer became liable for these when the pursuer won the case. The Tribunal's findings of professional misconduct concerned a lack of effective communication by the Respondent to the Secondary Complainer. The withdrawal itself had not been the subject of a professional misconduct finding. No evidence was produced to the Tribunal as to the strength of the Secondary Complainer's original claim or why she should not have been found liable in expenses, having lost the original action. Any award would have to be based on the loss of opportunity to argue that she should not be liable in expenses. If the Respondent had acted properly, there is no evidence that the Secondary Complainer would not still have been liable for these expenses. There was therefore insufficient information before the Tribunal to allow it to determine the issue on the balance of probabilities.

The Tribunal considered awarding compensation to the Secondary Complainer for her inconvenience and distress. However, it considered that the award of £800 by the SLCC was fair in all the circumstances. Therefore, the Tribunal decided not to make any award of compensation.

The Tribunal made no finding of expenses due to or by either party. It directed that publicity will be given to the decision. However, other than those persons referred to in paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980, no other third party need be identified in the findings as publication of their personal data may be detrimental to their interests.



Kenneth Paterson
Vice Chairman