

**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

**PAUL KEVIN O'DONNELL, Solicitor,
formerly of 44 Bracadale Road, Baillieston,
Glasgow and now of 16 Kirkhill Avenue,
Cambuslang, Glasgow**

Respondent

1. On 7 November 2018, Paul Kevin O'Donnell, Solicitor, formerly of 44 Bracadale Road, Baillieston, Glasgow and now of 16 Kirkhill Avenue, Cambuslang, Glasgow (hereinafter referred to as "the Respondent") was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Mr AG.
3. On 7 November 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 compensation claim form dated 8 November 2018 was lodged with the Tribunal Office.
4. On 4 January 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 the Secondary Complainer and the Respondent to adjust. The Tribunal assigned 20 March 2019 as a hearing. No Answers were received.

5. At the hearing on 20 March 2019, the Secondary Complainer was present and represented himself. The Respondent was neither present nor represented. The Tribunal heard evidence from the Clerk regarding service of the Tribunal's Interlocutor which contained Notice of the Hearing. The Tribunal decided that it was fair to proceed in the Respondent's absence.
6. The Tribunal carefully considered the Secondary Complainer's compensation claim form and his submissions.
7. The Tribunal found the following facts established:-
 - 7.1 Mr AG was the Secondary Complainer in the Complaint against Paul Kevin O'Donnell, Solicitor formerly of 44 Bracadale Road, Baillieston, Glasgow and now of 16 Kirkhill Avenue, Cambuslang, Glasgow. On 7 November 2018, the Tribunal found the Respondent guilty of professional misconduct in respect of his failure in breach of Rule B1.2 and B1.9 of the Law Society of Scotland Practice Rules 2011 to be trustworthy and act honestly at all times so that his integrity was beyond question and to communicate effectively with his client, and his failure to cooperate with the Complainers in their investigation of a conduct complaint against him
 - 7.2 Mr AG lodged a written statement of claim seeking £5,000 for loss, inconvenience and distress.
 - 7.3 The Respondent led the Secondary Complainer to believe that he was going to apply for legal aid but did not do so. He told the Secondary Complainer that he had instructed a surveyor to provide a report on the valuation of the works in question. He had not done so. He withdrew from acting for the Secondary Complainer without informing him, having previously told him that he did not need to attend a diet of debate. Decree passed against the Secondary Complainer. The Respondent failed to respond to correspondence issued by his regulator in connection with the Secondary Complainer's complaint. As a direct effect of the Respondent's professional misconduct, the Secondary Complainer suffered loss, inconvenience and distress.

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

Edinburgh, 20 March 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Paul Kevin O'Donnell, Solicitor formerly of 44 Bracadale Road, Baillieston, Glasgow and now of 16 Kirkhill Avenue, Cambuslang, Glasgow and having previously determined that the Respondent was guilty of professional misconduct; Find that the Secondary Complainer, Mr AG, has been directly affected by the Respondent's misconduct and considered 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, Mr AG, the sum of £1,250 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)

Colin Bell

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 11 APRIL 2019

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

At the hearing on 20 March 2019, the Tribunal heard evidence on oath from the Clerk regarding service of the Interlocutor which contained Notice of the Hearing. The Interlocutor of 4 January 2019 was served by Sheriff Officer on 9 January 2019 by means of a letter box at 16 Kirkhill Avenue, Cambuslang, Glasgow. Sheriff Officers certified they had reasonable grounds for believing that the Respondent resided there. The Tribunal considered whether it was fair to proceed in the absence of the Respondent. The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion “*with great caution and with close regard to the overall fairness of the proceedings*”. There would be a disadvantage to the Respondent in proceeding in his absence. However, he was given notice and there was no reason think he would attend on any other date. He had also failed to attend the professional misconduct hearing. It was in the public interest and the interests of the Secondary Complainer that the case proceed on 20 March 2019. The balance therefore lay in favour of proceeding in the Respondent’s absence.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer said that the Respondent had wasted his time. The Secondary Complainer had attended for interviews on various days including Sundays. The Secondary Complainer had told the Respondent that a surveyor’s report was required. The Respondent told him that he had visited the site. The Respondent gave the Secondary Complainer the name of a surveyor he said he had engaged. However, when the Secondary Complainer contacted that person it transpired that the Respondent had not consulted them.

With regard to the court case, the Secondary Complainer said that he confirmed with the Respondent that he did not need to attend Falkirk Sheriff Court. Decree passed against him in his absence. He had to appeal to get the case back on track. The Secondary Complainer said the Respondent had told him lies. The experience had been very frustrating. He felt that the Respondent’s misconduct was one of the reasons he lost his appeal.

The Secondary Complainer described how he had experienced a great deal of stress as a result of the Respondent’s misconduct. During this time, his wife had been ill and in hospital. It was very stressful for him because the Respondent told “lie after lie after lie”. For example, the Respondent told the Secondary Complainer that he had legal aid. The Secondary Complainer believed that he was entitled to this and he had consulted the Respondent’s firm because they did civil legal aid work.

After the Respondent withdrew from acting, the Secondary Complainer engaged another solicitor. She withdrew citing a conflict of interest. However, the Secondary Complainer believed that the real reason was that civil legal aid would not cover the amount of work required. The Secondary Complainer then found it difficult to get a solicitor. He had to defend himself in the action. He said this was nearly impossible. The Secondary Complainer said all these problems were created by the Respondent.

The Secondary Complainer said that he made a complaint to the firm which employed the Respondent. The Secondary Complainer agreed to accept £4,000 and in return he would not take the firm to court. However, he did make a complaint to the SLCC. The Secondary Complainer said he had not received any compensation through the SLCC. He had no reports from his GP or any other medical practitioner to indicate the nature and effects of the stress he had suffered. However, he described feeling very stressed over a period of six years. As a result of the court case, he has had an inhibition placed on his house. He has a heart complaint and suffers from osteoarthritis. He said that his heart complaint and osteoarthritis developed about 10 years ago. However, this case caused a lot of sleepless nights. Those started in April 2013. He had to give up work as a result of his medical condition in 2014.

In response to questions from the Tribunal, the Secondary Complainer confirmed that he never paid the Respondent any cash. He visited him at his offices five or six times. He took the train once or twice but then took the car for all other journeys. The office was about 30 miles from his home.

The Chairman asked the Secondary Complainer about the section in his compensation claim form which states "Through self-representation and not having a solicitor to represent me at the proof, I lost my case." The Secondary Complainer said he did not have the experience to win his case although he felt that he did have a good case.

In response to questions from the Tribunal, the Secondary Complainer confirmed that the pursuers sued him for £10,500. Decree passed against him. However, he is still waiting to hear with regard to expenses. The Secondary Complainer said that he appealed the case to the Supreme Court. He does not have legal aid for that appeal or a court date.

In response to questions from the Tribunal, the Secondary Complainer confirmed that an action was raised against him. He submitted a counter-claim. His counter-claim was refused. He was unsuccessful in the principal action. He is appealing the Sheriff's decision on the basis that the Sheriff was not conversant with construction law. Following the case, the Secondary Complainer was ordered to pay the pursuer £10,000. However, he has appealed this decision. Everything is on hold pending the appeal.

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 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.

On 7 November 2018, the Respondent was found guilty of professional misconduct. The Respondent led the Secondary Complainer to believe that he was going to apply for legal aid but did not do so. He told the Secondary Complainer he had instructed a surveyor to provide a report. He had not done so. He withdrew from acting for the Secondary Complainer without informing him having previously told him he did not have to attend court. Decree passed against the Secondary Complainer. The Respondent failed to respond to correspondence issued by his regulator in connection with this complaint.

The Tribunal carefully considered the Secondary Complainer's compensation claim form dated 8 November 2018 and his submissions. The Secondary Complainer claimed compensation of £5,000. He wished to be compensated for the time wasted and fuel used to attend meetings with the Respondent in Edinburgh and to attend the Tribunal. The Secondary Complainer had no receipts or any other documentary evidence to support his claim. The Secondary Complainer also claimed compensation for “intense stress”. He said he experienced five and a half years of sleepless nights. He had ongoing heart problems. He felt that the stress had affected his health. The Respondent repeatedly lied to the Secondary Complainer over a year and a half. He could not find another solicitor to represent him. He had to represent himself and feels that as a result of that, he lost his case. He felt that he was totally let down by the Respondent.

The Tribunal considered that the Secondary Complainer had been directly affected by the Respondent's misconduct. It was appropriate that he be compensated for the time and expense incurred in his repeated meetings with the Respondent. During these meetings, the Respondent repeatedly lied to the Secondary

Complainer regarding progress. This caused the Secondary Complainer stress when he found out the truth. The Secondary Complainer's health problems had started well before the professional misconduct occurred. However, he did experience stress as a result of the misconduct. Pursuing a complaint through the SLCC and the Law Society of Scotland caused him inconvenience and distress. The Respondent's lack of cooperation frustrated and delayed the complaints process. This all affected the Secondary Complainer.

However, there was no evidence to suggest that the Secondary Complainer lost his case as a result of the Respondent's professional misconduct. The Secondary Complainer was represented by two solicitors after the Respondent withdrew from acting. He was able to defend the case against him and submit a counter-claim. The Tribunal was in no position to assess the quality of the Secondary Complainer's defence or his counter-claim. There was no question of compensating him in respect of any claim for a loss of opportunity to pursue his case.

The Tribunal noted that the Secondary Complainer received £4,000 from the Respondent's firm. It was not clear what this was for. The Secondary Complainer's evidence was that the money was given to him in order to prevent him bringing a court action against the Respondent's firm. While there is an overlap between professional negligence and professional misconduct, these are discrete concepts. The Tribunal had insufficient information before it regarding this payment to allow it to take it into account when assessing the appropriate level of compensation for the Secondary Complainer.

The Tribunal noted that the Secondary Complainer wished to claim compensation for attending the Tribunal as a witness in the professional misconduct case against the Respondent. The Tribunal considered that any appropriate expenses should be paid in the usual way by the party which called the witness.

Therefore, in all the circumstances, the Tribunal determined that the appropriate total award in these circumstances was £1,250. This award was to compensate the Secondary Complainer for the fuel used to attend meetings with the Respondent and also for the inconvenience and distress he experienced as a result of the professional misconduct.

The Secondary Complainer confirmed that he had no motion for expenses. The Tribunal found the Respondent 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 his personal data is likely to be detrimental to his interests.



Colin Bell
Vice Chairman