

**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

**LAURA WINTON, 87 Clydesdale Avenue,
Paisley**

Respondent

1. On 29 January 2018 Laura Winton, 87 Clydesdale Avenue, Paisley (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct (a) individually, in that she failed to respond to correspondence and statutory notices from the Council, and (b) *in cumulo*, that i) she failed to advise the Secondary Complainer of the potential conflict of interest between them and failed to advise her to obtain legal advice; ii) she failed to advise the Secondary Complainer of her legal position, particularly in relation to time bar, what options were available to her and how to proceed; iii) she failed to advise the Secondary Complainer in relation to the expenses of the litigation and that expenses could be awarded against her; and iv) she withdrew from acting in a manner which would prejudice the course of justice.
2. There was a Secondary Complainer.
3. On 29 January 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. Written statements of claim dated 20 November 2017 and 18 March 2018 were received.
4. On 26 March 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 both the Secondary Complainer and the Respondent to adjust. The Tribunal assigned 24 May 2018 as a hearing.

5. At the hearing on 24 May 2018, the Secondary Complainer was present and represented herself. The Respondent was neither present nor represented. The Secondary Complainer gave evidence on oath referring to her written statements of claim of 20 November 2017 and 18 March 2018 and the supporting documents lodged with the Tribunal Office.
6. The Tribunal carefully considered the evidence and submissions of the Secondary Complainer, her compensation claim forms and supporting documents.
7. The Tribunal found the following facts established:-
 - 7.1 The Secondary Complainer was the Secondary Complainer in the Complaint against Laura Winton, 87 Clydesdale Avenue, Paisley. On 29 January 2018, the Tribunal found the Respondent guilty of professional misconduct (a) individually, in that she failed to respond to correspondence and statutory notices from the Council, and (b) *in cumulo*, that i) she failed to advise the Secondary Complainer of the potential conflict of interest between them and failed to advise her to obtain legal advice; ii) she failed to advise the Secondary Complainer of her legal position, particularly in relation to time bar, what options were available to her and how to proceed; iii) she failed to advise the Secondary Complainer in relation to the expenses of the litigation and that expenses could be awarded against her; and iv) she withdrew from acting in a manner which would prejudice the course of justice.
 - 7.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 for loss, injury and distress. This represented the maximum award that the Tribunal could make. The Secondary Complainer claimed to have suffered actual financial loss of £20,083.87. This comprised of additional mortgage payments of £14,383.87 and legal expenses of £5,700. She also claimed compensation in respect of the distress and inconvenience which occurred because of the Respondent's misconduct.
 - 7.3 The Respondent had a duty to communicate effectively with the Secondary Complainer. On none of the occasions in which she met with the Secondary Complainer did she attempt to explain that expenses could be awarded against the Secondary Complainer if the court action failed. The Respondent did not attempt to explain the significance of the argument taken in regard to time bar or the possible consequences for the Secondary Complainer, including potential liability on the

part of the Respondent. The Respondent failed to advise the Secondary Complainer of her legal position in relation to the issue of time bar, the options that were available to her, and the possible consequences in expenses. The Respondent withdrew from acting for the Secondary Complainer in a peremptory manner which would prejudice the course of justice. The Respondent was aware that the case had been dismissed and yet delayed until the eve of the hearing on expenses to withdraw from acting by letter tendered to the Sheriff Court. As a result, the Secondary Complainer was unrepresented at that hearing. The Respondent did not communicate effectively with the Secondary Complainer and did not explain the potential conflict of interest which involved potential liability on the part of the Respondent. As a direct effect of the Respondent's professional misconduct, the Secondary Complainer suffered inconvenience and distress.

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

Edinburgh 24 May 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Laura Winton, 87 Clydesdale Avenue, Paisley and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer 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 £800 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 Secondary Complainer to the extent of £16.30 and 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)

Alan McDonald
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 JUNE 2018.

IN THE NAME OF THE TRIBUNAL



Alan McDonald

Vice Chairman

NOTE

The Tribunal had before it compensation claim forms dated 20 November 2017 and 18 March 2018; a letter dated 12 February 2018 from the Secondary Complainer to the Tribunal; an email dated 14 February 2018 from the Secondary Complainer's current solicitor to the Secondary Complainer; the Secondary Complainer's bank statements from 1 October 2014 to 1 April 2016; a document confirming the loan obtained by the Secondary Complainer; and a letter dated 12 January from the Secondary Complainer to the Law Society Fiscal who prosecuted the professional misconduct case against the Respondent. During the hearing the Secondary Complainer also produced a letter from her GP dated 12 March 2018.

EVIDENCE BY THE SECONDARY COMPLAINER

The Secondary Complainer noted that she had already received some compensation. She had claimed against the professional indemnity insurance of the solicitor she had first instructed in respect of this matter (referred to as Ms B in the professional misconduct findings). She received £36,500 in respect of the cohabitation claim which had been time barred. She received reimbursement of the expenses of £22,500. She also received £800 in respect of "legal fees". She said she had been quite honest and clear with the Tribunal regarding the compensation she had received.

The expenses in the case were originally £25,000 but were reduced to £22,500. To pay these, she had to borrow an extra £30,000 on her capital and interest repayment mortgage. Her monthly repayments greatly increased. She was asked whether she had been compensated in respect of the capital and therefore any outstanding compensation claim was for the interest only. The Secondary Complainer's view was that she was paying a much-increased mortgage every month because she was not able to extend the term of the loan due to her age. She "had no idea" what the division between capital and interest was.

The Tribunal asked the Secondary Complainer to explain more about the £5,700 she was claiming for in legal fees. The Secondary Complainer said that she had to instruct a new solicitor and these fees related to the work done by him. When the case settled she was reimbursed for some of these fees but not all. £5,700 remained outstanding. She accepted this figure in full and final settlement with the insurer after receiving advice from her solicitor. She referred to an email from her current solicitor which indicated that she was "out of pocket to the tune of £5,700 in relation to legal expenses". This email referred to her solicitor's "cash card" which was attached to the email, but which was not produced to the Tribunal.

It was the Secondary Complainer's view that the money she received was in respect of Ms B's negligence only. However, that settlement left her to bear additional mortgage costs and the £5,700 legal fees which were not covered by the award of compensation and fees. The Secondary Complainer believed that she suffered loss because of the combined actions of the Respondent and Ms B and could not apportion the blame between them. The Secondary Complainer said that when the Law Society decided to take no action against Ms B she still wanted to pursue her claim against the Respondent. In her eyes, both were guilty. This was the final action in the case. There were no outstanding claims. In answer to a question from a member of the Tribunal, the Secondary Complainer indicated that she had not paid any fees to Ms B's firm or to the Respondent.

The Secondary Complainer said that in addition to the financial loss, she had also experienced anxiety, distress and inconvenience. In support of this claim she provided a letter from her GP to the Tribunal. This letter said that she had attended her practice in October 2014 "*due to lots of stress related to the settling of her deceased partner's estate.*" She was prescribed sleeping tablets on two separate occasions. She had recently attended the surgery in respect of physical symptoms.

The Chair asked whether the Secondary Complainer had already received any compensation in respect of anxiety and distress. The Secondary Complainer said this may have been included as part of the claim. She did not know. She could not say how much of her anxiety and distress was attributable to the Respondent compared to Ms B.

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 29 January 2018, the Respondent was found guilty by this Tribunal of professional misconduct. She failed to respond to correspondence and statutory notices from the Law Society. In addition and *in cumulo*, she had failed to communicate effectively with the Secondary Complainer and withdrawn from acting in a peremptory manner.

The Tribunal reflected on what was meant by directly affected and considered that a direct affect was one which would not have happened but for the professional misconduct. Loss, inconvenience or distress must result from the misconduct. The Tribunal noted that the purpose of compensation is not to punish the Respondent but to compensate the Secondary Complainer for the effects of the professional misconduct. The Tribunal noted its power to award compensation was limited. It could direct a solicitor pay compensation of such amount which did not exceed £5,000 for loss, inconvenience or distress. The standard of proof in connection with a claim of compensation is that of balance of probabilities.

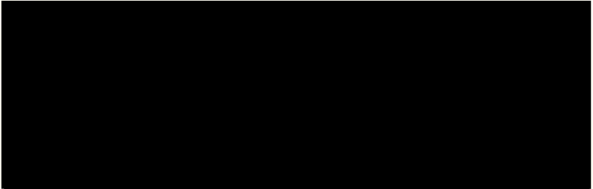
The Tribunal considered the Secondary Complainer's written claim for compensation and her oral submissions carefully. The Secondary Complainer claimed the maximum amount of compensation which the Tribunal could award. She said that she had suffered financial loss of £20,083.87 which comprised of additional mortgage payments of £14,383.87 and legal expenses of £5,700. She also claimed in respect of her anxiety, inconvenience and distress.

The Tribunal declined to make any award of compensation in respect of financial loss. The Secondary Complainer received compensation from Ms B's insurer in respect of the capital element of her mortgage repayments. No evidence was led by the Secondary Complainer to demonstrate the amount of additional interest she paid. It was not clear whether the interest was covered by the award of compensation from the insurer. No evidence was led regarding any arrangement fees incurred. Therefore, the Tribunal could not be satisfied on the balance of probabilities the extent to which the Secondary Complainer was not reimbursed.

In respect of the claim for legal fees of £5,700, the Tribunal noted that the Secondary Complainer with the benefit of legal advice, had settled for an amount which left this sum outstanding. The Secondary Complainer could provide no further detail about these fees or why they were not settled by the insurer. They were attributable to the claim against Ms B's insurers. No evidence was led to link these to the conduct of the Respondent.

The Tribunal considered that the Secondary Complainer should be compensated for her inconvenience and distress arising as a result of the Respondent's professional misconduct. The Respondent had withdrawn from acting and had failed to communicate effectively. The Tribunal considered that the Secondary Complainer had experienced significant inconvenience and distress as a result of the Respondent's misconduct. It had a serious effect, but it was not lasting. It had caused worry, concern, anxiety and upset. The Respondent failed to take reasonable steps to rectify matters. The Tribunal therefore concluded that the appropriate award of compensation was £800.

Publicity should be given to the decision although only the Respondent need be named as identifying others may be detrimental to their interests. The Respondent should be liable to the Secondary Complainer in expenses to the extent of £16.30 and also the expenses of the Tribunal including the expenses of the Clerk.



Alan McDonald
Vice Chairman