

**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**

**HUGH SCOTT NEILSON, Glendevon, 13  
Grahamshill Street, Airdrie, Lanarkshire**

**Respondent**

1. On 21 November 2018, Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr B (hereinafter referred to as “the Secondary Complainer”).
3. On 21 November 2018, 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. On 7 March 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 both the Secondary Complainers and the Respondent to adjust. The Tribunal assigned 27 May 2018 as a hearing.
5. At the compensation hearing on 27 May 2019, the Secondary Complainer was present with his wife who spoke on his behalf. The Respondent was not present but was represented by Ronald Conway, Solicitor, Glasgow. The Tribunal carefully considered the submissions of both parties.

6. The Tribunal found the following facts established:-
- 6.1 Mr B was the Secondary Complainer in the Complaint against Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie (the Respondent). On 21 November 2018, the Tribunal found the Respondent guilty of professional misconduct. He failed to act in the best interests of the Secondary Complainer, failed to properly advance his case, and failed to communicate effectively with his client, all contrary to Rules B1.4 and B1.9 of the Law Society of Scotland Practice Rules 2011.
- 6.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 in relation to disputed fees, inconvenience and distress. Various invoices, notes and letters were lodged by the Secondary Complainer in support of his claim.
- 6.3 The Respondent failed to advance the Secondary Complainer's case, failed to communicate effectively with him and failed to act in his best interest. The Respondent adjourned two diets of proof due to his lack of preparation and conceded expenses, all without the Secondary Complainer's instructions. He misled the Secondary Complainer as to the causes of the adjournments in order to conceal his lack of preparation. No financial loss arose as a direct effect of the Respondent's professional misconduct. However, the Secondary Complainer did experience inconvenience and distress resulting from the Respondent's professional misconduct.
7. The Tribunal heard submissions from both parties with regard to the expenses for the hearing on compensation and publicity. Thereafter, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 May 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie 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 Complainers: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Mr B the sum of £4,000 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; Finds no expenses due to or by any party; and Directs 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)**

**Nicholas Whyte**

**Chairman**

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 Complainers by recorded delivery service on 26 JUNE 2019 .

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**

**Chairman**

**NOTE**

At the compensation hearing on 27 May 2019, the Tribunal had before it the compensation claim form lodged by the Secondary Complainer along with supporting documents, and Answers lodged on behalf of the Respondent. Mr Conway indicated at the outset that he was content to agree the statements and invoices lodged by the Secondary Complainer. The Secondary Complainer indicated that his wife would speak on his behalf. Parties informed the Tribunal that the Respondent had paid £500 to the Secondary Complainer as directed by the SLCC. The Respondent had also made an offer of £3,000 in respect of the present case.

**SUBMISSIONS ON BEHALF OF THE SECONDARY COMPLAINER**

The Secondary Complainer's wife confirmed that she had rejected the Respondent's offer of £3,000 and wished the Tribunal to award £5,000 instead. She explained that the Respondent accepted their case after their first solicitor died. The Respondent failed to lodge productions. He failed to answer their questions. He did not appear for proof in October. He charged them for meetings but they hardly saw him. The Secondary Complainer attended court in December but the case was not called. The Respondent sent them various invoices but did not do any work to justify those fees. The invoices were "a load of rubbish". Eventually the case concluded, and the Secondary Complainer was successful. There was an issue regarding interest which was resolved at their instigation. Harper MacLeod failed to tell the Secondary Complainer that the Respondent had left the firm. Another solicitor represented them at the appeal. The Secondary Complainer believed that the appeal would not have gone ahead if the Respondent had been more efficient. Some credit notes were applied when they queried the fees. The Secondary Complainer feels that the Respondent sent invoices under false pretences.

The Secondary Complainer's wife submitted that £3,000 was insufficient even to compensate the Secondary Complainer for his inconvenience and distress. They had both suffered health issues which they considered were exacerbated due to the stress caused by the Respondent's misconduct. The Secondary Complainer had anxiety issues as a result of this case. She made reference to the letter from the Secondary Complainer's GP which was before the Tribunal.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT**

Mr Conway apologised to the Secondary Complainer on the Respondent's behalf. The Respondent accepted unreservedly that inconvenience and distress had been caused by the delay in proceedings and the two discharged proofs. Mr Conway noted that he has never had access to the files and has tried to

piece the picture together from correspondence and invoices that he has seen. He is aware that the Respondent discharged proofs in June and October 2012.

Mr Conway accepted that the Secondary Complainer believed that the invoices from Harper MacLeod were fictitious. He noted that this was a serious allegation and not one which was put before the Tribunal during the misconduct hearing. There was a distinction between invented fees and fees not chargeable in a taxation. The compensation hearing was the wrong forum for a dispute about fees. This was a matter between the Secondary Complainer and Harper MacLeod. It was right and proper that the firm paid the expenses of the aborted proofs. Some credits were made but any dispute about fees is properly a matter for taxation. He noted that Harper MacLeod offered £2,750 to the Secondary Complainer in respect of the Respondent's personal failings and this was declined. It would have been open to the Secondary Complainer to mitigate his loss by accepting that amount. He noted that the Respondent did eventually deal with the proof in April 2013 and left the firm shortly thereafter. A significant amount of fees were charged thereafter. It is impossible for the Tribunal to identify proper fees. The defenders appealed the judgement. That cannot be laid at the Respondent's door.

Mr Conway said that he was sorry to hear of the Secondary Complainer's ongoing health problems. However, the Tribunal should be slow to accept that all difficulties, particularly the pre-existing health complaints are down to the professional misconduct. Mr Conway made reference to the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases. He submitted that the mental impact of the misconduct on the Secondary Complainer fell in the "less severe" category which ranged from £1,220 to £4,670. He suggested that £3,000 was the appropriate figure. The Secondary Complainer did not have a psychiatric disorder but has been angered and suffered inconvenience and distress. So long as the Tribunal kept in mind the distress must be related to delay, he was content to leave the matter there.

## **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 21 November 2018, the Respondent was found guilty by this Tribunal of professional misconduct by failing to advance the Secondary Complainer's case, failing to communicate effectively with him and failing to act in his best interest. The Respondent adjourned two diets of proof due to his lack of preparation and conceded expenses, all without the Secondary Complainer's instructions. He misled the Secondary Complainer as to the causes of the adjournments in order to conceal his lack of preparation.

The Tribunal noted its power to award compensation was limited. It could direct a solicitor to pay compensation of such amount which did not exceed £5,000 for loss, inconvenience or distress. A direct effect was one which would not have happened but for the professional misconduct. The loss, inconvenience or distress must result from the misconduct. The standard of proof in connection with a claim for compensation is that of the balance of probabilities.

The Tribunal declined to make any award of compensation for patrimonial loss. There was no finding of professional misconduct relating to the fees charged by the Respondent to allow it to consider this issue. The Respondent could not be responsible for fees incurred after he had left the firm. The appropriate way to deal with the fees dispute was by taxation.

The Secondary Complainer suffered serious inconvenience and distress as a direct effect of the Respondent's professional misconduct. The Respondent's failings had led to ten months of delay in the case. The Tribunal accepted that the misconduct had contributed to the Secondary Complainer's ill health due to the stress he experienced. However, other factors including the fee dispute with Harper MacLeod had also played a part. His well-being was affected over a significant period. His quality of life was noticeably disrupted. The letter from his GP indicated that his main problems "*revolve around anxiety which at times can become very poorly controlled and which seems to coincide with a court case which he found extremely stressful.*" He also notes that the misconduct investigation "*has undoubtedly fuelled his stress greatly*". The doctor notes that the Secondary Complainer had to leave work early as a result of this and the early years of his retirement have been hampered greatly by his feelings of anxiety and stress "*which would appear to have affected his life to a large degree.*" He was not prone to anxiety before these events. Pursuing a complaint through the SLCC and Law Society of Scotland caused inconvenience. The Respondent misled the Secondary Complainer, and this inevitably has had an impact on his ability to trust the profession again. In all these circumstances, the appropriate award for non-quantifiable loss was £4,000. In doing so, the Tribunal had no regard to the £500 awarded by the SLCC as there was insufficient evidence provided by either party regarding the basis for this award.

The Tribunal invited submissions on expenses and publicity. The Tribunal considered that the fair approach in the circumstances of this case where both parties were partially successful was to find no

expenses due to or by any party. The Tribunal decided 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 as publication of third-party details would be likely to damage their interests.



**Nicholas Whyte**  
**Chairman**