

**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

**PETER MANSON ROBERTSON, care of
Blackadders LLP, 6 Bon Accord Square,
Aberdeen**

Respondent

1. On 13 September 2017, Peter Manson Robertson, care of Blackadders LLP, 6 Bon Accord Square, Aberdeen (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct in respect that he acted in a conflict of interest situation and breached Rules 3/1, 4/1 and 9 of the 2008 Practice Rules, and Rules 3 and 5 of the 1986 Practice Rules.
2. There were Secondary Complainers in the Complaint, namely Mr and Mrs A (hereinafter referred to as “the Secondary Complainers”).
3. On 13 September 2017 the Tribunal allowed the Secondary Complainers 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 on 23 October 2017.
4. On 8 November 2017 the Tribunal issued an interlocutor allowing the statement of claim for the Secondary Complainers 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 11 January 2018 as a hearing.

5. On 5 January 2018, of consent and on the Secondary Complainers' motion, the Tribunal adjourned the hearing for the Secondary Complainers to seek legal advice and representation.
6. On 12 January 2018, the Tribunal issued an interlocutor allowing the statement of claim for the Secondary Complainers 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 the 13 February 2018 as a hearing.
7. On 13 February 2018, the Secondary Complainers were neither present nor represented. They had intimated by email of 12 February 2018 to the Tribunal Office that they did not intend to be present at the hearing. The Respondent was not present but was represented by William Macreath, Solicitor, Glasgow. Submissions were made on behalf of the Respondent. The Tribunal invited the Respondent to provide documentary evidence in support of his submissions. On the Respondent's motion, the Tribunal adjourned the hearing for Mr Macreath to make enquiries in this regard.
8. Mr Macreath sent an email to the Tribunal Office on 26 February 2018. The content of that email was shared with the Secondary Complainers on 27 February 2018. The Secondary Complainers responded by letter of 1 March 2018.
9. The Tribunal carefully considered the submissions of both parties.
10. The Tribunal found the following facts established:-
 - 10.1 Mr and Mrs A were the Secondary Complainers in the Complaint against Peter Manson Robertson, care of Blackadders LLP, 6 Bon Accord Square, Aberdeen (the Respondent). On 13 September 2017, the Tribunal found the Respondent guilty of professional misconduct in respect that he acted in a conflict of interest situation and breached Rule 3/1, 4/1 and 9 of the 2008 Practice Rules, and Rule 3 and 5 of the 1986 Practice Rules when he acted in the sale and purchase of Property 1 in 2011.
 - 10.2 The Secondary Complainers lodged a written statement of claim seeking £220,000 said to represent the future value of Property 1; £4,500 which the Secondary Complainers alleged should have been paid to them following the sale of that

property; £23,123.80 to reimburse them for miscellaneous costs; and £25,000 for stress. Invoices were lodged by the Secondary Complainers in support of their claims for quantifiable loss.

- 10.3 In 2011, the purchase price of Property 1, was £100,000. On 14 February 2011 the Respondent sent a cheque for £95,663.62 to Lloyds TSB in full redemption of the outstanding mortgage account.
- 10.4 A review of the file revealed no evidence as to the Secondary Complainers being advised that the transaction had settled nor what had happened to the balance of the £100,000 purported to be the purchase price and why this was not passed to them. The Secondary Complainers should have received an accounting for £4,336.38 which represents the difference between the £100,000 purchase price and the redemption of the loan at £95,663.62. The Respondent's failure to ensure that the Secondary Complainers received an accounting for the balance was a direct effect of him having acted in the conflict of interest situation. Failure to receive the monies or an accounting made it difficult for the Secondary Complainers to make enquiries about this sum. As a result, they suffered loss.
- 10.5 The Respondent acted without the Secondary Complainers' authority. He did not communicate effectively with them regarding the sale and the funds which passed through his firm. They experienced inconvenience and distress resulting from the Respondent's professional misconduct.

11. The Tribunal received written 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:-

Thornhill 16 April 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Peter Manson Robertson, care of Blackadders LLP, 6 Bon Accord Square, Aberdeen and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainers have 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 and Mrs A the sum of £4,836.38 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; 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.

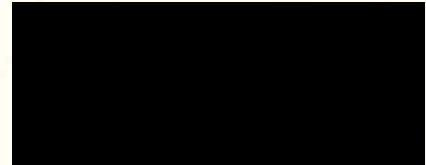
(signed)

Colin Bell

Vice Chairman

12. 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 30 APRIL 2018.

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

The Secondary Complainers intimated by email to the Tribunal Office on 12 February 2018 that they did not intend to be present or represented at the hearing on 13 February 2018. They were content for the hearing to proceed in their absence, relying upon their written claim for compensation and their letter of 8 February 2018 with enclosures.

The Tribunal regretted that the Secondary Complainers did not appear in person to present their claim and assist the Tribunal with submissions and clarification. However, it considered that it could deal with the compensation claim in their absence based upon the Tribunal's findings in Law Society of Scotland v Peter Manson Robertson, the Secondary Complainers' claim for compensation, the Respondent's Answers to the compensation claim, the Secondary Complainers' letter of 8 February 2018 with enclosures, and Mr Macreath's submissions on 13 February 2018.

COMPENSATION CLAIM BY THE SECONDARY COMPLAINERS

The Secondary Complainers' written claim for compensation sought £220,000 which was said to represent the future value of Property 1; £4,500 which they alleged should have been paid to them following the sale of the property; £23,123.80 to reimburse them for miscellaneous costs including legal advice, property alleged to have been stolen from their shed, fuel, parking, postage, rent, and furnishings; and £25,000 for stress. Despite the sums claimed for, the Secondary Complainers noted that the Tribunal could only award up to £5,000 in compensation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

Mr Macreath started by explaining that in his Answers he had referred to Mrs A by the wrong first name and offered his apologies. He noted that the Tribunal was limited by statute to award no more than £5,000 in compensation.

Mr Macreath highlighted that the Secondary Complainers' claim for compensation included a claim for actual quantifiable loss as well as inconvenience and distress. He noted that the Tribunal provides written guidance to Secondary Complainers and it was unfortunate that the Secondary Complainers had not been able to take legal advice on their claim. In Mr Macreath's submission there was little or no link between the claim for actual loss and the conduct which was proved or admitted before the Tribunal. He explained that quantifiable loss must arise as a direct result of the misconduct and would not otherwise have been incurred but for the misconduct. He submitted that the loss of the Secondary

Complainers' home could not be linked to the conflict. The Law Society had accepted that the circumstances of the instruction was that the brothers had come to the Respondent with the deal already advanced. Mr B had agreed to deal with the Secondary Complainers' past and present debts and school fees etc. A decision had been reached that in return the Secondary Complainers' property would be transferred to Mr B. The purchase price was £100,000. The valuation by the surveyors suggested the property was worth £150,000 but the decision to sell and purchase for £100,000 reflected the previous debts owed by the Secondary Complainers, debts due by them and the assured tenancy allowing the Secondary Complainers to occupy the property at a low rent.

Mr Macreath drew attention to the fact that the claim is partly about the eviction proceedings which took place three years after the sale. This was not part of the complaint regarding the conflict. The claim for furnishings, damage to property, the Secondary Complainers' inability to get a mortgage and thefts from the shed had nothing to do with the professional misconduct which was about the Respondent's inability to give balanced advice. The eviction arose as a result of a disagreement between the brothers which did not involve the Respondent. The Secondary Complainers had the opportunity to take advice and counsel's opinion but consented to decree.

With regard to inconvenience and distress, Mr Macreath acknowledged the loss of confidence and loss of opportunity the Secondary Complainers suffered as a result of the misconduct. He noted that there were few decisions where compensation was not awarded where the Tribunal had made a finding of professional misconduct. However, he highlighted that there should be medical evidence to support a claim of distress resulting from professional misconduct. He noted that where there was no medical evidence to support a claim of stress, the award of compensation had not exceeded £750 in recent cases. He suggested that a great deal of the stress in this case relates to the breakdown in relationships between the family members. He suggested that an appropriate award of compensation in this case would be £250 to reflect the inconvenience and distress suffered by the Secondary Complainers but that no award should be made in relation to the claim for actual quantifiable loss. He noted that his client had not received any intimation of a professional negligence claim.

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 13 September 2017, the Respondent was found guilty by this Tribunal of professional misconduct by acting in a conflict of interest situation. In doing so he failed to act in the best interests of the Secondary Complainers. He did not communicate effectively with them regarding the sale and the funds which passed through his firm.

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. The Tribunal reflected on what was meant by “directly affected” and considered that 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 considered the Secondary Complainers’ written compensation claim carefully. The Secondary Complainers claimed for £220,000 which was said to represent the future value of the family home; £4,500 which they alleged should have been paid to them following the sale of the property; £23,123.80 to reimburse them for miscellaneous costs including legal advice, property alleged to have been stolen from their shed, fuel, parking, postage, rent, and furnishings; and £25,000 for stress.

The Tribunal declined to make any award of compensation to reflect the value of Property 1. Any financial loss arising as a result of the sale of the property was not a direct effect of the Respondent acting in a conflict of interest situation or failing to give the Secondary Complainers independent advice. It could not be said on the basis of the information before it, that the sale would not have occurred but for the professional misconduct. The Secondary Complainers’ eventual eviction from the property was not sufficiently linked to the professional misconduct.

The Tribunal noted the Secondary Complainers’ claim for £4,500 which they alleged should have been paid to them following the sale of the property. In 2011, the purchase price of Property 1 was £100,000. On 14 February 2011 the Respondent sent a cheque for £95,663.62 to Lloyds TSB in full redemption of the outstanding mortgage account. A review of the file revealed no evidence as to the Secondary Complainers being advised that the transaction had settled nor what had happened to the balance of the £100,000 purported to be the purchase price and why this was not passed to them.

The Tribunal invited the Respondent to explain how he had dealt with these funds as it appeared that the Secondary Complainers should have received £4,336.38 as the difference between the £100,000 purchase price and the loan of £95,663.62. Following the parties' opportunity to make written submissions, the Tribunal was satisfied on the balance of probabilities that the funds were not returned to the Secondary Complainers and no accounting was made to them in this regard. The Tribunal had previously made this finding in fact in respect of the misconduct Complaint which is subject to a higher standard of proof. The Secondary Complainers explained in their submissions that they did not receive the information or the funds. After being given the opportunity to do so, the Respondent did not produce any documentary or other evidence that he had provided an accounting.

The Tribunal was of the view that the failure to account to the Secondary Complainers arose as a direct effect of the Respondent acting in a conflict of interest situation. But for the professional misconduct, the Respondent would not have failed to account for the free proceeds of sale to the seller. Had the Secondary Complainers been properly advised, they would have received a State for Settlement disclosing the price, any loans repaid, the fees as agreed in a letter of engagement and any properly incurred outlays. In the absence of proper accounting it was very difficult for the Secondary Complainers to ensure that they received the correct amount due to them. The Tribunal therefore considered it appropriate that the Respondent compensate the Secondary Complainers for this element of their claim and that an award of £4,336.38 should be made in their favour.

The Secondary Complainers also sought £23,123.80 as reimbursement for miscellaneous costs. The Tribunal considered that these did not arise as a direct effect of the Respondent's misconduct. In particular, the theft of equipment from a garden shed had no apparent link to the Respondent in any way. The other costs arose as a result of the Secondary Complainers' decision to move to another property following eviction proceedings and were not a direct effect of the professional misconduct.

Lastly, the Secondary Complainers claimed £25,000 for stress. No independent vouching was provided with regard to the medical issues the Secondary Complainers claimed to have experienced as a result of the Respondent's professional misconduct. However, the Tribunal considered that the Secondary Complainers had experienced inconvenience and distress and that the appropriate award in the circumstances was £500. The Respondent had failed to account to them for the free proceeds of the sale and they had suffered anxiety and distress as a result of having to pursue their claim. Therefore, in total, the Tribunal determined that the Respondent should pay the Secondary Complainers £4,836.38 in respect of their compensation claim.

The Tribunal invited both parties to make written submissions with regard to expenses and publicity and both did so. The Tribunal considered that the fair approach in the circumstances of this case where both parties were partially successful, and the Secondary Complainers had no travelling or other expenses connected with their claim for compensation before the Tribunal, 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.



Colin Bell
Vice Chairman