

**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

**ALAN JOHN BAILLIE, formerly of Baillies
Law Limited, 37 Union Street, Dundee**

Respondent

1. On 6 March 2024, Alan John Baillie, formerly of Baillies Law Limited, 37 Union Street, Dundee ("the Respondent"), was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Lorraine Ludman, 1 The Green, Craobh Haven, Argyll.
3. Following the finding of professional misconduct, the Tribunal allowed the Secondary Complainer 28 days from the intimation of the findings of misconduct to lodge a claim for compensation. The written findings were intimated to the Secondary Complainer. A claim was lodged. The Respondent lodged Answers to the claim.
4. The Tribunal set the matter down for a virtual compensation hearing on 26 June 2024. Notice was duly served upon the Respondent and Secondary Complainer.
5. At the virtual compensation hearing on 26 June 2024, the Respondent was not present but was represented by John Macmillan, Dundee. The Secondary Complainer represented herself.
6. The Tribunal found the following facts established:-

- 6.1 Lorraine Ludman was the Secondary Complainer in the Complaint against Alan John Baillie, formerly of Baillies Law Limited, 37 Union Street, Dundee (“the Respondent”).
- 6.2 On 6 March 2024, the Respondent was found guilty of professional misconduct in respect that:-
- (a) He failed to communicate effectively with the Secondary Complainer in respect of conveyancing work relating to the transfer of title at Lunga Mill, Ardfern, Argyll in that his actions led her to believe that he was carrying out her instructions on a solicitor-client relationship basis contrary to his position that no such relationship was in place;
 - (b) He acted in a conflict of interest between 2009 and 2016 in that he represented the Secondary Complainer and Andrew McIlvride in relation to the transfer of title at Lunga Mill, Ardfern, Argyll when it became apparent that their interests in relation to the transaction were no longer aligned;
 - (c) He failed to advise the Secondary Complainer to seek separate legal advice in relation to the transfer of title at Lunga Mill, Ardfern, Argyll when it became apparent that their interests in relation to the transaction were no longer aligned;
 - (d) He inappropriately used funds in the Secondary Complainer’s client account to pay the bills of another client, Andrew McIlvride, in that he deducted £690 from the client account on 30 January 2009 and 13 March 2009 and transferred this to Andrew McIlvride’s client account without the knowledge and consent of the Secondary Complainer.
- 6.3 The Secondary Complainer lodged a written statement of claim with the Tribunal Office claiming compensation of £5,000.
- 6.4 The Secondary Complainer was directly affected by the Respondent’s professional misconduct and suffered inconvenience and distress as a result.

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

By Video Conference, 26 June 2024. The Tribunal, having considered the Complaint at the instance of the Council of the Law Society of Scotland against Alan John Baillie, formerly of Baillies Law Limited, 37 Union Street, Dundee and having previously determined that the Respondent was guilty of professional 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, Lorraine Ludman, 1 The Green, Craobh Haven, Argyll, the sum of £4,000 by way of compensation in respect of inconvenience and distress resulting from the professional 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; 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 and the Secondary Complainer but need not identify any other person.

(signed)

Colin Bell

Chair

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 Complainer by recorded delivery service on 31 July 2024 .

IN THE NAME OF THE TRIBUNAL



Colin Bell
Chair

NOTE

At the virtual compensation hearing on 26 June 2024, the Tribunal had before it the decision in the misconduct case against the Respondent; the Secondary Complainer's compensation form; Answers to the claim form, a copy of a letter dated 29 November 2016; Sheriff Hughes' judgment in the case of Ludman-v-McIlvride and an excerpt from that judgment; and a List of Witnesses for the Secondary Complainer.

EVIDENCE FOR THE SECONDARY COMPLAINER**Witness One: Lorraine Ludman**

The Secondary Complainer gave evidence on oath. She said that as a result of the Respondent's actions over seven years she had lost money and had experienced stress and anxiety.

With regard to financial loss, the Secondary Complainer noted that the court case cost her £250,000. The Secondary Complainer said she lost £140,000 to her former partner. She had to spend £250,000 on legal fees.

With regard to non-financial loss, the Secondary Complainer reported that she experienced sleepless nights. She was worried. She had to compile seven large files of documents for the court case. Even collating the bank statements took her three days. She explained the case as the worst thing that had ever happened to her. Her lawyers were in Dundee and she had to make many trips to see them from her home in Dubai and her home near Oban. The many court appearances took time. There were two live court dates, and the rest were on Zoom. There were five meetings in Dundee, which is a 3.5 hour journey from her home in Scotland.

The Secondary Complainer claimed that the Respondent had been deliberately obtuse in his answers, even about matters which were "clearly visible". He had been the Secondary Complainer's friend before this incident. However, he denied there had been an agreement between the parties and she had to go to court to prove that an agreement had been in place. The Respondent "attacked" her. He sent a letter to the Laird of a village of ten people misrepresenting the situation. The Respondent had not made things easy for her. She had to get a court order for to make the Respondent release her files and that alone cost her an additional £1,000.

The Secondary Complainer also objected to the Respondent's answers which related to her "ex-pat lifestyle". She said she had spent a lot of time, money and stress on the situation. The stress had been "immeasurable". The court case had consequences for her health and ability to think and enjoy life. She spoke to being miserable, snappy, stressed and anxious. The endless flow of money she had to pay out was overwhelming. She had to sell properties to fund the court case. These properties were her future. She did not seek medical help at this time. She spoke to supportive friends. She said she was old fashioned and preferred to deal with things in private.

The Secondary Complainer explained that if she had been properly advised, she either would have known at the outset that the land could not be separated without the Laird's permission and she would not have paid out money, or her solicitor could have negotiated with the Laird. She would have known there was a right of access and the restrictions in place. The Respondent never told her of these problems. He just kept telling her that "it was happening" when she chased him "hundreds of times".

In cross examination, the Secondary Complainer said that she spends 91 days a year on the west coast of Scotland and the rest of her time in Dubai. She agreed with Mr Macmillan that represented a 25/75% split. She agreed that the target of the litigation was her former partner. She agreed that she was awarded expenses at the end of the case. She said that having to sell properties to fund the litigation was a hardship. Mr Macmillan noted that the sum sought for actual financial loss had been reimbursed. The Secondary Complainer said the Respondent only repaid that sum because she found the document misfiled in her file. That had occurred three times. That was not all the money. She agreed that £1,380 had been repaid with interest but that this was done ten years after it had been taken.

Witness Two: Alexander High

The witness gave evidence on oath. He said that he had known the Secondary Complainer since 2018. He joined her company in March 2018 and has worked closely with her since then. Their desks are a few feet apart. He has got to know her over the years. He said that in those six and a half years, there had been a clear deterioration in her mental state. She had repeatedly explained how the case was affecting her and her sleep. Physiological changes were evident. She lost focus more often. The circumstances of the Respondent's professional misconduct comes up frequently in conversation. The Secondary Complainer was clearly under an enormous psychological and emotional burden. She experienced a severe amount of anxiety. The topic comes up every day and consumes much of her day. She is extremely and visibly upset. The matter has caused hardship. The witness said that when he met the Secondary Complainer, she was whimsical. She had hobbies and interests. She liked to travel. She had become increasingly withdrawn over time. She had been struggling to find enjoyment in her life. It

had been “heartbreaking” for the witness to see it unfold. The Secondary Complainer was not the same person she had been. There had been an enormous impact on her general well-being. She had lost faith in the legal profession. They had both been shocked by the letter to the Laird. She had been failed by a member of the legal profession who had tried to manipulate her.

The witness confirmed in answer to a question from the Tribunal that he is one of nineteen people employed by the Secondary Complainer. In cross examination the witness confirmed that he did not have any medical qualifications. He said that he had only been involved in the case since 2018, having started at the company on 26 March 2018. In answer to a question from the Tribunal, the witness explained that in May 2023, the Secondary Complainer had brought in an external consultant as a general manager to improve the processes in the business. In his view, if it had not been for the Secondary Complainer’s state of mind, this would not have been necessary.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer explained that she felt entitled to £5,000 compensation. She referred to the lawyers’ costs, the time involved and the cost of flights. She did not think a figure could be put on the stress element.

SUBMISSIONS FOR THE RESPONDENT

Mr Macmillan noted that the Respondent had offered £1,500 compensation to the Secondary Complainer, but that this had been declined. He said that the Respondent accepted that compensation was appropriate but that the proper range was around this mark.

With regard to actual financial loss, Mr Macmillan noted that the Secondary Complainer had only made a claim for £1,380. This sum had been repaid with interest. Other costs she had alluded to during her evidence were not in the claim form, and in any case were not sufficiently specified.

Mr Macmillan suggested that the head of claim the Tribunal had to consider was that relating to non-quantifiable loss. He noted that it was not open to the Tribunal to conclude at this stage that there was any dishonesty or lack of integrity, as that had not been part of the Tribunal’s findings in the misconduct case. He said the Tribunal would have to measure the hardship involved. He said that the case fell within the “significant” category, not the “serious” tariff. £1,500 is at the top of the significant band. Mr Macmillan noted that there was no medical evidence or evidence of psychological damage.

Mr Macmillan said that each compensation case has to be decided on its own facts but wanted to draw the Tribunal's attention to three recent similar compensation cases arising out of the following prosecutions: Law Society-v-Graeme Miller, Law Society-v-Simon Duncan, and Law Society-v-Michael Kilkerr. Mr Macmillan said that the Kilkerr case was most similar to the present case. The Tribunal awarded £1000 for distress and inconvenience in that case.

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.”

The Tribunal's power to award compensation is limited. It can only direct a solicitor to pay compensation up to a maximum award of £5,000 to a Secondary Complainer for loss, inconvenience or distress which resulted from the misconduct. A direct effect is one which would not have happened but for the professional misconduct. The standard of proof in connection with a claim for compensation is that of balance of probabilities. The onus of proof rests upon the Secondary Complainer. The Tribunal has a discretion to award compensation but is not obliged to do so. The Tribunal's power to award compensation is limited to £5,000.

The Tribunal carefully considered the witnesses' evidence, the documents before it, and the submissions made by the Secondary Complainer and Mr Macmillan. It had careful regard to the findings of misconduct, noting that there had been no finding of dishonesty or lack of integrity. It tested whether the Secondary Complainer had been directly affected by the Respondent's misconduct.

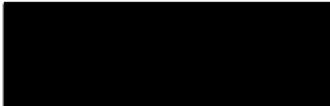
The Secondary Complainer made a claim for financial loss of £1,380. During cross-examination, she confirmed that this money had been repaid to her by the Respondent with interest (although she said the payment was made very late and only after she found undeniable evidence that the Respondent had used the money in her client account). As the money had been repaid, the Tribunal made no award in relation to this sum. During her evidence, the Secondary Complainer described other financial losses. The

Respondent had not been given sufficient notice of these claims as they did not feature on the claim form. Even if the Tribunal had been prepared to consider further heads of claim for financial loss, there was insufficient specification of the sums the Secondary Complainer said she had lost and no vouching provided to support her claim. The claim form makes it very clear that the Tribunal will generally require evidence of financial loss before this can be considered. Therefore, in all these circumstances, the Tribunal declined to make any award in relation to financial loss.

The Tribunal did, however, consider that the Secondary Complainer had been inconvenienced and distressed by the Respondent's misconduct. The Tribunal had regard to its compensation tariffs table and considered that the case fell into the "serious" category. The Respondent's misconduct had a serious effect over an extremely lengthy period. It affected the Secondary Complainer's well-being over a long period. There had been a significant inconvenience over a long period of time and on many occasions. The Secondary Complainer's quality of life had been considerably and noticeably disrupted. She had experienced significant distress and upset.

The Tribunal was persuaded by the evidence of the Secondary Complainer and Mr High, that the Secondary Complainer had suffered mentally as a result of the Respondent's misconduct. Although Mr High was not medically qualified, he had worked closely with the Secondary Complainer for many years and was able to speak to the effect on her. The Secondary Complainer's court case against her former partner arose partly as a result of the Respondent's actions and omissions. The Tribunal appreciated that this was a stressful situation for the Secondary Complainer. It caused disruption to her daily life and took time to resolve. She was unable to get any closure. The Respondent had failed to take reasonable steps to rectify matters. The Secondary Complainer spoke to this latter element, and it was also evident from Sheriff Hughes' judgment in the Ludman-v-McIlvride case. The Respondent allowed the stressful situation to persist and added to it by sending the letter of 29 November 2016 to the Laird, and denying for many years that the Secondary Complainer had been a client. This conduct eroded the Secondary Complainer's trust in the legal profession. Taking all of these factors into consideration, the appropriate award of compensation was £4,000.

Following submissions on publicity and expenses, the Tribunal found no expenses due to or by either party. It directed that publicity would be given to the decision and that the Respondent, Secondary Complainer and witness would be named in this decision.



**Colin Bell
Chair**