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

JAMES PURVIS, 6 Blair Road, Blairhill, Coatbridge

Respondent

1. On 18 September 2017 James Purvis, 6 Blair Road, Blairhill, Coatbridge (hereinafter referred to as "the Respondent") was found guilty of professional misconduct in respect of his failure to communicate effectively with his client in breach of Rule 9 of the 2008 Rules and Rule B1.9.2 of the 2011 Rules to the extent that he failed to seek sufficient information from his client to allow him to lodge the application for restoration of a company to the register and in respect of his failure to act in the best interests of his client in breach of Rule 3 of the 2008 Rules and Rule B1.4.1 of the 2011 Rules to the extent that he did not lodge the application for restoration of a company to the register before the time bar.

2. There were two Secondary Complainers in the Complaint, namely Mr A and Mr B.

3. On 18 September 2017 the Tribunal allowed the two Secondary Complainers 28 days from the intimation of the Findings to lodge a written claim for compensation. Both Secondary Complainers lodged compensation claim forms.

4. On 8 November 2017 the Tribunal issued an interlocutor allowing the statement of claims 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 Secondary Complainers and the Respondent to adjust, and assigning the 6 February 2018 as a hearing in respect of the matter.

5. The Respondent submitted two emails dated 11 and 12 January 2018 to the Tribunal Office, which he later invited the Tribunal to treat as his Answers.

6. At the hearing on 6 February 2018, Mr A was present and unrepresented. A letter was submitted to the Tribunal from Mr B indicating that he was unable to attend due to health problems and inviting the Tribunal to allow Mr A to act on his behalf. The Respondent was present and unrepresented. There was no appearance on behalf of the Law Society. Mr A gave evidence and lodged two letters as Productions. The Respondent also gave evidence. Submissions were made on behalf of both parties.

7. The Tribunal found the following facts established:-

7.1 Mr A and Mr B were Secondary Complainers in the Complaint against James Purvis, 6 Blair Road, Blairhill, Coatbridge (the Respondent) that resulted in the Respondent being found guilty of professional misconduct in respect of his failure to communicate effectively with his client in breach of Rule 9 of the 2008 Rules and Rule B1.9.2 of the 2011 Rules to the extent that he failed to seek sufficient information from his client to allow him to lodge the application for restoration of a company to the register and in respect of his failure to act in the best interests of his client in breach of Rule 3 of the 2008 Rules and Rule B1.4.1 of the 2011 Rules to the extent that he did not lodge the application for restoration of a company to the register before the time bar.

7.2 Both Secondary Complainers lodged written statements of claim which contained claims for compensation for (a) loss of £13,852.54 plus interest and (b) inconvenience.

7.3 Both Secondary Complainers ran their own cheque cashing businesses. Company 1 was a cheque cashing business run by Mr B. That company was dissolved on 25 September 2009. Mr B continued in the same line of business in his own right thereafter. Mr A sent cheques for his own cheque cashing business together with some cheques from Mr B's cheque cashing business to Company 2 for encashment. Funds in the sum of £13,852.54 for these cheques were placed by Company 2 into a bank account in the name of the dissolved company. Subsequently, the funds were transferred by the bank concerned to the Queens and Lord Treasurers Remembrancer.

7.4 The sum of £13,852.54 was the property of both Mr A and Mr B. In order to recover these funds, it was necessary for Mr B to apply to restore Company 1 to the Register of Companies. The Respondent was instructed to take the appropriate steps to do that. For that to be done, an application required to be raised in the Sheriff Court.

7.5 When originally instructed in this matter, the Respondent was a partner in the firm of Grant & Wylie Solicitors. That firm merged with PRP Legal Limited on 1 November 2014. The Respondent was employed as a consultant by PRP Legal Limited.

7.6 The Respondent was summarily dismissed by PRP Legal Limited on 9 June 2015. Mr B's claim to have Company 1 restored to the Register of Companies time barred on 25 September 2015. The Respondent had no access to any client files after 9 June 2015, these all having been left with his employers, PRP Legal Limited.

7.7 Both Secondary Complainers required to contact the Respondent on repeated occasions for updates on progress, to no avail. Both Secondary Complainers then proceeded with a Complaint to the SLCC. This amounted to inconvenience for both Secondary Complainers.

7.8 Both Secondary Complainers have been directly affected by the misconduct of the Respondent, resulting in them sustaining inconvenience.

8. 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 16 February 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against James Purvis, 6 Blair Road, Blairhill, Coatbridge and having previously determined that the said James Purvis was guilty of professional misconduct, Find that the Secondary Complainer, Mr A, has been directly affected by the Respondent's misconduct and considered that it is appropriate to award compensation to him: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Mr A the sum of £150 by way of compensation in respect of inconvenience 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; Direct no 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 but should not identify any other person.

(signed)

Nicholas Whyte

Chairman

Edinburgh 16 February 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against James Purvis, 6 Blair Road, Blairhill, Coatbridge and having previously determined that the said James Purvis was guilty of professional misconduct, Find that the Secondary Complainer, Mr B, has been directly affected by the Respondent's misconduct and considered that it is appropriate to award compensation to him: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Mr B the sum of £150 by way of compensation in respect of inconvenience 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; Direct no 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 but should not identify any other person.

(signed)

Nicholas Whyte

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 Complainers by recorded delivery service on 19 MARCH 2018.

IN THE NAME OF THE TRIBUNAL

[redacted]

Nicholas Whyte

Chairman

NOTE

Prior to the hearing on 6 February 2018, both Secondary Complainers had lodged written claims for compensation with the Tribunal Office and the Respondent had submitted Answers in the form of two emails. Mr A and the Respondent were both present. Mr B was unable to attend due to his health but he had invited the Tribunal to allow Mr A to represent his interests at the hearing.

Prior to the hearing, the Respondent had also indicated to the Tribunal that he was suffering from ill-health. At the hearing, the Chairman confirmed with the Respondent that he was fit to represent himself at the hearing and that he wished to proceed.

The Tribunal heard evidence from both Mr A and the Respondent.

EVIDENCE OF MR A

Mr A indicated that he and Mr B had instructed the Respondent at the firm of Grant & Wylie in approximately 2011 to take action to have Company 1 reinstated to the Register. Both he and Mr B made telephone calls checking on progress. The Respondent indicated that he was waiting for advice from a QC. He had received a letter from the Respondent, from the firm PRP, saying that Grant & Wylie and that firm had now amalgamated. This letter was received in January 2015. (The witness lodged a copy of that letter with the Tribunal, to which the Respondent took no objection.)

Mr A confirmed that both he and Mr B telephoned the Respondent on numerous occasions although not after the start of 2015. Both he and Mr B believed that their application was still ongoing. The witness was unable to say exactly when he found out the application to restore Company 1 was time barred. He believed that it was the Law Society which had given him this advice.

In answer to a question from the Tribunal about what had happened between January 2015 and the time bar in September 2015, the witness responded that he and Mr B had thought that everything was ongoing. They believed that the firm of Grant & Wylie had taken all their business with them to PRP when they merged.

The witness was asked by the Tribunal why the letter from the Respondent dated January 2015 was addressed to Mr and Mrs A. The witness confirmed that he had had a number of dealings with one of the partners in Grant & Wylie in relation to wills and conveyancing.

The witness indicated that he was not aware that the Respondent had left the firm of PRP. He could not recall having any conversation with the Respondent in 2015 and confirmed that he had not contacted the firm PRP. He could not say exactly what had instigated his complaint but recalled that he had telephoned the Law Society who had given him the address of an organisation where he should lodge his complaint. The complaint had proceeded and the Law Society told Mr A and Mr B that the application to restore the company was time barred. The date of time bar had passed by the time the Law Society gave them this information. The figure of £13,852.54 noted within the written claim for compensation for Mr B was the total sum that they had lost.

The Tribunal referred the witness to the written claim and asked him to clarify any claim for distress and inconvenience. The witness indicated that he was 76 and Mr B was 78. He explained that they had little chance of getting that sum of money back and that they would never get that kind of money back from their pension. He explained that he did not believe his health had suffered but thought that Mr B's might have. Mr B had more financial commitments and more debt. This whole thing had affected Mr B more and had resulted in a loss of confidence on his part.

The Respondent indicated that he had no cross-examination.

The Chairman invited the witness to clarify the source of funds placed into Company 1's bank account.

Mr A clarified that Mr B had run a cheque cashing business in the name of Company 1. This company had a franchise for Company 2. Mr B lost the franchise. He had however continued to receive cheques. Mr A also ran a cheque cashing business. Mr B had sent his cheques to Mr A who had in turn passed all of these cheques together to Company 2 for encashment. Company 2 sent the money to the bank account in the name of Company 1. He was unable to say how the money was split in ownership between him and Mr B but believed it was something like 70-30.

The witness confirmed when Company 1 was dissolved no money was owed by that company to any individual. The witness confirmed that it was only when he made enquiry of the bank that he was told that the account could only be re-opened if Company 1 was restored. That was why he and Mr B had gone to see the Respondent.

EVIDENCE OF THE RESPONDENT

The Respondent stated that whatever his failings in acting for the Secondary Complainers, he was not responsible for the eventual time bar of the claim. The claim did not time bar until 25 September 2015.

He had been summarily dismissed by PRP on 9 June 2015. The witness accepted that the necessary procedure to restore the company was not a complicated one. After his departure from the firm, PRP had remained responsible for his files.

The partner who was more familiar with Mr B had remained partner with PRP after the Respondent left their employment. On 9 June 2015 the Respondent had turned up for work at approximately 7am and by 9:30am he had been asked to hand over his keys and leave the building. He had not been allowed to take anything with him. All of his work was left behind. The firm would have known about this case. Everyone in the firm would have had access to every one of the Respondent's files and they ought to have made it their business to know about them. He believed that correspondence would have been coming into the office about the case after his departure on 9 June.

In response to a question from the Tribunal, the witness confirmed that when the merger took place at the end of November 2014 all of the Grant & Wylie files became the property of PRP and that this file was one of these files. PRP and the partner familiar with Mr A ought to have been aware of that. He believed that he had been dismissed because he was not living up to the expected level of fee income.

CROSS EXAMINATION BY MR B

On being invited to cross-examine the Respondent, Mr A produced a letter from the Respondent as a consultant at PRP dated 18 March 2015 addressed to the Law Society. The Respondent indicated that because of the mail opening process at PRP the letter, to which the letter of 18 March 2015 replied, would have been opened by a partner of PRP and therefore was clear evidence PRP were aware of this file.

The Respondent believed that a copy of this letter was sent to Mr A by the Law Society in the course of the Complaints procedure.

SUBMISSIONS FOR MR B

The Chairman invited Mr A to make submissions in relation to why he thought it was appropriate for the Tribunal to make an award in his favour.

Mr A submitted to the Tribunal that, whether it was the Respondent or the firm of PRP, someone had let both he and Mr B down. Neither of them had known that their application was going to be time barred. He considered it appropriate to try and get some of their money back.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that he was sorry for any loss suffered by the two Secondary Complainers and sorry for his failings. He submitted that he could have taken no further steps to restore Company 1 to the Register after the 9 June 2015. After that date he had no locus to act for the two men. The Respondent agreed that the procedure necessary was not complicated. After 9 June 2015 PRP still had until 25 September 2015 in order submit the necessary application.

DECISION

The Tribunal was dealing with claims from two Secondary Complainers in relation to Section 53(2)(bb) of the Solicitors (Scotland) Act 1980.

The standard of proof for such proceedings was on the balance of probabilities.

The Tribunal found both witnesses to be reliable and credible. Factually, there was little dispute between the parties.

The Secondary Complainers had two heads of claim: (1) patrimonial loss; (2) distress and inconvenience.

Dealing with the loss first, the Tribunal was satisfied that the figure of £13,852.54 had been lost by the two Secondary Complainers as a result of the dissolution of Company 1. In order to have a chance of recovering these funds, they required to be successful in restoring Company 1 to the Register of Companies, which would have allowed the bank to re-open the bank account. Given the statutory time limits for such applications, such an action became time barred on 25 September 2015. The Respondent had been summarily dismissed by PRP on 9 June 2015, more than three months before the procedure time barred. It was accepted that the necessary procedure was a simple one.

The question for the Tribunal was whether the loss sustained by the two Secondary Complainers under this head was "resulting from the misconduct". After the Respondent's peremptory dismissal, there was little more that he could do and there still remained more than three months to take what would have been fairly simple steps to preserve the Secondary Complainers' position. In these circumstances, the Tribunal held that the Secondary Complainers had not established that their loss resulted from the Respondent's misconduct.

The Secondary Complainers referred to distress and inconvenience. Mr A had given evidence referring to having to make repeated calls to the Respondent. This would clearly have resulted in irritation and annoyance amounting to inconvenience. Both Secondary Complainers had to proceed with a complaint. Mr A had made reference to a loss of confidence on the part of Mr B but little more information than that was produced to the Tribunal.

In the circumstances, the Tribunal was satisfied that it was established that both Secondary Complainers had been directly affected by the misconduct of the Respondent and that as a result of the misconduct, both Secondary Complainers had suffered inconvenience. The Tribunal concluded that the appropriate level of compensation to reflect the inconvenience caused was £150 to each Secondary Complainer.

The Tribunal invited both parties to make submissions with regard to expenses. Mr A indicated that he had incurred train fares of £18. The Respondent submitted that he had incurred train fares of £21.40. In the circumstances, as both parties had had partial success, the Tribunal concluded that the fair disposal was to make no award of expenses to either party.

With regard to publicity, the Tribunal considered it appropriate to continue the Tribunal's approach at the hearing on 18 September 2017 when it concluded that publicity should include the name of the Respondent but should not identify any other person.

Nicholas Whyte
Chairman