

**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

**ROY WILLIAM ANDREW MILLER, formerly
trading under the firm name of Miller & Co.,
latterly as a sole practitioner at 6 St Ninian
Terrace, Crown Street, Glasgow**

Respondent

1. On 7 March 2018, Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow (hereinafter referred to as "the Respondent") was found guilty of professional misconduct.
2. There were Secondary Complainers in the Complaint, namely Mr A and Mrs C.
3. On 7 March 2018, the Tribunal allowed the Secondary Complainers 28 days from the intimation of the Findings to lodge written claims for compensation with the Tribunal Office. Written statements of claim were received.
4. On 14 May 2018, the Tribunal issued an interlocutor allowing the statements 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 28 August 2018 as a hearing.
5. At the hearing on 28 August 2018, no parties were present or represented. The Tribunal heard evidence from the Clerk regarding service of the Tribunal's Interlocutor which contained Notice of the Hearing. The Tribunal decided that it was fair to proceed in the Respondent's absence. Both Secondary Complainers had requested that the Tribunal

proceed on the basis of their written claims for compensation and the additional documents they had provided in support of their claims.

6. The Tribunal found the following facts established:-

6.1 Mr A and Mrs C were Secondary Complainers in the Complaint against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow. On 7 March 2018, the Tribunal found the Respondent guilty of professional misconduct *in cumulo* in respect that (a) He lost all documentation provided to him by Mr A and unduly delayed in raising a court action, (b) He failed or delayed in advising Mr A about the proof diet fixed for 19 October 2010 and failed to contact and to take any statements from witnesses and to cite witnesses before that proof, (c) He failed or delayed in advising Mr A that a decree with expenses was granted on 19 October 2010 until 17 November 2010, (d) He provided inadequate instructions to a local agent for the appearance at a hearing in Mr A's case on 7 December 2010 and thereafter failed or delayed in advising upon or providing Mr A with any update following the hearing, (e) He failed to contact and to take any statements from witnesses and to cite any witnesses before the proof in Mr A's case on 4 July 2011, and (f) He failed to respond to the Complainers' correspondence including formal statutory notices relating to Mr A, and separately *in cumulo* in respect that (g) He failed or delayed in progressing Mrs C's divorce, (h) He failed to communicate effectively with Mrs C, (i) He failed to obtain or having obtained, lost Mrs C's marriage certificate, and (j) He failed to respond to the Complainers' correspondence including formal statutory notices relating to Mrs C.

6.2 Mr A lodged a written statement of claim seeking £5,000 for loss, inconvenience and distress. Mrs C lodged a written statement of claim seeking £1,500 for loss, inconvenience and distress or other such sum as the Tribunal thought fair.

7. The Tribunal pronounced Interlocutors in the following terms:-

Edinburgh 28 August 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner at 6 St Ninian Terrace, Crown Street, Glasgow and having previously determined that the Respondent was guilty of professional misconduct, Find that the

Secondary Complainer, Mr A, has been directly affected by the Respondent's misconduct and consider that it is appropriate to award compensation to the said Secondary Complainer: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to the Secondary Complainer, Mr A, the sum of £1,000 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 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)

Kenneth Paterson

Vice Chairman

Edinburgh 28 August 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner at 6 St Ninian Terrace, Crown Street, Glasgow and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer, Mrs C, has been directly affected by the Respondent's misconduct and consider that it is appropriate to award compensation to the said Secondary Complainer: Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to the Secondary Complainer, Mrs C, the sum of £1,319 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 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)

Kenneth Paterson

Vice 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 **18 SEPTEMBER 2018**.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chairman

NOTE

At the hearing on 28 August 2018, the Tribunal heard evidence on oath from the Clerk regarding service of the Interlocutor which contained Notice of the Hearing. The Tribunal considered whether it was fair to proceed in the absence of the parties. The Tribunal noted that the papers had been served by recorded delivery on the Respondent and both Secondary Complainers. The Secondary Complainers had provided written statements of claim. In addition, Mr A provided a supplementary statement, various emails, copy letters, invoices and receipts in support of his claim. Mrs C provided a psychiatrist's letter, a letter from a community psychiatric nurse, and a letter from the Department of Work and Pensions. Both Secondary Complainers had intimated to the Tribunal Office that they did not intend to attend the compensation hearing and were content for the matter to be dealt with in their absence on the basis of the documents provided.

The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion "*with great caution and with close regard to the overall fairness of the proceedings*". There would be a disadvantage to the Respondent in proceeding in his absence. However, he was given ample notice and there was no reason to think he would attend on any other date. The Tribunal noted that the Respondent had also failed to attend the professional misconduct hearing. It was in the public interest and in the interests of the Secondary Complainers that the case proceeded on the date set down. The balance lay in favour of proceeding in the Respondent's absence.

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 7 March 2018, the Respondent was found guilty of professional misconduct. In respect of Mr A's case, the Respondent lost documentation, failed or delayed to advise Mr A about a proof diet, failed to adequately deal with potential witnesses for that proof, failed or delayed in advising Mr A that decree with expenses had been granted, provided inadequate instructions to local agents, failed to communicate effectively with Mr A, and failed to respond to Law Society correspondence including formal statutory

notices relating to Mr A's complaint. In respect of Mrs C's case, he failed or delayed to progress her divorce, he failed to communicate effectively with her, he failed to obtain or having obtained, lost her marriage certificate and failed to respond to Law Society correspondence including formal statutory notices relating to Mrs C's complaint.

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 to each Secondary Complainer for loss, inconvenience or distress resulting from the misconduct. A direct effect was one which would not have happened but for the professional misconduct. The standard of proof in connection with a claim of compensation is that of balance of probabilities.

By email of 19 August 2018 to the Tribunal Office, Mr A indicated that he wanted to claim compensation for loss of the original claim (£3,101), his original solicitor's fees (£750), the expenses of the case (approximately £2,000) and Peacock Johnston Solicitors' fees (£4,150). In addition, in his compensation claim and supplementary statement, the Secondary Complainer referred to the inconvenience and distress caused by the Respondent's professional misconduct.

The Tribunal considered that it would be inappropriate to compensate Mr A for the loss of the original court case. There was no evidence provided to the Tribunal to allow it to assess the strength of the case. It was noted that even after engaging a second firm of solicitors, Mr A was still unsuccessful. It was noted from the Tribunal's findings that Mr A had twice been advised by separate solicitors to accept a tender. He had chosen not to do so. The Tribunal could not therefore say that the loss of the court case was a direct effect of the Respondent's misconduct.

The Tribunal considered the fees paid to solicitors in respect of Mr A's original court case, both due to the Respondent, Peacock Johnston Solicitors and the judicial expenses which Mr A was liable to pay. The Tribunal had regard to fact that Mr A had fairly and properly advised the Tribunal that he had received £3,500 from the Respondent's insurer following Mr A's complaint to the Scottish Legal Complaints Commission (SLCC). The Tribunal also noted that in an email to the SLCC, Mr A wrote:-

"A short note to say thank you for all your efforts in the case V Roy Miller, I never would have predicted the outcome and it is some comfort to retrieve most of my expenses..."

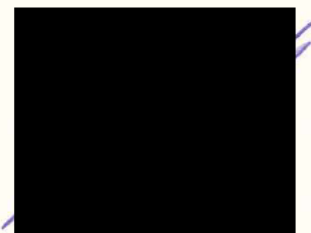
Therefore, Mr A has already received a significant amount of compensation with respect to his expenses. Unfortunately, the SLCC determination was not provided to the Tribunal and Mr A did not attend the compensation hearing. The Tribunal therefore had no basis upon which to award any more compensation

with regard to expenses. With the exception of the fees relating to the SLCC complaint, it could not be said that but for the Respondent's misconduct, these fees would not have been incurred. The Tribunal could not say that these fees were a direct effect of the Respondent's misconduct.

However, the Tribunal did consider that Mr A had suffered inconvenience and distress as a direct effect of the Respondent's professional misconduct. The Tribunal was of the view that it had a serious effect on Mr A. It caused significant inconvenience on several occasions. Mr A was worried, concerned and upset. The Respondent failed to take reasonable steps to rectify matters. Mr A had to pursue his complaint through the SLCC which took time and effort. The Respondent failed to cooperate with his regulator which added to the time taken to deal with the complaint. Therefore, the Tribunal determined that the appropriate award in these circumstances was £1,000.

With regard to Mrs C's claim for compensation, the Tribunal noted from its previous decision that she paid £319 to the Respondent for a divorce. The Respondent said the divorce would be dealt with within a matter of months. However, Mrs C discovered years later that she was still married. This caused her significant inconvenience and distress. It had a serious effect. It caused significant inconvenience on several occasions. The Respondent failed to take reasonable steps to rectify matters. He had previously acted for Mrs C to gain an interdict against her husband. He therefore knew the background to the case and how important it was to Mrs C to obtain a divorce. She had to pursue her complaint through the SLCC and the Law Society of Scotland. Therefore, the Tribunal determined that the appropriate award in these circumstances for her inconvenience and distress was £1,000. Therefore, the total award to Mrs C was £1,319.

Neither party made any submissions with regard to expenses or publicity. The Tribunal decided the Respondent should be liable in the expenses of the Tribunal including the expenses of the Clerk. Publicity will be given to the decision and that publicity will include the name of the Respondent. The Secondary Complainers need not be identified as publication of their personal data is likely to be detrimental to their interests.



Kenneth Paterson
Vice Chairman