

**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

**GRAEME BRUCE MURRAY, Solicitor,
Graeme Murray & Co., 10-12 Chapel Street,
Aberdeen**

Respondent

1. On 31 May 2018, Graeme Bruce Murray, Solicitor, Graeme Murray & Co., 10-12 Chapel Street, Aberdeen (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There were two Secondary Complainers in the Complaint, Jonathan Mitchell, Q.C. and Isobel Wylie, Advocate, both care of the Faculty of Advocates, Advocates Library, Parliament House, Edinburgh.
3. On 31 May 2018, the Tribunal allowed the Secondary Complainers 28 days from the intimation of the Findings to lodge a written claim for compensation with the Tribunal Office.
4. On 6 September 2018, the Tribunal issued an interlocutor allowing the statement of claim for Jonathan Mitchell, Q.C. to be received. No statement of claim was received for Isobel Wylie, Advocate. The said interlocutor appointed the Respondent to lodge Answers if so advised within 7 days, with 7 days thereafter for the Secondary Complainer Jonathan Mitchell, Q.C. and the Respondent to adjust. The Tribunal assigned 2 October 2018 as a compensation hearing. Answers were received in the form of a letter from the Respondent’s agent and an email containing a correction to said letter, both dated 11 September 2018.

5. At the compensation hearing on 2 October 2018, the Secondary Complainer Jonathan Mitchell, Q.C. was present and represented himself. The Respondent was neither present nor represented.
6. The Tribunal carefully considered the Secondary Complainer Jonathan Mitchell's compensation claim form and his submissions made on the day. It also had regard to the letter and email submitted on behalf of the Respondent.
7. The Tribunal found the following facts established:-
 - 7.1 Jonathan Mitchell, Q.C., was a Secondary Complainer in the Complaint against Graeme Bruce Murray, Solicitor, Graeme Murray & Co., 10-12 Chapel Street, Aberdeen. On 31 May 2018, the Tribunal found the Respondent guilty of professional misconduct in respect that he failed to communicate with Faculty Services Limited on behalf of Counsel, failed to respond to correspondence from Faculty Services Limited and failed to make payment of the fee notes due to Counsel.
 - 7.2 Jonathan Mitchell, Q.C., lodged a written statement of claim seeking £4,200 in respect of unpaid fees.
 - 7.3 The Respondent on instructing counsel accepted a personal responsibility for counsel's fees. On four occasions he neglected his professional duty in this regard and failed to communicate effectively with Faculty Services Limited. Mr Mitchell suffered loss as a direct effect of the Respondent's professional misconduct. The Respondent was subsequently sequestered. Mr Mitchell has submitted a claim for his fees in the Respondent's sequestration.
8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 2 October 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Graeme Bruce Murray, Solicitor, Graeme Murray & Co., 10-12 Chapel Street, Aberdeen and having previously determined that the Respondent was guilty of professional misconduct; Having considered whether it was appropriate to award compensation to the Secondary

Complainer, Jonathan Mitchell, Q.C.; Make no award of compensation; 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 Complainers but need not identify any other person and that publicity should be deferred pending the outcome of associated proceedings or confirmation that there will be none.

A black rectangular box redacting the signature of Kenneth Paterson.

(signed)

Kenneth Paterson
Vice 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 *26 OCTOBER 2018* .

IN THE NAME OF THE TRIBUNAL



**Kenneth Paterson
Vice Chairman**

NOTE

At the hearing on 2 October 2018, the Tribunal had before it Mr Mitchell's claim for compensation, the Respondent's agent's letter and email of 11 September 2018, and the professional misconduct findings against the Respondent dated 31 May 2018.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

Mr Mitchell submitted that his case was short and straightforward. The Respondent was the instructing solicitor. The fees were never queried and never paid. The Tribunal had already found that the Respondent was responsible for these fees. Quantum was not an issue. Mr Mitchell thought he should be awarded compensation despite the Respondent's "hard luck defence".

The Tribunal asked Mr Mitchell if he had any comment on the Respondent's sequestration. Mr Mitchell indicated that he had "heard on the grapevine" that the Respondent had been sequestered and that "something might come out of the sequestration". Mr Mitchell confirmed that he was a creditor in relation to the sequestration and had an entitlement to receive money through that process. However, he was not trying to recover the fees twice. If the Tribunal were to award compensation under its statutory powers, he would then not have a claim in the sequestration. The solicitor is liable in terms of the Law Society of Scotland Rules. It was "pie in the sky" to suggest there might be money coming from the sequestration. The situation was no different if the firm was still in existence.

The Tribunal questioned Mr Mitchell with regard to whether he was, through this claim, seeking to be paid first before any other creditors. He indicated that the Tribunal's powers were not limited as a result of the fact that separate powers existed in another area. That must be the case, otherwise sequestration would be "get out of jail free card" for any solicitor in these circumstances. He had not heard anything regarding payment by the Trustee.

SUBMISSIONS FOR THE RESPONDENT

The Respondent's agent's letter of 11 September 2018 noted the background to the case, the instructions to Mr Mitchell and the Respondent's failure to pay fees. The Respondent indicated that Mr Mitchell had submitted a claim for his fees in the Respondent's sequestration. The sequestration process has not yet been concluded but the Respondent anticipates that a dividend will be paid to creditors. The Respondent's agent submitted that the sequestration process is intended to "clear the decks" so far as an

individual's debts are concerned. It was therefore inappropriate for Mr Mitchell to seek compensation for a debt which was never a personal one and which should have been extinguished by the claim in sequestration.

DECISION

The Tribunal considered the terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 which provides that the Tribunal may:-

“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 standard of proof to be applied in connection with a claim of compensation is that of balance of probabilities.

The Tribunal noted in terms of the sub section above that it had a discretion whether to award compensation and was not obliged to do so. On 31 May 2018, the Respondent was found guilty of professional misconduct. He failed to pay counsel's fees when he had a professional obligation to do so. The Tribunal considered that a direct effect was one which would not have happened but for the professional misconduct. Mr Mitchell's loss was a direct effect of the Respondent's professional misconduct. He suffered loss as a result of the Respondent's failure to fulfil his professional obligations.

However, the Tribunal did not consider that it was appropriate to compensate Mr Mitchell in the particular circumstances of this case. He has already submitted a claim in sequestration. The claim related to the same subject matter. The debt and the loss are the same. It was not incompetent to make the claim for compensation to the Tribunal. However, it would be inappropriate for the Tribunal to exercise its discretion to award compensation when the effect would be to give one creditor an advantage over the others in sequestration proceedings which were already underway. The Tribunal was not in a position to know what other claims were outstanding against the Respondent. The Trustee has an overview of all the debts and is best placed to adjudicate between the claims.

The Tribunal invited submissions on expenses and publicity. Mr Mitchell indicated that he was not seeking expenses and thought the appropriate award was that no expenses should be due to or by either party. The Tribunal made no finding of expenses due to or by either party. It directed that publicity should be given to the decision although the Respondent and the Secondary Complainers should be

named. Publicity will be deferred pending the outcome of associated proceedings or confirmation that there will be none.



Kenneth Paterson
Vice Chairman