

**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

**MATTHEW PHILIP BERLOW, 9 Lochbroom
Court, Newton Mearns, Glasgow**

Respondent

1. On 27 April 2023, Matthew Philip Berlow, 9 Lochbroom Court, Newton Mearns, Glasgow (“the Respondent”), was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Dorothy McPherson, 3 Netherton Road, Newton Mearns, Glasgow.
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 on 1 June 2023.
4. The Tribunal set the matter down for a virtual compensation hearing on 18 September 2023. Notice was duly served upon the Respondent and Secondary Complainer.
5. At the virtual compensation hearing on 18 September 2023, the Secondary Complainer was present and represented herself. The Respondent was present and represented himself.
6. The Tribunal found the following facts established:-
 - 6.1 The claimant at this hearing was the Secondary Complainer in the Complaint against Matthew Philip Berlow, 9 Lochbroom Court, Newton Mearns, Glasgow.

The Respondent had previously been found guilty of professional misconduct in that:-

- (a) His actions lacked integrity and to that extent breached Rule B1.2, when in a Facebook comment he deliberately associated members of the Scottish Palestine Solidarity Campaign with the criminal act of graffiti, knowing no crime had taken place and that the original post was false;
- (b) His actions were likely to bring the profession into disrepute when he made a payment of £800 cash to Mr Reid in circumstances which appeared to be a *quid pro quo* for Mr Reid's assistance with the Respondent's ongoing complaints against Neil McPherson;
- (c) His actions were likely to bring the profession into disrepute and breached Rule 1.14.1 and Rule B1.14.2, when he made disparaging remarks about Neil McPherson to Mr Reid, after the Respondent had withdrawn from acting for Mr Reid and Mr Reid had engaged Mr McPherson; and
- (d) His actions breached Rule B1.14.1, and Rule B1.2 in that they lacked integrity, and were likely to bring the profession into disrepute, when he published a grossly offensive exchange between two other people on his closed Facebook group for criminal lawyers.

6.2 The Respondent was found not guilty of professional misconduct in relation to allegations that he:-

- (a) Implicitly encouraged or supported Mr Reid to record a meeting between Mr Reid and Mr McPherson, or had failed to dissuade him from so doing;
- (b) Lacked integrity, breached Rule B1.14.1, and engaged in conduct likely to bring the profession into disrepute in an exchange with David McPherson in 2015 by using intemperate, offensive, abusive and unpleasant language;
- (c) Lacked integrity, breached Rule B1.14.1, and engaged in conduct likely to bring the profession into disrepute in an exchange with David McPherson (averments of misconduct 5.1.6 and 5.3.2);

- (d) Lacked integrity, breached Rule B1.14.1, and engaged in conduct likely to bring the profession into disrepute in respect of his comments about Neil McPherson;
- (e) Lacked integrity in respect of his comment about Dorothy McPherson; and
- (f) Breached Rule B1.14.1 and brought the profession into disrepute when he sent a grossly offensive exchange between two other people to Neil McPherson.

6.3 The Secondary Complainer lodged a written statement of claim with the Tribunal claiming £500 for non-quantifiable loss.

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

By Video Conference, 18 September 2023. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Matthew Philip Berlow, 9 Lochbroom Court, Newton Mearns, Glasgow and having previously determined that the Respondent was not guilty of professional misconduct in relation to the matters in which the Secondary Complainer could claim to have been directly affected by the Respondent's conduct; Having considered whether it was appropriate to award compensation to the Secondary Complainer; 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 Complainer but that this publicity should be deferred until the Tribunal's findings of 27 April 2023 are published.

(signed)

Catherine Hart

Vice 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 16 OCTOBER 2023 .

IN THE NAME OF THE TRIBUNAL



Catherine Hart
Vice Chair

NOTE

At the virtual compensation hearing on 18 September 2023, both parties represented themselves. The Secondary Complainer having no objection, the Tribunal received the Respondent's productions which had been lodged late due to a problem with formatting. The Tribunal had before it the findings in the professional misconduct case, the compensation claim form and attached screenshot, the Respondent's Answers to the claim, and the Respondent's productions.

SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer said the Respondent had made a post about her five years ago. She found out about it through the father of a former pupil. When it was brought to her attention, she was extremely distressed. She had retired as a teacher with an unblemished career. She was horrified that the Respondent had made these comments about her in a public forum. These comments are in the public domain forever. She did not know how many people had seen the post and believed it.

The Secondary Complainer noted that the Law Society Sub Committee had decided she should be awarded £500 compensation for the Respondent's reckless act.

The Secondary Complainer noted that the Respondent had originally shown some remorse. However, now he was quite bullish and indignant. He had posted that he had "no remorse" in relation to the Tribunal's findings on misconduct. That was worrying and indicative of his behaviour towards the Secondary Complainer's family over the last five years. She did not know how to get the Respondent to stop. They had reported him to Police Scotland in relation to having allegedly committed perjury at the misconduct hearing. She wanted the Respondent to stop harassing her and to stop using Facebook altogether.

The Chair invited the Secondary Complainer to address the basis for her claim, given that the Tribunal had not made a finding of misconduct in relation to the charge in which she was named as a Secondary Complainer. The Secondary Complainer said that she had assumed that because the Respondent had pleaded guilty to carrying out the act, it would stand. She did not understand the procedure. The Respondent had already admitted to the Law Society that he had behaved in this way.

SUBMISSIONS FOR THE RESPONDENT

The Respondent said the reference to the Secondary Complainer was contained in a private message to her son. The Respondent said he had asked whether the Secondary Complainer was an abusive drunk too. The private message was never published. That was why the Tribunal had found him not guilty.

The Respondent said that since he made the comment, the Secondary Complainer had been arrested and charged with stalking and harassment. She had made threats of violence and antisemitic comments. She had also written to various people making threats and false allegations. She was the subject of a report to the Procurator Fiscal for stalking and harassment with a racial aggravation.

The Respondent said he had not targeted the Secondary Complainer. She was the subject of one comment to her son. The Law Society accepted it was contained in a private message. The Secondary Complainer was not telling the truth when she said it was on Facebook, or she had been misinformed. He suggested that she did not know what she was talking about.

The Respondent said the background to the matter was that the Secondary Complainer's family had terrorised him for years. Her son had been convicted of stalking and harassment. The Respondent is one of his victims, along with others.

The Respondent asked why he was at this hearing, having to face the Secondary Complainer, when he was found not guilty of this charge.

FURTHER SUBMISSIONS FOR THE SECONDARY COMPLAINER

The Secondary Complainer said the Respondent's replies were "outrageous". She questioned whether he had a personality disorder or mental health troubles. She said the idea he was terrified of her "beggars belief". It was her submission that the Respondent had cut and paste the whole conversation and put it on his page and on a page for lawyers. He did not say that the exchange was private when the complaint was made. She did not seek compensation from the Law Society. She just wanted to make a complaint.

FURTHER SUBMISSIONS FOR THE RESPONDENT

The Respondent suggested that Neil McPherson had told the Secondary Complainer what to do and say. The messages which had been published on Facebook were a separate tranche of messages between David McPherson and a former client. Copies of these messages were posted on a private lawyers' site.

These contained threats of violence, and anti-Catholic and anti-Semitic comments. The Respondent had been referred to as Adolph Hitler. It had since transpired that David McPherson had been sending these messages to lots of others. He was convicted of stalking and harassment. It appeared that the Secondary Complainer had been told by third parties that the comment about her had also been posted on Facebook. This was incorrect.

DECISION

The powers of the Tribunal to award compensation are set out within 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 was limited. It could 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.

The Respondent had been found not guilty of the averment of misconduct that he had lacked integrity in respect of his comment about this Secondary Complainer. There was therefore no professional misconduct established which could provide a basis for a claim for compensation by this Secondary Complainer in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980.

The Tribunal appreciated that this would be a disappointment to the Secondary Complainer who had believed that because the Law Society had at one stage made a suggestion that compensation of £500 would be appropriate, that offer should still be available to her in these proceedings. However, the legislation does not allow the Tribunal to make an award of compensation in the absence of established professional misconduct. Therefore, the Tribunal made no award of compensation.

The Respondent moved for expenses. The Secondary Complainer did not have any comment to make on the issue. The Tribunal noted that the Secondary Complainer had been unsuccessful in her claim, and that might in some circumstances have resulted in a finding of expenses against her. However, the Tribunal considered the fact that she had believed she had a basis for a claim, despite indications to the contrary, and that the Tribunal had in its misconduct findings invited all Secondary Complainers to make

a claim. The Respondent's conduct during the hearing was unnecessarily combative and rude. He did not treat the Tribunal with respect, from the late lodging of his productions to his conduct during the hearing. Therefore, taking account of all these circumstances, the Tribunal concluded that no award of expenses should be made. This decision will be given publicity, but it will be deferred until publication of the Tribunal's findings of 27 April 2023 in relation to professional misconduct.



Catherine Hart
Vice Chair