

**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**

**STEVEN LILLY, 128 Kilmeny Crescent,  
Wishaw**

**Respondent**

1. On 13 January 2020, Steven Lilly, 128 Kilmeny Crescent, Wishaw (hereinafter referred to as "the Respondent") was found guilty of professional misconduct.
2. There were two Secondary Complainers, Mr A and Mr B.
3. On 13 January 2020, the Tribunal allowed both Secondary Complainers 28 days from the intimation of the Findings to lodge a written claim for compensation with the Tribunal Office.
4. The Secondary Complainer, Mr B, lodged a written claim for compensation. On 1 April 2020, in view of government advice regarding COVID-19, the Tribunal *ex proprio motu* in terms of Rule 44 of the Tribunal Rules 2008 sisted the case.
5. On 22 May 2020, the Tribunal pronounced an Interlocutor recalling the sist, directing that the compensation claim form should be served upon the Respondent, allowing the Respondent 21 days to lodge Answers to the claim and thereafter appointing a procedural hearing to be set down on a date to be afterwards fixed.
6. A copy of the Interlocutor of 22 May 2020 and a copy of the claim for compensation were intimated to the Respondent. No Answers were lodged by the Respondent. The Tribunal

set down a procedural hearing for 13 July 2020 and a notice thereof was duly served upon the Respondent in terms of the Tribunal Rules.

7. On 24 June 2020, the Tribunal received an email from the Respondent indicating that he might not be able to attend the procedural hearing but confirming that he considered that the case was suitable to be heard by way of a virtual platform and was in favour of that approach.
8. The procedural hearing on 13 July 2020 proceeded by way of Zoom. Mr B was present. The Respondent was neither present nor represented. The Tribunal fixed a full hearing of the claim for compensation to proceed by Zoom on 17 August 2020 at 10am.
9. Notice of the hearing set down for 17 August 2020 was duly intimated to the Respondent by post and email.
10. The hearing on 17 August 2020 proceeded by way of Zoom. The Secondary Complainer was present. The Respondent was neither present nor represented. It was confirmed to the Tribunal that the Depute Clerk had spoken to the Respondent on 14 August 2020 at which time the Respondent confirmed that he was aware of the arrangements for the hearing, that he may or may not attend dependant upon whether or not a business meeting came up that clashed with the time, that he was aware that if he failed to appear the Tribunal could deal with the hearing in his absence and he was prepared for that to happen. The Tribunal determined that the fair and appropriate procedure was to hear and deal with the claim for compensation in the absence of the Respondent. The Tribunal heard evidence and submissions from Mr B.
11. The Tribunal found the following facts established:-
  - 11.1 Mr B was a Secondary Complainer in the Complaint against Steven Lilly, 128 Kilmeny Crescent, Wishaw. The Respondent was found guilty of professional misconduct in relation to his dealings with Mr B in respect that:-
    - (a) In providing to Mr B his personal bank details, receiving and retaining funds due to his then employers, and not returning the funds to Mr B or forwarding them to his then employers he acted in manner which is likely to bring the profession into disrepute.

- (b) In providing to Mr B, his personal bank details, receiving and retaining funds due to his then employers, and not returning the funds to Mr B or forwarding them to his then employers he acted in breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011.
- (c) In providing to Mr B, his personal bank details, receiving and retaining funds due to his then employers, and not returning the funds to Mr B or forwarding them to his then employers he acted in contravention of Practice Rule B6.12.1(c) of the Law Society of Scotland Practice Rules 2011.

11.2 Mr B lodged a written statement of claim with the Tribunal Office claiming compensation of £5,000. This figure included £600 paid into the Respondent's bank account, £1,500 that the Respondent had offered to pay, and £2,900 for distress and inconvenience.

11.3 Mr B was directly affected by the Respondent's misconduct as set out in paragraph 11.1 above. As a result of the foregoing misconduct, Mr B incurred loss and suffered inconvenience and distress.

12. The Tribunal, having heard further submissions from Mr B in respect of expenses and publicity, pronounced an Interlocutor in the following terms:-

By Video Conference, 17 August 2020. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Steven Lilly, 128 Kilmeny Crescent, Wishaw and having previously determined that the Respondent was guilty of professional misconduct; Find that the Secondary Complainer, Mr B, has been directly affected by the Respondent's misconduct and consider 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 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)**

**Colin Bell**

**Vice Chair**

13. 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

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Vice Chair**

**NOTE**

Prior to the hearing on 17 August 2020, the Secondary Complainer, Mr B, had lodged a written statement of claim for compensation which had been intimated to the Respondent. No Answers were lodged on behalf of the Respondent. No appearance was made by or on behalf of the Respondent at the hearing on 17 August 2020. Mr B was present.

The Tribunal heard from the Depute Clerk that a notice of hearing had been sent to the Respondent by mail and email. She confirmed that she had spoken to the Respondent on the telephone on the afternoon of Friday 14 August 2020 and that the Respondent had confirmed he was aware of the arrangements of hearing. He indicated that he may or may not attend the hearing dependent upon whether a business meeting arose that clashed with the hearing arrangements. The Respondent confirmed he was aware that the Tribunal could deal with the hearing in his absence and that he was prepared for that to happen.

The Tribunal gave careful consideration to the circumstances described. It concluded that this was a conscious and deliberate decision of the Respondent not to attend. Mr B had attended both the previous procedural hearing and was present at today's full hearing. In the circumstances, the Tribunal concluded that the fair and appropriate decision, having regard to the interests of justice, was to continue to hear the case in the absence of the Respondent.

Mr B advised the Tribunal that he had sent documents to the Tribunal Office by post, shortly after the procedural hearing. The Chair explained to Mr B that these documents had not been received by the Tribunal Office and asked if he would prefer to continue to another day for the documents to be available. Mr B confirmed that he preferred that the matter continue and reach a conclusion today.

Mr B proceeded to give parole evidence.

**EVIDENCE FOR MR B**

Mr B explained how he had come to instruct the Respondent to defend him in a criminal prosecution. He confirmed that he paid the Respondent £600 for his professional services. Mr B had become unhappy with the way that his case was being dealt with. On one occasion, a warrant was granted for the arrest of Mr B for failing to attend a court date because the Respondent had not appeared on his behalf. It was only after Mr B complained to the firm about the conduct of the Respondent that Mr B discovered the fee of £600 had gone to the Respondent personally and not the firm.

Mr B went on to describe his dissatisfaction with the eventual conclusion of the criminal proceedings against him. He had been placed on restrictions which prevented him from travelling and meant he was unable to run his business. As a consequence his business partners were able to conspire against him and he lost his business.

Mr B had been ordered as part of the criminal prosecution to pay compensation of £1,500. After Mr B had complained to the firm about the progress of his case, the Respondent had offered to pay this compensation to the court on behalf of Mr B but he had never done so. The Respondent had still not repaid Mr B the £600.

As a result of the stress of the criminal proceedings and the loss of his business, Mr B had suffered significant health problems, which continued today.

### **SUBMISSIONS FOR MR B**

The Chair explained to Mr B that the Tribunal was limited to considering only the misconduct of the Respondent found established before the Tribunal on 13 January 2020. Mr B invited the Tribunal to consider his whole evidence and take from it the issues that the Tribunal considered relevant in his 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 considered that a direct effect was one of 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. The Tribunal has a discretion to award compensation and is not obliged to do so.

The Tribunal had careful regard to the written statement of claim, parole evidence and submissions of Mr B. The Tribunal found Mr B to be both a reliable and credible witness.

Mr B's claim appeared to fall into three separate parts:-

**(a) £600 received and retained by the Respondent**

It was clearly established that the Respondent had received and retained £600. This was the essence of the finding of misconduct against the Respondent, insofar as the Complaint related to Mr B.

At the hearing on 13 January 2020, the Respondent accepted that he had not repaid Mr B and that his previous employer had undertaken to represent Mr B without charging a fee. Mr B had confirmed on 17 August 2020 that the Respondent had still not repaid this figure to him. Accordingly, the Tribunal was satisfied that Mr B had been directly affected by the misconduct and that the loss of £600 resulted from that misconduct. It was therefore appropriate to make an award in favour of Mr B for £600.

**(b) £1,500 offered to be paid by the Respondent**

The offer to pay the compensation order did not form any part of the findings of misconduct before the Tribunal. It could not be said, in terms of Section 53(2)(bb), that this was a result of the misconduct. No award in relation to this figure would be competent.

**(c) £2,900 inconvenience and distress**

Mr B had described significant consequences, both financial and to his health, which he attributed to the conduct of the Respondent. However, the Tribunal can only have regard to the misconduct established before it and not any wider issues of complaint that Mr B may have had. The misconduct established related only to the receiving and retaining of £600 of fees.

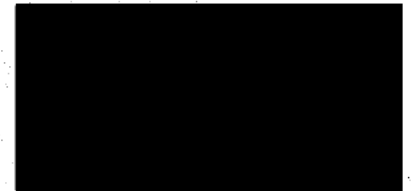
It was, however, clear to the Tribunal that these proceedings had had a significant effect upon Mr B. He had clearly been distressed whilst giving evidence and the Tribunal had had to adjourn to allow him to gather his thoughts. The procedure before the Tribunal had required Mr B to revisit the difficulties he had had to face. It was clear that Mr B had been caused worry and concern and that the Respondent had taken no steps to rectify matters.



The Tribunal was satisfied on the balance of probabilities that Mr B had suffered inconvenience and distress resulting from the Respondent's misconduct and considered that the appropriate award of compensation to adequately reflect that was £400.

Mr B confirmed he had not incurred any expenses in relation to the Tribunal proceedings as they had taken place on Zoom. He invited the Tribunal to have regard to the sensitive and personal nature of the information before it and to maintain his anonymity.

The Tribunal considered that the appropriate award of expenses was one against the Respondent, for the expenses of the Tribunal and Clerk. Given the personal and intrusive nature of the information contained in this decision, the Tribunal concluded that publicity should be given to the decision which should include the name of the Respondent but need not identify any other person.



**Colin Bell**  
**Vice Chair**