

**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

**JEREMY JAMES CRAM, a sole practitioner
formerly carrying on business as Jeremy Cram
& Co. (formerly AJ Cram & Co.), 7 Castle
View, Newmains**

Respondent

1. On 17 September 2018, Jeremy James Cram, a sole practitioner formerly carrying on business as Jeremy Cram & Co. (formerly AJ Cram & Co.), 7 Castle View, Newmains (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A, Advocate.
3. On 17 September 2018, the Tribunal allowed the Secondary Complainer 28 days from the intimation of the findings to lodge a written claim for compensation with the Tribunal Office. A written statement of claim was received.
4. On 5 November 2018, the Tribunal issued an interlocutor allowing the statement of claim for the Secondary Complainer to be received and appointing the Respondent to lodge Answers if so advised within 7 days, with 7 days thereafter for both the Secondary Complainer and the Respondent to adjust. The Tribunal assigned 26 November 2018 as a hearing.
5. At the hearing on 26 November 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.

6. The Tribunal found the following facts established:-

6.1 Mr A, Advocate was the Secondary Complainer in the Complaint against Jeremy James Cram, a sole practitioner formerly carrying on business as Jeremy Cram & Co. (formerly AJ Cram & Co.), 7 Castle View, Newmains. On 17 September 2018, the Tribunal found the Respondent guilty of professional misconduct. Only part of that misconduct involved the Secondary Complainer as follows:

- (a) From 13 October 2014 to the date of the Complaint the Respondent failed and/or delayed unreasonably to respond to and cooperate with the reasonable enquiries of FS (Faculty Services), the Secondary Complainer, The Dean of the Faculty of Advocates and the Complainers both by way of returning telephone calls and/or responding to correspondence in relation to payment of outstanding fees;
- (b) From 13 October 2014 to the date of the Complaint the Respondent delayed unreasonably and/or failed to procure payment of outstanding fees due to the Secondary Complainer or FS on their behalf as was his professional obligation;
- (c) Between November 2014 and the date of the Complaint, having been advised that the Scottish Legal Aid Board (SLAB) had indicated that some of the Secondary Complainer's fees had been paid to him, the Respondent failed to make payment of those fees and has unreasonably delayed and failed to provide information to FS to enable them to clarify the issue of payment by SLAB of two outstanding fees where the position was not known;

6.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 for loss.

6.3 The Respondent had a duty to respond and cooperate with the Secondary Complainer, Faculty Services and the Dean of the Faculty of Advocates. He had a duty to pay the Secondary Complainer's fees, particularly when he had received

those fees from SLAB. He failed to do so. As a direct effect of the Respondent's professional misconduct, the Secondary Complainer suffered loss.

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

Edinburgh 26 November 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Jeremy James Cram, a sole practitioner formerly carrying on business as Jeremy Cram & Co. (formerly AJ Cram & Co.), 7 Castle View, Newmains and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer, Mr A, Advocate, has been directly affected by the Respondent's misconduct and considered 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, Advocate, the sum of £5,000 by way of compensation in respect of loss 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.

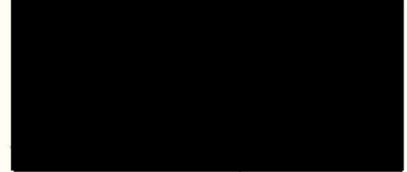
(signed)

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 Complainer by recorded delivery service on *4 January 2019*.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chairman

NOTE

At the hearing on 26 November 2018, the Tribunal heard evidence on oath from the Clerk regarding service of the Interlocutor which contained notice of the hearing. The Clerk gave evidence that the Interlocutor of 5 November 2018 had been served by recorded delivery letter on 6 November 2018 and signed for. The Clerk also gave evidence that she had spoken with the Respondent on the telephone on 6 November 2018 and received an email from him on that same date. The terms of that telephone call and email suggested that the Respondent expected the Tribunal to deal with the matter in his absence. The Clerk also gave evidence that the same Interlocutor and notice of hearing had been served upon the Secondary Complainer. 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 the Secondary Complainer. The Secondary Complainer had provided a written statement of claim with supporting documentation. The Secondary Complainer had intimated to the Tribunal Office that he did not intend to attend the compensation hearing and was content for the matter to be dealt with in his 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 notice, there was no reason to think he would attend on any other date, and his correspondence suggested that he was content for the matter to proceed in his absence. 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 Complainer that the case proceeded on the date set down. The balance therefore lay in favour of proceeding in their absence.

DECISION

The Tribunal carefully considered the Secondary Complainer’s compensation claim form dated 9 April 2018 with attached documents and the Respondent’s email of 6 November 2018. 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 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.

On 17 September 2018, the Respondent was found guilty of professional misconduct. On many occasions and for a long period, the Respondent neglected his professional duties. He failed to communicate with Faculty Services Limited to enable them to clarify the issue of payment by SLAB. He failed to pay the fees he was responsible for and which in some cases had been paid to him by SLAB. It was clear that on at least some occasions SLAB had provided the Respondent with monies for onward transmission to the Secondary Complainer. The Respondent did not pass this money on. It is fundamental to the relationship between Counsel and solicitors that when Counsel are instructed, solicitors will pay their fees. The Secondary Complainer's loss arose directly from the Respondent's failure to follow this principle and his consequent professional misconduct. It was therefore appropriate to make an award of compensation.

The Tribunal's power to award compensation was limited to £5,000. The Secondary Complainer indicated that he wished to claim compensation of £5,000. This comprised of unpaid fees as well as interest and compensation relating to fees which had been paid by the Client Protection Fund. The unpaid fees element alone amounted to over £12,000 but the Secondary Complainer had restricted his claim to the statutory maximum available, namely £5,000. The Secondary Complainer made no claim in respect of non-quantifiable loss. The Tribunal noted that the unpaid fees due to the Secondary Complainer were far in excess of the statutory amount of compensation which the Tribunal could award. It therefore considered it appropriate to make an award of £5,000 to the Secondary Complainer in respect of those unpaid fees.

Although the matter became somewhat academic following the decision to award the statutory maximum amount of compensation in respect of the unpaid fees, the Tribunal considered that it would have declined to award interest based on the Late Payment of Commercial Debts (Interest) Act 1998 or to award compensation under that Act in relation to the fees paid by the Client Protection Fund. The Secondary Complainer had not demonstrated any actual loss in relation to this. The Tribunal also noted that in relation to one of these cases, the fee note, although paid by the Client Protection Fund, did not appear in the professional misconduct complaint. It would not therefore have been able to award any compensation in relation to that particular fee.

The Tribunal had regard to an email the Respondent had sent to the Tribunal Office on 6 November 2018. In that email, the Respondent noted that he was not in a position to settle the compensation claim.

He was no longer working as a solicitor and earned less than £20,000 a year. He advised that he had little in the way of assets. He accepted that he owed money but said there was no way for him to pay this back. He noted that *"I would like to offer my sincere apologies to all people who are directly affected by my financial mismanagement."* In particular, he offered the Secondary Complainer *"a very personal apology"*. The Tribunal noted the Respondent's regret and his current financial circumstances. However, it considered that impecuniosity was not a bar to an award of compensation. Enforcement of the Tribunal's order will be a matter for the Secondary Complainer.

Neither party made any submissions with regard to expenses or publicity. The Tribunal decided that the Respondent should be liable in the expenses of the Tribunal including expenses of the Clerk. Publicity will be given to the decision and that publicity will include the name of the Respondent. However, it need not identify any other person.



Kenneth Paterson
Vice Chairman