

**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

**SIMON KENNEDY DUNCAN, Solicitor, Flat
G/L, 603 Clarkston Road, Glasgow**

Respondent

1. On 2 June 2023, Simon Kennedy Duncan, Solicitor, Flat G/L, 603 Clarkston Road, Glasgow ("the Respondent"), was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Jack McLachlan, 105 Broomlands Road, Cumbernauld.
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. A compensation claim form dated 24 July 2023 was received timeously.
4. The Tribunal set the matter down for a virtual compensation hearing on 15 November 2023. Notice was duly served upon the Respondent and Secondary Complainer.
5. At the virtual compensation hearing on 15 November 2023, the Respondent was present and represented by Johnston Clark, Solicitor, Dundee. The Secondary Complainer was not present or represented.
6. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 15 November 2023. The Tribunal, having considered the Complaint at the instance of the Council of the Law Society of Scotland against Simon

Kennedy Duncan, Solicitor, Flat G/L, 603 Clarkston Road, Glasgow and having previously determined that the Respondent was guilty of professional misconduct; Dismiss the Secondary Complainer's claim for 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 need not identify any other person.

(signed)

Ben Kemp

Vice Chair

7. 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 *5 December 2023*.

IN THE NAME OF THE TRIBUNAL



Ben Kemp
Vice Chair

NOTE

At the virtual compensation hearing on 15 November 2023, the Tribunal had before it the findings in the professional misconduct case against the Respondent; the Secondary Complainer's compensation claim form; a copy of Mr Clark's email to the Secondary Complainer dated 3 November 2023; a copy of the Professional Conduct Sub Committee's decision of 30 April 2023 lodged by the Respondent; and a copy of the Tribunal's decision in Law Society-v-Laura Winton lodged by the Respondent. The Tribunal also had sight of an email from the Secondary Complainer to the Tribunal Clerk which was sent at 2319 hours on 14 November 2023 which was in the following terms:

"I apologise for not replying earlier, I will be unable to attend the Tribunal hearing tomorrow as I will be in work with no resource or ability to phone in."

Mr Clark moved the Tribunal to dismiss the Secondary Complainer's claim for compensation with expenses. Mr Clark said he had tried to engage with the Secondary Complainer twice but had received no response to his email of 3 November 2023 or an earlier letter. He noted the trouble and expense already incurred by the Tribunal. If the Tribunal was not minded to dismiss the claim, he suggested that it dealt with the matter that day on the basis of the documents lodged. The Secondary Complainer's claim would have to speak for itself. If the matter was adjourned, the Respondent moved for expenses of the 15 November 2023 compensation hearing.

The Tribunal retired to consider the position. It noted that the Secondary Complainer had indicated on 30 August 2023 that he was content with a hearing by video conference, and that he would prefer that option. The Secondary Complainer was given formal notice of the hearing by letter of 12 September 2023. The joining instructions for the compensation hearing were sent to him by email on 8 November 2023. The Secondary Complainer was clearly aware of the compensation hearing. However, his email explaining that he would not be present was not sent until late in the evening on 14 November 2023 and was not received until the morning of the compensation hearing. He did not explain why he had been unable to give more notice of his working situation. He did not ask the Tribunal to proceed in his absence on the basis of the claim form he had lodged. He did not ask the Tribunal to adjourn the hearing to another date or provide any potential dates when he would be available.

The Tribunal considered the potential options. It could adjourn the hearing. It noted that the Secondary Complainer had given only very late notice of his non-attendance and had not provided any explanation. There was nothing to indicate that the Secondary Complainer wished the case to be adjourned.

The Tribunal could attempt to proceed in the Secondary Complainer's absence. However, having considered the Secondary Complainer's claim form in advance of the hearing, the Tribunal was concerned that it would not provide sufficient basis upon which to determine the case on the balance of probabilities in the absence of evidence from the Secondary Complainer who had provided no vouching of the elements of his claim. The Secondary Complainer claimed the maximum amount of compensation on the basis of his eroded confidence in the legal system, inconvenience, and emotional distress but there was little in the way of detail as to how this had manifested itself. If the Secondary Complainer was unsuccessful, this would open him up to the potential of a finding of expenses against him. The Secondary Complainer had not invited the Tribunal to proceed in his absence, or ever suggested that this might be something he wished the Tribunal to do. The Tribunal was therefore reluctant to follow this course of action.

The Tribunal considered that in all the circumstances of the case, the most appropriate action was to dismiss the Secondary Complainer's claim for compensation. The Secondary Complainer had received ample notice of the compensation hearing. His intimation that he would not attend the compensation hearing was received extremely late. The hearing was set in order for the Secondary Complainer to persuade the Tribunal that he ought to receive compensation. In his absence, it was not for the Tribunal to make that case for him or attempt to work out what his case might be, especially when it had not been invited to do so. If he was unable at the last minute to attend, it was the Secondary Complainer's responsibility to communicate properly with the Tribunal Office and specify what action he wished the Tribunal to take in the circumstances. The Tribunal also noted that the Secondary Complainer had failed to respond to the Respondent's attempts to agree a settlement. The Tribunal found no expenses due to or by either party and indicated that publicity would be given to his decision which would name the Respondent and the Secondary Complainer but need not identify any other person.



Ben Kemp
Vice Chair