

**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

**FIONA MCKINNON, McKinnon & Co., 51
Gartcraig Road, Carntyne, Glasgow**

Respondent

1. On 12 January 2022, Fiona McKinnon, McKinnon & Co., 51 Gartcraig Road, Carntyne, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, MC.
3. On 12 January 2022, the Tribunal allowed the Secondary Complainer 28 days from intimation of the Findings to lodge a written claim for compensation with the Tribunal Office. The Secondary Complainer lodged a written statement of claim. The Secondary Complainer indicated to the Tribunal Office by email of 17 March 2022 that she did not intend to attend any hearing and invited the Tribunal to make its decision based on the documents she had lodged with the Tribunal.
4. The Tribunal set the matter down for a virtual compensation hearing on 10 May 2022 at 10am. The hearing was intimated to the Respondent by letter of 22 March 2022. The Respondent was also informed that she had 14 days from the date of the letter to lodge Answers to the claim and following that there would be a period of 14 days to adjust, if required. No Answers were lodged.
5. At the virtual compensation hearing at 10am on 10 May 2022, no parties were present or represented. The Respondent had intimated by email to the Tribunal Office at 0905 hours

on 10 May 2022 that she was unwell and unable to attend the compensation hearing. The Tribunal decided to proceed with the hearing in the Respondent's absence on the basis of the papers before them.

6. The Tribunal found the following facts established:-

6.1 MC was the Secondary Complainer in the Complaint against Fiona McKinnon, McKinnon & Co., 51 Gartcraig Road, Carntyne, Glasgow. The Respondent was found guilty of professional misconduct singly and *in cumulo* in respect that she (a) failed to act in the best interests of MC and failed over a period of 12 years to progress her personal injury claim; (b) failed to communicate effectively with MC between March 2005 and November 2017 in relation to the progress of her personal injury claim; (c) failed to communicate effectively with Alan Conroy in that she failed or unduly delayed for several months in providing him with letters notifying of a claim against his firm in respect of the Respondent's negligence in dealing with a personal injury case; (d) failed or unduly delayed for a period in excess of 10 months in providing the secondary complainer Alan Conroy the file of MW, to enable him to investigate a complaint by MW; (e) failed or unduly delayed in implementing a mandate from the solicitor representing LG for a period in excess of two years; (f) failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the SLCC and its solicitor in respect of its regulatory function; and (g) failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the Council in respect of its regulatory function in relation to three complaints.

6.2 The Secondary Complainer lodged a written statement of claim with the Tribunal claiming £5,000 for stress and inconvenience caused.

6.3 The Secondary Complainer was directly affected by the Respondent's failure to act in her best interests to progress a personal injury for over 12 years and failure to communicate with her over that period. She was also directly affected by her failure to respond to correspondence from the SLCC and the Law Society of Scotland. She suffered loss, inconvenience and distress as a result.

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

By Video Conference 10 May 2022. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Fiona McKinnon, McKinnon & Co., 51 Gartcraig Road, Carntyne, Glasgow and having previously determined that the Respondent was guilty of professional misconduct, Find that the Secondary Complainer, MC, has been directly affected by the Respondent's misconduct and consider 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, MC, the sum of £3,000 by way of compensation in respect of 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.

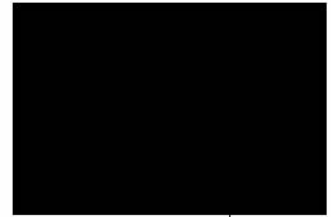
(signed)

Kenneth Paterson

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 14 JUNE 2022 .

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson
Vice Chair

NOTE

The hearing on 10 May 2022 was set to consider the claim for compensation made by the Secondary Complainer, MC. The Secondary Complainer indicated to the Tribunal Office by email of 17 March 2022 that she did not intend to attend any hearing and invited the Tribunal to make its decision based on the documents she had lodged with the Tribunal. No appearance was made on behalf of the Respondent. She had intimated to the Tribunal Office at 0905 hours on 10 May 2022 that she was unwell and unable to attend the compensation hearing. Attached to the email was an email from NHS Scotland Test and Protect dated 29 March 2022. She requested that the Tribunal fix a further hearing in four weeks' time and grant her an extension to provide Answers.

The Tribunal noted that the compensation hearing had been intimated to the Respondent by letter of 22 March 2022. The terms of her email of 10 May 2022 indicated that she had received intimation and was aware of the compensation hearing that day. The Tribunal considered whether it was fair to proceed in the Respondent's absence. It noted that the Respondent had failed to produce Answers and that the request to adjourn the hearing came at the very last minute. The Respondent provided an email which showed that she had reported a positive COVID test on 29 March 2022. She indicated she was still suffering from the effects of the virus. No explanation was given as to reason why she had not sought an extension for Answers or an adjournment at an earlier stage. No medical report was provided to evidence her inability to attend the remote hearing. A pattern of failure to comply with time limits and requests for adjournments had been a feature of the misconduct case. The Tribunal had convened. The Secondary Complainer expected the hearing to take place. The case was almost eighteen months old. The Tribunal considered that expeditious progress of the case was important as was fairness to the Secondary Complainer. A fair hearing was still possible in the absence of the Respondent. In these circumstances, the Tribunal was of the view that the balance of fairness tipped in favour of proceeding. It therefore decided to proceed with the compensation hearing in the absence of the Respondent.

The Tribunal had before it the misconduct decision and the Secondary Complainer's compensation claim. These documents had been intimated to the Respondent.

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 noted its power to award compensation was limited. It could direct a solicitor to pay compensation of such amount which did not exceed £5,000 to a Secondary Complainer for loss, inconvenience or distress resulting from the misconduct. 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.

The Tribunal gave careful consideration to the content of the statement of claim. The Secondary Complainer had lodged a claim for financial loss as well as inconvenience and distress. No submissions were provided in support of the claim. The claim form was not accompanied by any other documents.

In terms of financial loss, the Secondary Complainer wished to claim for any personal injury compensation which might have been awarded if the original claim had been dealt with properly. She claimed for personal expenses which were incurred following the accident, such as car hire. In addition, she claimed for inconvenience and distress caused by continually pursuing her case with the Respondent. She referred to many years of excuses and false promises. She felt totally disregarded by the respondent. The matter had been constantly on her mind and had an impact on her mental wellbeing and family life. The timescale over which the misconduct had occurred had been distressing. No receipts, vouching or documents were provided in respect of the claim for financial loss or inconvenience or distress.

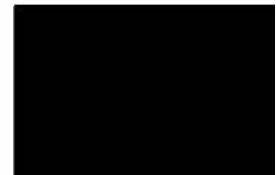
As a result of the Respondent’s misconduct, the Secondary Complainer had lost the opportunity to pursue her personal injury claim. The Tribunal considered the prospects of success when approaching its valuation of the appropriate amount of compensation (Robertson-v-Law Society of Scotland [2015] CSIH 95).

The loss of opportunity to pursue the personal injury claim arose as a direct effect of the Respondent failing to act. Despite the repeated attempts of the Secondary Complainer over 12 years to try to get the Respondent to act, the Respondent failed to settle the claim with the insurers or raise an action. But for the misconduct, the Secondary Complainer would have pursued her claim. She had lost a real chance, which was not merely speculative, to pursue a claim.

The Tribunal considered how to value the loss of that opportunity. There was no evidence provided by the Secondary Complainer regarding the likelihood of success. However, the Tribunal noted from its previous decision that the insurers admitted liability (although the cause of any injuries and the appropriate award of any compensation were still to be determined). The Tribunal considered that the Secondary Complainer had a good chance of success. It took into account her whiplash injury and also that she had suffered ongoing shoulder pain which required additional physiotherapy. The shoulder pain was noted as having been experienced as late as January 2012. The appropriate award with regard to loss of opportunity to pursue the claim was therefore £1,000.

The Secondary Complainer had been inconvenienced and distressed by the misconduct which had occurred over a period of twelve years. She had repeatedly attempted to get the Respondent to take action. The misconduct had a serious effect on the Secondary Complainer's well-being. It caused significant inconvenience over a long period of time. The Respondent took no steps to rectify matters. The Secondary Complainer had been left feeling badly let down and had "an overwhelming feeling of total disregard" from the Respondent. The appropriate award with regard to inconvenience and distress was therefore £2,000.

In total therefore, the Tribunal awarded £3,000 compensation to the Secondary Complainer. The Tribunal ordered that publicity would be given to the decision and would name the Respondent but that no other person required to be named. The expenses of the Tribunal will be met by the Respondent.



Kenneth Paterson
Vice Chair