

**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, Alan Conroy.
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.
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, the Secondary Complainer was present and represented himself. The Respondent was not present or represented. She 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 granted the Secondary

Complainer's motion to proceed with the hearing in the Respondent's absence. The Secondary Complainer made submissions.

6. The Tribunal found the following facts established:-
  - 6.1 Alan Conroy 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 loss, inconvenience and distress.
  - 6.3 The Secondary Complainer was directly affected by the Respondent's failure to communicate effectively with him and by failing to provide him with a file. He was also directly affected by her failure to respond to correspondence from the SLCC and the Law Society of Scotland. He 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, Alan Conroy, 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, Alan Conroy, the sum of £5,000 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 and the Secondary Complainer 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

**IN THE NAME OF THE TRIBUNAL**



**Kenneth Paterson**  
**Vice Chair**

**NOTE**

The hearing on 10 May 2022 was set down to consider the claim for compensation made by the Secondary Complainer, Alan Conroy. 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 Secondary Complainer moved the Tribunal to proceed with the hearing in the Respondent's absence. He noted the significant delays which had already taken place. One of the clients concerned had died while proceedings were ongoing. He highlighted that the Respondent had not lodged 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 also been a feature of the misconduct case. The Tribunal had convened and the Secondary Complainer was present. 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 granted the Secondary Complainer's motion to proceed with the compensation hearing in the absence of the Respondent.

The Tribunal had before it the misconduct decision, the Secondary Complainer's compensation claim and an email from the Secondary Complainer of 11 March 2022 with attached documents. All these documents had been intimated to the Respondent. The Secondary Complainer made submissions.

## **SUBMISSIONS FOR THE SECONDARY COMPLAINER**

The Secondary Complainer referred to his email of 11 March 2022 and his compensation claim form.

In February 2018 the Secondary Complainer received a letter from Jones Whyte, a firm acting for AG. That letter made it clear that recorded delivery letters from that firm about a claim had been received by the Respondent in September and November 2017. AG's claim arose because of the Respondent's failure to raise a court action within the triennium. The Respondent had not brought this to the Secondary Complainer's attention although it was his claims situation which was on the line. The Secondary Complainer said that other things then came to light which the Respondent had hidden from him. The Secondary Complainer engaged Beltrami & Co. to assist him but they stopped taking instructions because the Respondent was obstructive. The Secondary Complainer sought an opinion from Counsel. With Counsel's assistance, he minimised the loss by negotiating the claim from £8,000 to £4,000. He had suffered a total loss of £7,279.10. This comprised of the £4,000 settlement figure, and fees to Jones Whyte, Beltrami and Co. and Counsel. He referred to the copy ledger cards and letters from Jones Whyte which he had produced.

The Secondary Complainer noted that the Tribunal's misconduct decision was based on a plea arrangement made between the Law Society and the Respondent's agent. He understood the practical reasons why that arrangement was made but it meant that some of his legitimate claims were not included in the Complaint which was before the previous Tribunal. He noted that he paid £3,000 of outlays in the Respondent's cases. The Respondent had not received payment for these by the Scottish Legal Aid Board or insurance companies.

The Secondary Complainer estimated that he had spent 70-80 hours dealing with problems created by the Respondent and the subsequent complaints to the Scottish Legal Complaints Commission, Law Society of Scotland and this Tribunal.

The Secondary Complainer noted that MC is the wife of a relative. AG is a friend. The Respondent's conduct had caused him a lot of professional and personal embarrassment. In all the circumstances, he said that the maximum award of compensation would not be unreasonable.

## **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, documents produced by the Secondary Complainer and his submissions. The Secondary Complainer had lodged a claim for patrimonial loss as well as inconvenience and distress.

The Tribunal noted that it could only have regard to the loss, inconvenience and distress directly caused by the misconduct which was established by the Tribunal on 12 January 2022. It could therefore take no account of the outlays which were part of the Secondary Complainer’s claim as these were not part of the established misconduct.

The Tribunal considered the misconduct which had been established on the last occasion. The Respondent had failed to communicate with the Secondary Complainer by failing or unduly delaying for several months in providing him with letters notifying a claim against his firm in respect of her negligence in dealing with a personal injury case. The Respondent failed to provide a file to the Secondary Complainer to enable him to investigate a complaint by MW. The Respondent had also failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices sent by the SLCC and the Law Society of Scotland in relation to the complaints.

The Tribunal was satisfied that the Secondary Complainer had suffered loss as a result of the Respondent’s failure to inform him of AG’s claim against the firm. The Secondary Complainer did not ring-fence the firm’s indemnity insurance. He was unaware of any potential outstanding claims (paragraph 13.84 of the Tribunal’s findings in fact). The Respondent was aware of the claim but did not inform the Secondary Complainer. She did not assist to resolve the claim which was eventually settled by the Secondary Complainer. The Secondary Complainer had to make payments to Jones Whyte, Beltrami and Co. and Counsel.

The Respondent failed to provide a file to the Secondary Complainer to enable him to investigate a complaint by MW. This created a great deal of inconvenience and distress to the Secondary Complainer and the complaint remained unresolved at the time of MW's death.

The Secondary Complainer spent many hours dealing with these issues which arose as a result of the Respondent's misconduct. If he had the letters relating to AG's claim, or knowledge of their contents, he would have been able to take action regarding his indemnity insurance and respond promptly to resolve the claim. He also made complaints to the SLCC and responded to the Law Society's investigation. The complaints process was very protracted due to the Respondent's failure to respond to her regulators. The Secondary Complainer was inconvenienced and distressed as a result.

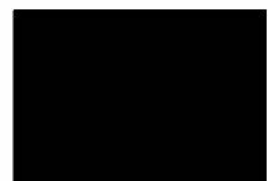
The Tribunal noted the personal and professional embarrassment caused by the Respondent's misconduct. The Respondent's misconduct made it very difficult for the Secondary Complainer to resolve the claim by AG. This was a problematic situation to resolve and was made all the more difficult because AG was known to the Secondary Complainer. This caused him distress.

The Tribunal considered that the inconvenience and distress suffered was significant, causing worry, concern, anxiety and upset over a long period of time. The Respondent had failed to take any steps to rectify matters.

In all the circumstances, the Tribunal was satisfied that the appropriate award in the circumstances was £5,000. This reflects the patrimonial loss and the inconvenience and distress experienced by the Secondary Complainer as a result of the Respondent's actions and the time taken to see these complaints through to conclusion.

The Secondary Complainer had no objection to the matter being given publicity. He did not move for an award of expenses in his favour.

The Tribunal ordered that publicity would be given to the decision and would name the Respondent and the Secondary Complainer. The Respondent will pay the Tribunal's expenses.



**Kenneth Paterson**  
**Vice Chair**