

**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

**LEON KONDOL, McBride Kondol & Co., 35
Glenmore Avenue, Glasgow**

Respondent

1. On 5 May 2021, Leon Kondol, McBride Kondol & Co., 35 Glenmore Avenue, Glasgow (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer in the Complaint, Mr A.
3. On 5 May 2021, 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 claim for compensation was lodged. The Respondent lodged a written Answer to the compensation claim. Both parties indicated to the Clerk to the Tribunal that they would prefer the Tribunal to determine the claim for compensation on the basis of the documents lodged, rather than hold a compensation hearing in person or online. The Tribunal decided that it would deal with the matter on the papers on 9 September 2021.
4. At the virtual compensation hearing on 9 September 2021, the Tribunal carefully considered the Secondary Complainer’s compensation claim and attached documents and the Respondent’s Answer.
5. The Tribunal found the following facts established:-
 - 5.1 Mr A was the Secondary Complainer in the Complaint against Leon Kondol, McBride Kondol and Co., 35 Glenmore Avenue, Glasgow. On 5 May 2021, the

Tribunal found the Respondent guilty of professional misconduct in respect that he provided to his client (the Secondary Complainer), and allowed him to retain, Crown witness statements and an independent forensic physician's report, all containing highly sensitive information, contrary to Rules B1.2 and B1.14.1 of the Law Society of Scotland's Practice Rules 2011 and Articles 11 and 12 of the Code of Conduct for Criminal Work.

5.2 The Secondary Complainer lodged a written statement of claim seeking £5,000 for loss, inconvenience and distress.

5.3 The Secondary Complainer was not directly affected by the Respondent's professional misconduct. Any loss, inconvenience or distress was not a direct effect of the Respondent's professional misconduct.

6. Due to the Tribunal not being quorate on 9 September 2021, due to a delay in the re-appointment of two of its members, the Tribunal reconvened on 29 September 2021. It re-made and validated its decision made on 9 September 2021. This procedure was agreed in advance in writing by all parties.

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

By Video Conference, 29 September 2021. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Leon Kondol, McBride Kondol & Co., 35 Glenmore Avenue, Glasgow ("the Respondent") and having previously determined that the Respondent was guilty of professional misconduct; Having considered whether it was appropriate to award compensation to the Secondary Complainer, Mr A; Make no award of 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 but need not identify any other person.

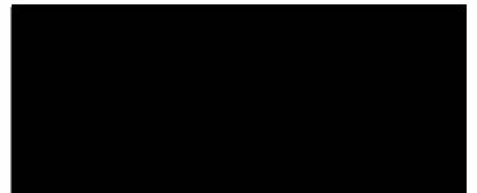
(signed)

Colin Bell

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



Colin Bell

Chair

NOTE

At the hearings on 9 September 2021 and 29 September 2021, the Tribunal had before it the Secondary Complainer's claim for compensation with attached documents, the Respondent's Answer to the claim and the Tribunal's Findings in the professional misconduct case against the Respondent dated 5 May 2021.

The Secondary Complainer wished to claim compensation for the cost of sending recorded delivery letters to the Respondent, the solicitor he instructed after the Respondent, and the Scottish Legal Complaints Commission (SLCC). He noted it had been very hard for him both financially and in terms of his mental health. He provided details of his medications.

The Respondent noted that all the complaints by the Secondary Complainer to the SLCC were dismissed apart from this one, which related to an issue of professional conduct which had no impact on the Secondary Complainer's representation or trial. The Respondent represented the Secondary Complainer only for one year. It was the Secondary Complainer's choice to send the letters. They were not requested by the Respondent. The Respondent noted that the Secondary Complainer's health issues were not linked to the misconduct. There was no supporting documents or evidence regarding his health.

DECISION

The Tribunal considered the terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 which provides that the Tribunal may:-

“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.”

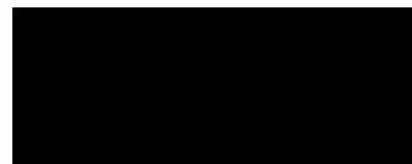
The Tribunal considered that a direct effect was one which would not have happened but for the professional misconduct. The standard of proof in connection with a claim of compensation is that of balance of probabilities. The Tribunal has a discretion to award compensation and is not obliged to do so.

The Tribunal carefully considered the facts found on the last occasion and the terms of the finding of misconduct. It could only have regard to the professional misconduct which had been established, not any additional complaints the Secondary Complainer might have about the Respondent.

The Secondary Complainer's claim regarding financial loss was not supported by any evidence. There was no independent vouching of the sums spent or even an estimate of the alleged loss. However, in any case, there was no causal link between the alleged loss and the misconduct. Any loss did not arise as a direct effect of the Respondent's misconduct. The Secondary Complainer would have written these letters regardless of what the Respondent did. They were not linked to the misconduct in question, namely the provision of highly sensitive material to the Secondary Complainer.

The Secondary Complainer's claim regarding inconvenience and distress was also unsupported by evidence. He provided details of the medications he was currently taking. However, there was no evidence of any link between the medications and the Respondent's misconduct. These medications are frequently taken by people of the Secondary Complainer's age. There was no supporting evidence of any inconvenience or distress. The Secondary Complainer claimed his mental health concerns were related to the Respondent repeatedly lying to him and failing to carry out his instructions. However, these complaints were not part of the misconduct case. Therefore, the alleged inconvenience and distress could not have arisen as a direct effect of the misconduct.

Therefore, in all these circumstances, the Tribunal declined to make any award of compensation. Publicity will be given to this decision. However, as in the misconduct decision, only the Respondent need be named in this decision on compensation. The Secondary Complainer's name will be anonymised to protect the identity of the Crown witnesses in the Secondary Complainer's criminal trial. Identification of these individuals may be detrimental to their interests. The Tribunal made no finding of expenses due to or by either party.



Colin Bell
Chair