**GUIDANCE FOR SECONDARY COMPLAINERS**

**In respect of a compensation claim arising from a Finding of Professional Misconduct**

The Scottish Solicitors’ Discipline Tribunal has the power to award compensation where a solicitor is found guilty of professional misconduct and a secondary complainer has been directly affected by that misconduct. The maximum award is £5,000. If you wish to make a claim for compensation, please read through this guidance and complete the compensation claim form at the end. Once completed, please return the form to the Fiscal acting on behalf of the Law Society, or if a finding of misconduct has already been made by the Tribunal, return the form to the Tribunal Office.

**Please note**: The Law Society is responsible for communicating with secondary complainers until a finding of misconduct is made. It is only after the Tribunal has found the solicitor guilty of professional misconduct that the Tribunal can proceed to deal with a compensation claim. The Tribunal will only deal with the secondary complainers identified in the misconduct Complaint.

**Completing the Form:**

**Section 1 - Your Details**

Please provide the details of the person who is seeking compensation.

**Section 2 – Compensation Claim**

***Part A – Quantifiable Loss (Financial Loss)***

Please give as much detail as possible and list the evidence available to support your claim.

* The Tribunal must be satisfied that the expenses incurred were a direct effect of the professional misconduct and would not have been incurred but for the misconduct.
* Where you have already paid expenses as a result of the conduct of the solicitor, the Tribunal will normally require documentary evidence (such as a receipt) to confirm this and show the amount you have paid;
* Where the expenses have not been paid, the Tribunal must be satisfied regarding the amount claimed. Ideally, supporting documentary evidence (for example a bill or invoice) should be submitted. If an estimate is to be relied upon, the Tribunal would prefer three to be lodged;
* The amount of compensation relating to financial loss would normally be based on actual expenses, not estimates;
* The evidence required to support the loss claimed could include receipts, invoices, credit/debit cards slips, pay slips, tickets and/or letters from traders/professionals;
* Where expert opinion is required to support the level of financial loss (for example a medical report) you must pay the costs of the report and include it in your compensation claim. If compensation is awarded, these costs will be included;
* You may suffer financial loss that is not a direct expense but is due to the financial impact of the delay or lost opportunity, for example: something you own might lose value (for example a delay in the conveyancing for a house sale resulting in the house losing value, losing out on interest or capital, or losing out on rental payments). This can form part of your claim. Evidence must be provided to support such a claim.

***Part B – Non-Quantifiable Loss (Distress and Inconvenience Loss)***

Please give as much information as you can as to how the conduct of the solicitor affected you.

* The Tribunal may award compensation for inconvenience and distress. If it is maintained that substantial distress or some recognised medical condition was caused or exacerbated by the misconduct then expert medical reports should be lodged;
* Inconvenience is the time and effort spent by you as a direct result of the professional misconduct and the time spent on having to pursue the complaint about the conduct;
* Distress includes the worry, concern, anxiety, anger, disappointment or embarrassment you may have experienced as a result of the conduct. Distress can also include loss of confidence in a solicitor and a reluctance to engage further with the profession. Distress can vary from mild irritation to anxiety which requires medical treatment;
* The Tribunal may consider:
  + How much of the inconvenience would have been experienced anyway and how much could have been avoidable. Reasonable steps must have been taken to avoid further costs and stress being incurred.
  + To what extent was the distress caused by the direct consequence of the solicitor’s actions.
* A balance will be struck between asking you for information which will support the consequences claimed and demanding information which might add to the distress already caused. The Tribunal however will need some evidence of any distress and inconvenience if you are claiming for this.

***Part C – Total Claim***

Please indicate the total amount your wish to claim for. Please note that the Tribunal only has the power to award compensation up to the maximum of £5,000. This is the total limit for all categories combined (loss, inconvenience and distress).

***Part D - Compensation Received***

Please indicate if you have already received compensation in respect of this matter. Please give details even if the Respondent was not the person who ultimately paid the compensation, as this may be relevant to your compensation claim before the Tribunal.

**FAQ’s:**

***What can I claim compensation for?***

Your claim can only relate to financial loss and/or distress and inconvenience as a direct consequence of the solicitor’s conduct as set out in the Complaint. Reasonable steps must have been taken by you to minimise the loss. The total amount of compensation which the Tribunal can award is £5,000.

***I have already received an award of compensation. Do I still make a claim?***

If you have already received compensation in respect of this matter please include these details on the compensation claim form, even if the Respondent was not the person who ultimately paid the compensation, as this may be relevant to your compensation claim before the Tribunal.

***Can I claim for both financial loss and distress?***

Yes. You must be able to provide to the Tribunal evidence of your financial loss and any possible evidence to support your claim for distress and inconvenience. The total amount which the Tribunal can award cannot exceed £5,000, even if your loss is more than this.

***Will I need to send all the evidence in with the claim form?***

It is helpful if you can provide all the evidence at the time of submitting the claim form. However, the issue of compensation will only be considered if the Tribunal makes a finding of professional misconduct against the solicitor. Any items which you cannot send should be submitted as soon as possible and you must confirm if they will be available before the hearing. Any documents on which you wish to rely in support of your compensation claim must be copied to the Respondent. The Tribunal’s Privacy Notice is available on our website and gives more information about how we use your personal data.

***Do I provide the original receipts and invoices?***

No, please provide copies as originals will not be returned to you at the conclusion of proceedings.

***What happens after I submit my claim?***

The professional misconduct case will take place first. Generally, if a finding of professional misconduct is made, a separate compensation hearing will be fixed. You will be sent a letter and a notice letting you know the date, time and place of the compensation hearing. The notice also sets out time limits to lodge any further documents you wish the Tribunal to consider and List of Witnesses you may wish to call to give evidence to support your claim. Occasionally, the Tribunal will deal with a compensation case on the same day as misconduct hearing. This occurs most often when the secondary complainer has had to appear as a witness during the misconduct proceedings and is able to give evidence in relation to the compensation claim on the same day. If you wish the Tribunal to deal with your case in this way, please liaise with the Law Society Fiscal regarding this as early as possible so that arrangements can be made to accommodate this.

***How do I submit documents (Productions)?***

Any documents you wish to lodge to support your claim must be sent to the Tribunal Office 14 days before the compensation hearing. You must also send a copy of the documents to the Respondent solicitor. Please note that the Tribunal dealing with the compensation claim will have the misconduct findings before them. However, they do not have access to any other material that you might have submitted, for example to the SLCC, the Law Society of Scotland, or the Fiscal earlier in the process. Therefore, please submit any documents you wish the Tribunal to consider to the Tribunal Office within 14 days of the hearing.

***What papers will the Respondent receive?***

All information upon which you intend to rely must be provided to the Respondent at the same time as it is lodged with the Tribunal. This includes the compensation claim form, any supporting documents and additional information. All information will be provided to the Respondent (and their representative) when the Tribunal Office is setting a date for the compensation hearing.

***I wish to bring witnesses to provide evidence to support my claim. What do I need to do****?*

You need to inform the witnesses of the date, time and place to attend. 7 days before the compensation hearing you must send a List of Witnesses to the Tribunal office detailing who you wish to call as a witness. You must also send a copy of this List to the Respondent solicitor.

***Do I attend the compensation hearing?***

It is your claim and it is advisable that you are present. You may prefer to instruct a representative to act on your behalf. You can also bring a friend/relative to support you.

***I do not wish to attend the compensation hearing. Can the Tribunal still deal with my compensation claim?***

The Tribunal can proceed in your absence on the basis of the written material you have submitted. However, this may have consequences for your claim if the Tribunal is unable to clarify with you any queries that they have. If you do not wish to attend the compensation hearing, please let the Tribunal Office know.

***Do I attend the professional misconduct hearing?***

The Fiscal will advise you whether you need to attend the professional misconduct hearing.

***Will the compensation hearing be held on the same day as the professional misconduct hearing?***

The Tribunal may have time available to deal with your compensation claim straight after the professional misconduct hearing if you have already lodged your claim form and supporting documents. You will be advised before the professional misconduct hearing if the Tribunal wishes to deal with your compensation claim on the same day in the event that the solicitor is found guilty of professional misconduct. However, in most cases, a separate compensation hearing will take place on a different date which is set after the misconduct hearing.

***What do I need to do at a compensation hearing?***

The Tribunal tries to make the process as informal as possible. The Chair will ask you to give details about your claim. You can refer to the documents you have submitted or ask witnesses to give evidence to support your claim. If you have a witness, they will be asked to take the oath to tell the truth or asked to affirm that they will tell the truth. You can then ask your witness questions relevant to your claim. The Tribunal may ask questions to clarify any issues.

***How does the Tribunal award compensation for inconvenience and distress?***

Compensation is a matter for the Tribunal’s discretion. Evidence or vouching of loss, inconvenience or distress should be provided. The table of compensation tariffs which the Tribunal uses to assess the appropriate award for inconvenience and distress is below.

## SSDT Compensation Tariffs (Inconvenience and Distress)

|  |  |  |
| --- | --- | --- |
| **Consequence of the Misconduct or Unprofessional Conduct**  **Might Include** | | **Range of Compensation** |
| **Limited** | * Limited effect and duration * Caused minimal inconvenience on a single occasion * Resulted in irritation and/or minor annoyance * Solicitor has rectified matters now | **Up to £250** |
| **Modest** | * Limited effect and duration * Caused minor inconvenience on a number of occasions * Caused some worry and concern * Solicitor took reasonable steps to rectify matters | **Over £250 – up to £750** |
| **Significant** | * More serious effect over a period of time but not a lasting effect * Caused significant inconvenience on several occasions * Caused worry, concern, some anxiety and upset * Solicitor failed to take reasonable steps to rectify matters | **Over £750 – up to £1,500** |
| **Serious** | * Serious effect probably over a long period of time, possibly affecting the Lay Complainer’s well-being over a significant period * Significant inconvenience over a long period of time or on many occasions * Quality of life of Lay Complainer (and/or family) considerably and noticeably disrupted * Lay Complainer or family member suffered particular difficulties * Caused significant distress and upset * Solicitor failed to take reasonable steps to rectify matters | **Over £1,500 -up to £5,000** |

***Will my travelling expenses be paid for attending the compensation hearing?***

Your expenses will not be paid directly by the Tribunal but can form part of your claim. At the compensation hearing, please let the Tribunal know of your travelling costs when you are asked about expenses.

***Can expenses be awarded against me?***

If your compensation claim goes ahead and is unsuccessful, expenses may be awarded against you in relation to Tribunal time taken to deal with your unsuccessful claim. The Tribunal is unable to provide an estimate as expenses vary from case to case but can run to thousands of pounds. You might also have to pay the legal expenses of the Respondent.

Expenses in Tribunal proceedings usually follow success. In general, the Tribunal makes awards of expenses on the 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. However, parties have the opportunity to make submissions on expenses at the conclusion of the case. Accounts of Expenses can be taxed by the Auditor of the Court of Session.

***Who do I contact if I have a query?***

Prior to any finding of professional misconduct being made, you should contact the Law Society of Scotland Fiscal. If a finding of professional misconduct has been made you should contact the Tribunal Office.

***What about publicity of the decision? Will my name and details be included?***

It is the Tribunal's practice to publish the details of people making compensation claims. If this causes you any difficulties, you should advise the Law Society Fiscal at an early stage. You will be asked about publicity at the conclusion of the case. If you have reasons why you think you should not be named in the decision, please raise these with the Tribunal at this stage.

***What happens after the compensation hearing?***

You will be sent a copy of the Findings of the Tribunal. This can take up to six weeks after the compensation hearing. Parties may have a right of appeal to the Court of Session against the Findings. They have 21 days from intimation of the findings in which to lodge the appeal.

***Can I lodge an Appeal if I am not happy with the decision?***

You may have a right of appeal to the Court of Session within 21 days from the date of the letter intimating the Findings to you. Please contact the Court of Session and advise the Tribunal Office that you are lodging an Appeal.

***If I have been awarded compensation, when do I receive the money?***

Once the appeal period expires (21 days after intimation of the findings), the Respondent should send you payment directly within the time specified in the certified copy Interlocutor sent to you by the Tribunal office, usually 28 days. It can therefore take around seven weeks for compensation to be paid after the compensation hearing.  If the Respondent fails to do this you can instruct Sheriff Officers on your behalf to start proceedings to enforce payment.  If you require another certified copy Interlocutor, please contact the Tribunal office.

**Please note** it is advisable to obtain legal advice when pursuing your claim for compensation. The Tribunal Office and Law Society Fiscal cannot advise you as to your claim – they can only inform you regarding the procedure of the Tribunal.

*(Version 8: September 2022)*

**COMPENSATION CLAIM FORM**

**Section 1 – Your Details**

*(the person making the claim)*

|  |  |
| --- | --- |
| **Title** |  |
| **Name(s)** |  |
| **Address** |  |
| **Postcode** |  |

**Section 2 - Compensation Claim**

**Part A – Quantifiable Loss**

*(claim for financial loss – please refer to the guidance)*

|  |  |
| --- | --- |
| **What do you wish to claim for in respect of the actual financial loss which occurred as a direct result of the solicitor’s misconduct**  **Please give details of the evidence available to support your claim i.e. receipts/invoices**  (please continue on separate sheet if necessary) |  |

**Part B – Non-Quantifiable Loss**

*(claim for distress and inconvenience – please refer to the guidance)*

|  |  |
| --- | --- |
| **What do you wish to claim for in respect of the distress and inconvenience which occurred as a direct result of the solicitor’s misconduct.**  **Please give details and list any evidence in support of your claim for distress and inconvenience.**  (please continue on separate sheet if necessary) |  |

**PART C – Total Claim for Compensation**

|  |  |
| --- | --- |
| **What is the amount of Compensation you are seeking?**  (The maximum total amount the Tribunal can award is £5,000) |  |

**PART D – Compensation Received**

|  |  |
| --- | --- |
| **Have you already received compensation in respect of this matter?** |  |

**Section 3 – Declaration**

I consent to this form and enclosures being copied to the parties of the proceedings.

I confirm that all information contained on this form is accurate.

|  |  |
| --- | --- |
| **Signature** |  |
| **Print Name** |  |
| **Date** |  |

**APPENDIX**

This page will be detached from your claim form before sending it to the Respondent. It is for the Tribunal Office’s purposes only. Email addresses and phone numbers will not be given to other parties unless you give consent to do so.

Further information on how we process your personal data can be found in the Tribunal’s Privacy Notice which is available on our website.

|  |  |
| --- | --- |
| **Email address** |  |
| **Telephone number** |  |

|  |
| --- |
| **TRIBUNAL OFFICE FILE ONLY** |