

**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

**KENNETH JOHN BAILLIE STEWART
MACLEOD, MacLeods WS, 13 Lombard
Street, Inverness**

Respondent

1. On 1 July 2021, Kenneth John Baillie Stewart MacLeod, MacLeods WS, 13 Lombard Street, Inverness (hereinafter referred to as “the Respondent”) was found guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A (hereinafter referred to as “the Secondary Complainer”).
3. On 1 July 2021, the Tribunal allowed the Secondary Complainer 28 days from the date of intimation of the Findings to lodge a written claim for compensation with the Tribunal Office. A written claim for compensation was received.
4. At the Secondary Complainer’s request, the Tribunal proposed that it made its decision on compensation on the basis of the papers and submissions provided by parties, rather than fixing a hearing, either in person or online. The Respondent did not object to this proposed course of action. The Tribunal set the matter down for a compensation hearing on the papers on 1 November 2021.
5. On 1 November 2021, the Tribunal considered the professional misconduct findings against the Respondent, the compensation claim and attached documents, and email correspondence from the Respondent.

6. The Tribunal found the following facts established:-
- 6.1 Mr A was the Secondary Complainer in the Complaint against Kenneth John Baillie Stewart MacLeod, MacLeods WS, 13 Lombard Street, Inverness (“the Respondent”).
- 6.2 The Respondent was found guilty of professional misconduct singly and in cumulo in respect that:-
- (a) The Respondent acted for two or more clients whose interests conflicted. The Respondent acted for Mr X, and Company 1. He also acted for the Secondary Complainer. The interests of Mr X and Company 1 conflicted with those of the Secondary Complainer. The interests of an investor and the company/person raising funds are in conflict. A lender and a borrower’s interests are in conflict. The Respondent should not have acted for both the Secondary Complainer and Company 1/Mr X. The investment was high risk and the Respondent did not advise the Secondary Complainer of the risk involved. Said conduct was contrary to Rule 6 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and Rule 3 of the Solicitors (Scotland) Practice Rules 1986.
- (b) The Respondent from March 2010 was heavily involved in the financing and provision of business and legal advice to Company 1. The Respondent held all the shares in Company 1. He acted for Company 1 and Mr X in securing the lease of the property from which the company traded, he applied for the change of use and HMO applications for Company 1 and he was named as the Licensee in the HMO application. He charged Company 1 fees. He was appointed along with his employee as a director of Company 1 in June 2011. He instructed/permitted a loan to Company 1 from Kenneth MacLeod Ltd. He had invested/loaned the company his personal funds. Said conduct and the failure to advise the Secondary Complainer of this information was contrary to Rules 1, 2, 3, and 7 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008.
- (c) The Respondent received an objection by Northern Constabulary to Mr X

being appointed as manager of the House of Multiple Occupation application in February 2011. That objection advised of Mr X's past criminal convictions, his use of aliases, and fake addresses. It also advised he faced a trial for a large fraud. In failing to advise the Secondary Complainer of the questionable history of Mr X to allow him to assess whether he wished to continue investing in Mr X/Company 1, the Respondent was in contravention of Rules 1, 2, 3, 6 and 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008.

- (d) The Respondent failed to communicate to the Secondary Complainer the trading difficulties experienced by Company 1 and Mr X (the striking off, debt collection letters, damage to property, action raised against Mr X). In failing to alert the Secondary Complainer of the difficulty trading and therefore the poor investment, the Respondent acted contrary to Rule 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008, and Rules B1.2 and B1.9 of the Law Society of Scotland Practice Rules 2011.
- (e) The Respondent did not advise the Secondary Complainer of the dissolution of Company 1 on the 12 April 2016 contrary to Rules B1.2 and B1.9 of the Law Society of Scotland Practice Rules 2011.

6.3 The Secondary Complainer lodged a written statement of claim with the Tribunal Office claiming compensation of £10,000.

6.4 The Secondary Complainer was directly affected by the Respondent's professional misconduct. The Secondary Complainer has incurred loss. It is very probable that, but for the misconduct of the Respondent, said loss would not have been incurred.

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

By Video Conference, 1 November 2021. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Kenneth John Baillie Stewart MacLeod, MacLeods WS, 13 Lombard Street, Inverness ("the Respondent") and having previously determined that the Respondent was guilty of professional misconduct; Find that the Secondary Complainer has been directly affected by the Respondent's

misconduct and considered that it is appropriate to award compensation to the Secondary Complainer: •rdain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to the Secondary Complainer, Mr A, the sum of £5,000 by way of compensation in respect of loss resulting from the professional 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; Finds no finding of expenses due to or by any party; and Directs 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)

Benjamin Kemp

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 *20 January 2022*.

IN THE NAME OF THE TRIBUNAL



Benjamin Kemp
Vice Chair

NOTE

At the compensation hearing on the papers on 1 November 2021, the Tribunal had before it the compensation claim form lodged by the Secondary Complainer along with two supporting documents. These were letters from the Respondent to the Secondary Complainer dated 20 April 2010 and 25 July 2016. The Secondary Complainer wished to receive compensation of £10,000. The Secondary Complainer noted that the Respondent had already admitted he was responsible for the loss, and that he wanted to compensate the Secondary Complainer for it. In two emails to the Tribunal Office, the Respondent indicated that the Secondary Complainer would be paid a total of £20,000, which would include a £10,000 contribution from the Respondent. The Respondent had also indicated during the misconduct proceedings that he intended to compensate the Secondary Complainer.

DECISION

The Tribunal carefully considered the professional misconduct findings, the Secondary Complainer's claim and the Respondent's emails.

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 can exercise its powers under Section 53(2)(bb) in relation to a former solicitor under Section 53(3A).

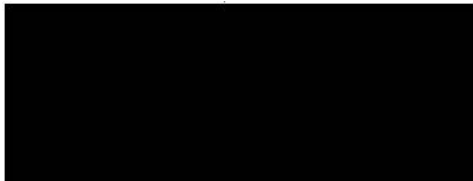
The Tribunal considered that a direct effect was one which would not have happened but for the professional misconduct. The standard of proof in connection with a claim of compensation is that of balance of probabilities. The Tribunal has a discretion to award compensation and is not obliged to do so. However, the Tribunal's power to award compensation was limited to £5,000.

At the Respondent's suggestion, the Secondary Complainer provided funds to Company 1 by way of an investment or loan. The investment was high risk. The Respondent acted for Mr X, Company 1 and the

Secondary Complainer. Their interests were in conflict. The Respondent was heavily involved in the financing and provision of business and financial advice to Company 1. He invested in the company himself. He was appointed as a director of the company in June 2011. The Respondent did not advise the Secondary Complainer of this highly relevant information. He failed to advise him of Northern Constabulary's objections to Mr X as manager of a House in Multiple Occupation. There was a need to make some disclosure to the Secondary Complainer, and/or to withdraw from acting for both clients. The Respondent was in possession of information which was potentially damaging to his client, the Secondary Complainer, but he could not or did not tell him about it. The Respondent failed to tell the Secondary Complainer about the trading difficulties encountered by Company 1 and Mr X. He failed to advise the Secondary Complainer of the dissolution of Company 1. Throughout, the Respondent failed to give the independent advice to the Secondary Complainer. The Respondent's conduct breached the practice rules regarding trust and personal integrity, independent advice, acting in the best interests of his clients, conflict of interest and disclosure of interest, and effective communication. He was found guilty of professional misconduct.

The Tribunal was satisfied that the Secondary Complainer lost £10,000 as a direct effect of the Respondent's misconduct. He was misadvised. He was told that for every £4,000 out of £5,000 invested he would receive a return of 8.5% per annum. He received no return and lost the capital he invested. The Tribunal recognised that there is uncertainty in any investment. However, the Respondent's actions were detrimental to the Secondary Complainer's interests. The Secondary Complainer would in all probability not have invested if he had been properly advised, and the Respondent had disclosed to him all relevant information. The Tribunal noted the Respondent's commitment to make good the loss to the amount of £20,000 and his acknowledgement of the appropriateness of making recompense. In all of these circumstances, therefore, the Tribunal considered it was appropriate to award the Secondary Complainer compensation of £5,000. This is the maximum award which the Tribunal can make.

Neither party made any submission with regard to expenses or publicity. The Tribunal made no finding of expenses due to or by any party. Expenses were minimal given that the matter had been dealt with on the papers by video conference. Publicity will be given to this decision. However, the Secondary Complainer and Mr X will not be named as publication of their personal data may damage or be likely to damage their interests.



Benjamin Kemp
Vice Chair