



Year of call 2008

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Areas of Practice

Damages & Reparation, Employment & Discrimination and Land & Property

Qualifications

1995 –1996 University of Dundee; Diploma in Legal Practice

1993–1995 University of Dundee; LLB (accelerated)

1990–1993 Milltown Institute, Dublin; BA Philosophy; 1st Class Honours In 2017/2018 Kenny undertook a course of study with Aberdeen University and was awarded a Certificate in Regulatory Law and Practice. The course was aimed at the law of professional regulation generally and the knowledge and skills gained are applicable to any case involving an element of regulatory law.

Profile

Kenny regularly appears in the Court of Session, the Sheriff Court, the Employment Tribunal and the Employment Appeal Tribunal. He has a wide civil practice with particular emphasis on the areas listed above.

Before becoming an Advocate Kenny was a solicitor for nine years. He appeared regularly in Sheriff Courts and Tribunals during this period. For three years he specialised in personal injury work and employment law. Prior to that he gained wide experience in civil litigation including cases involving: reparation; commercial and contract law; interdict; debt recovery and land law. Early in his career he undertook all kinds of chamber work including conveyancing and executry work.

Between 2007 and 2008 Kenny participated in the training course provided by the Faculty of Advocates to prospective advocates. His devil masters during that period were Alastair Duncan QC (Principal Devil Master), Douglas Fairley QC (Lord Fairley) (employment law) and Thomas Ross QC (criminal law).

From 2006 to 2013 Kenny tutored law students at Strathclyde University in civil procedure and advocacy skills.

Representative Cases

The following is a selection of recent cases Kenny has been instructed in or is currently instructed in.

Employment

McCulloch v The City of Edinburgh Council: 11 January 2022; ET/4102692/2020: Acted for a senior social worker in a whistleblowing and detriment / unfair dismissal claim against a local authority accused of dismissing the claimant for raising matters of concern regarding the care and safety of children cared for by the local authority. This was a case heard over ten days and involved presentation of evidence designed to support an inference that the dismissal was motivated by the protected disclosures made by the claimant.

Bennoch v Scottish Power Renewable Energy Ltd: 27 November 2019 to early 2022; ET/4106676/2017. Acted for the respondent in a ten day Hearing involving a claim for unfair dismissal based on allegations that the respondent's managers acted unfairly in relation to an annual job appraisal. The reason for dismissal given by the respondent, and accepted by the Tribunal, was "some other substantial reason". That involved a finding of a break down in relations between the claimant and his managers arising out of his refusal to accept the respondent's appraisal and rejection of his challenges to it. The dismissal was found to be fair. Advised on subsequent attempts by the claimant to challenge the Employment Tribunal's decision before the Employment Appeal Tribunal and Court of Session, which matters were considered in late 2021/early 2022.

Banerjee and another v Western Isles Health Board: 12 November 2021; ET/4107709/2021. Acted for two consultant paediatricians claiming unlawful deduction of wages. The consultants provided on call out of hours cover at an Island Hospital during a period when pandemic travel restrictions meant the Health Board could not obtain the necessary cover from its usual sources. The Health Board took the view the claimants volunteered to provide the cover for no pay. The claimants argued that the terms of their contract, a pre-pandemic pattern of being paid for such cover, and the circumstances in which they agreed to provide cover, all gave them a right to the pay claimed. The Tribunal found they had the necessary contractual rights to entitle them to the pay in what the judge described as a "finely balanced case" where each side presented "credible and persuasive arguments from their particular viewpoints".

Dudenko v Costa Ltd: 22 February 2021; ET/412497/2020. Acted for the respondent in an unfair dismissal claim where a manager delayed in evacuating a café situated in a supermarket during a fire drill.

McBride v Scottish Police Services Authority 2017 S.C. (U.K.S.C.) 1: Appeal from the Inner House of the Court of Session to the Supreme Court. The appellant was a fingerprint officer involved in the identification of the Y7 fingerprint in the Shirley McKie case. The appellant, whom Kenny acted for in the appeal before the Inner House and Supreme Court, was dismissed in the aftermath of the case. The ET had found the appellant's dismissal to be unfair and ordered reinstatement. The issues at appeal were whether they were correct to do so and whether the Inner House was correct to characterise the ET's order for reinstatement as one purporting to reinstate to a different contractual role from the one the appellant was dismissed from. The Supreme Court unanimously upheld the appellant's appeal the EAT and the Inner House below having found against her.

Representative Cases (continued)

Damages and Reparation

Cases Kenny has recently been instructed in, or is currently instructed in, where there are claims for reparation for personal injuries arising from delicts, including medical negligence, include:

- A case in ASPIC where he acts for the pursuer who has Hand Arm Vibration Syndrome caused by use of vibrating tools when employed as a roadworker. This is a case which is ongoing.
- A case in ASPIC which recently settled where Kenny represented the pursuer who had lost a kidney through the alleged professional negligence of a consultant urologist. Issues of *Hunter v Hanley* and issues of consent to proposed treatments arose.
- A case where Kenny advised the daughter and executrix of her deceased mother whose death was caused by a road traffic accident. Advice was tendered on the value of a personal claim and claims by the estate. There was also advice given on a potential claim by the daughter as a “secondary victim” where the daughter was not present at the scene of the accident or immediate aftermath but nonetheless suffered from a Major Depressive Disorder.
- **A v NHS: 2018, Sheriff Court, (anonymised):** Kenny acted for a pursuer who was discharged from hospital after an operation despite the fact that the wound at the site of the operation was bleeding excessively. The bleeding, once dried, caused dressings to constrict and restricted blood supply to the toes, eventually leading to their amputation. The claim was one based in clinical negligence. The case was litigated to a successful outcome for the pursuer without the need to proceed to a full proof.
- **M v A Local Authority (anonymised):** Court of Session case where the pursuer, a road worker, was injured when crushed and severely injured by a reversing piece of heavy machinery. The case was litigated to a successful outcome for the pursuer without the need to proceed to a full proof.

Other cases

Kenny regularly gives advice and acts in cases involving other areas of law including land law and trusts & executries. Current cases include a Sheriff Court action of count reckoning and payment for a beneficiary, executor and trustee in an executry where Kenny has recently conducted a debate. He recently (early 2022) gave written advice on the enforceability of a real burden in a Registered Title restricting use of land to certain purposes and prospects of the Keeper rectifying the Register by reason of an alleged inaccuracy. He was recently (June 2021) instructed to represent defenders in a Sheriff Court action whose neighbour claimed they had constructed a garage, wall and fence on his property. The neighbour sought declarators and interdicts. A favourable outcome was negotiated in context of an imminent Proof in the case.

Appointments

2006 – 2013; Strathclyde University, Tutor, Diploma in Legal Practice, Civil Procedure and Advocacy course.

Memberships

Bar Employment Law Group.

Talks

Kenny regularly gives talks on Employment Law, Land Law and Personal Injury law to solicitors.
Recent talks include:

2019: “When Private Life Meets Working Life: A Human Rights Based Perspective” A talk exploring Human Rights in the context of Employment Law. Given at a CLT conference.

2018: “Recovery of documents and information in the Employment Tribunal” Given at a Stable Employment Law event.

Publications

Potential challenges to decisions regarding the funding of the care of the disabled under the direct payment regime S.L.T. 2012, 28, 163–167. This article explores local authorities’ use of resource allocation systems as tools to make decisions as to the level of direct payments made to fund the care of the disabled.