



**Year of call** 2008

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## Areas of Practice

Employment & Discrimination, Damages & Reparation, 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

2017–2018: Aberdeen University; Certificate in Regulatory Law and Practice. This course was aimed at the law of professional regulation.

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 KC (Principal Devil Master), Douglas Fairley KC (Lord Fairley) (employment law) and Thomas Ross KC (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

*Dr Mihaylova v Western Isles Health Board*: 19 March 2024; ET 4104206/2023: Acted for the respondent in a claim for unfair dismissal, disability discrimination and failure to make reasonable adjustments brought by a consultant psychiatrist who developed an orthopaedic condition for which she required to take medication which in turn meant she could not do on-call night duties as was required by her contract. As a result she was dismissed after a period when locum cover was provided to facilitate her possible recovery. The claims were dismissed.

*Nelson v City of Edinburgh Council*: 16 May 2023; ET 8000053/2022: Acted for the respondent in a claim for discrimination on ground of the protected characteristic of sex. The Tribunal dismissed the claims on the basis of a defence of no-jurisdiction (time bar) and went on to find that had there been jurisdiction the claims would have failed in any event. Issues of credibility and reliability were central to the case.

*McCulloch v 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.

*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 with senior counsel 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.

### 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:

- *B v NHS Sheriff Court, (anonymised)*: A clinical negligence case where Kenny acts for a pursuer whose brain tumour was not identified by clinicians when it ought to have been leading to growth of the tumour and delayed treatment in a pursuer with complex co-morbidities unrelated to the index event.
- A case in ASPIC where he acted for the pursuer who had Hand Arm Vibration Syndrome caused by use of vibrating tools when employed as a roadworker. Exposure was over a long career where tools used changed and legal duties owed by the employer changed as the law developed and was amended leading to a complex legal and factual basis of claim. This is a case was successfully settled.
- 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 severely injured when crushed 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 successfully 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.