

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

INTERLOCUTOR

in Complaint


by

THE COUNCIL OF THE LAW SOCIETY OF
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh (hereinafter referred to as "the
Complainers")

against

JOHN DAVID MAIR, 5 Whittingehame
Gardens, 1097 Great Western Road, Glasgow
(hereinafter referred to as "the Respondent")

By Video Conference, 24 July 2024. The Tribunal refuses the motion of the Complainers to convert the preliminary hearing already fixed to a substantive hearing; Directs that the Respondent lodge a written Note of Argument no later than 23 August 2024 and that the Complainers lodge a written Note of Argument in response no later than 30 August 2024; and Continues the Complaint to the preliminary hearing, to take place virtually via Zoom, on 18 September 2024.


Catherine Hart
Vice Chair

NOTE

At the virtual procedural hearing on 24 July 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Tribunal heard evidence from the Depute Clerk regarding intimation of this hearing to the Respondent. It was confirmed that notices of hearing for both this procedural hearing and the preliminary hearing in September 2024 were sent by recorded delivery post, accompanied by a letter dated 30 May 2024, to the Respondent at the address 5 Whittingehame Gardens. The Royal Mail track and trace system disclosed that this letter was delivered on 31 May 2024. Additionally, the letter, and enclosures, were sent to the Respondent by email, via Egress. The Egress system confirmed that the email was opened on 31 May 2024. The Respondent sent an email in response to the Tribunal Office acknowledging those dates and confirming the Respondent's intention to participate.

The Tribunal gave careful consideration to the information before it, including the procedural history of the Complaint, and concluded that it was fair and appropriate to proceed in the absence of the Respondent.

The Fiscal noted that the Respondent had failed to lodge written submissions in support of his preliminary pleas and invited the Tribunal to convert the preliminary hearing to a substantive evidential one. He confirmed that the records sought by the Respondent had been found in a digital master file. This file was extensive and was being reviewed by him. He hoped to be in a position to disclose this information to the Respondent by 2 August 2024. Disclosure would require to be effected by way of Egress.

In answer to a question from the Tribunal, the Fiscal confirmed that he was not inviting the Tribunal to repel the Respondent's pleas but to reserve them. He considered that if the Respondent intended to raise them at a substantive hearing, that would not present any difficulty.

The Tribunal gave careful consideration to the Fiscal's motion, it considered that it would be unhelpful and counterproductive to fix an evidential hearing without resolving the preliminary pleas. It noted that the Respondent had failed to lodge written submissions by the due date but also noted the position with regard to disclosure. It appeared to the Tribunal that many of the preliminary issues raised by the Respondent were not dependant upon disclosure. The Tribunal noted that it had the authority to deal with the preliminary pleas on the basis of the information

before it, at the preliminary hearing fixed, in the absence of the Respondent, should he fail to appear at that hearing and should the Tribunal then sitting consider it appropriate to do so. The Tribunal refused the Fiscal's motion.

The Tribunal considered it appropriate to again direct the Respondent to lodge written submissions and having regard to the position of disclosure, determined that they should be lodged and intimated to the Fiscal no later than 23 August 2024. The Respondent should note that, if he fails to lodge written submissions, the Tribunal dealing with the preliminary hearing will have regard to issues of fair notice and may restrict consideration to the written information currently before it.

The Complainers were directed to lodge a written response to the Respondent's written submissions, if lodged, by 30 August 2024.



Catherine Hart
Vice Chair