

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

INTERLOCUTOR

in Section 42ZA Appeal

by

KHIZER KHAN, 12 Ashlea Drive, Giffnock,
Glasgow (hereinafter referred to as "the
Appellant")

against

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

and

WILLIAM RENFREW, Solicitor, W.
Renfrew and Co. Ltd, Solicitors, 648
Alexandra Parade, Glasgow (hereinafter
referred to as "the Second Respondent")

By Video Conference, 8 July 2020. The Tribunal, on the First Respondent's motion, Dismisses the Appeal; Finds no 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 parties.



**Nicholas Whyte
Chair**

NOTE

An appeal dated 27 August 2020 and amended grounds of appeal dated 13 September 2020 were lodged with the Tribunal. Answers were lodged by the First Respondent. The Tribunal fixed a procedural hearing for 19 February 2020.

At the procedural hearing on 19 February 2020 the Appellant was present and represented himself. The First Respondents were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Second Respondent was neither present nor represented. His agent had informed the Tribunal Office by email that the Second Respondent was terminally ill and did not intend to enter the process. The Tribunal fixed a further procedural hearing for 7 April 2020. The Tribunal asked the Fiscal to provide up-to-date information regarding the Second Respondent's health. The Chair indicated that parties should be prepared to adopt a view on the appropriate procedure should the Respondent be unfit to attend a hearing or in the event of his death.

Due to the coronavirus pandemic, the case was sisted on 26 March 2020 and the procedural hearing fixed for 7 April 2020 was discharged. The sist was recalled on 22 May 2020. A virtual procedural hearing was set for 8 July 2020 to take place by video conference.

At the procedural hearing on 8 July 2020, the Appellant was present and represented himself. The First Respondents were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Fiscal advised the Tribunal that the Second Respondent had died. She had provided written submissions to the Tribunal in advance of the hearing, copied to the Appellant, indicating that it was the First Respondent's position that the appeal could no longer proceed. The Appellant confirmed it was his submission that the appeal should continue. The Chair indicated that parties could agree that the Tribunal should hear and determine this matter on 8 July 2020. Alternatively, a preliminary hearing could be fixed for another date. Both parties agreed that the procedural hearing could be treated as a preliminary hearing and the matter dealt with on 8 July 2020.

The Fiscal made submissions based on her written representations. She noted the role of the Law Society in protecting the public and upholding the reputation of the profession. It had to act fairly and in the interests of justice. In civil proceedings on a person's death, all proceedings are suspended even if there are other parties to the action. The proceedings can only continue

if the deceased's executors are sisted to the action. However, the subject matter must be capable of being transferred to representatives. Criminal cases are discontinued on the death of accused persons. The Law Society terminates any investigation into a solicitor's conduct on his/her death. No order it made could be enforced against a deceased solicitor. Any prosecution for professional misconduct would also end on the subject's death. While it is not necessary for a solicitor to enter an appeal he/she must be afforded that opportunity. If the appeal was to go ahead, the First Respondents would be prevented from leading the Second Respondent in defence of its decision, the Tribunal could not sanction the solicitor and the Second Respondent could not appeal the Tribunal decision.

The Appellant said that he agreed that the Second Respondent could not be present and could not defend himself or answer any questions. However, there was ample documentary evidence to allow the Tribunal to consider the appeal. He quoted part of a precognition given by the Second Respondent in which it was reported that he said, "*At the end of day Mark, I really cannot give any explanation as to what I believe was an error on my part.*" The Appellant said that the First Respondent ought to have compared this admission to the Second Respondent's denials of unsatisfactory professional conduct during the investigation.

The Appellant said that the First Respondent's report was biased. The Law Society ought to have asked certain questions which arose following consideration of the documents. The Appellant said he was not looking for the Second Respondent to be punished. However, the Appellant had suffered greatly financially and mentally. He agreed that the interests of justice were paramount. The Appellant said all he was looking for was justice. The Second Respondent ought to be held responsible for his conduct.

The Chair asked the Appellant what he was asking the Tribunal to do given that the Tribunal's only power would be to award £5,000 compensation. The Appellant said he was looking for something financially. He noted that the Second Respondent still held a charge over his property and he had lost money as a result of the Second Respondent's conduct. The Chair noted that the Tribunal had no powers to deal with these matters. The Appellant confirmed he was seeking a finding of unsatisfactory professional conduct and compensation.

The Tribunal carefully considered the parties' submissions. It also had regard to its powers when dealing with an appeal brought under Section 42ZA(10) of the Solicitors (Scotland) Act 1980. Under Section 53ZB(2) of that same Act, the Tribunal can quash the determination being

appealed against and make a determination upholding the complaint. If it does so, it can direct the solicitor to pay compensation up to £5,000. Alternatively, it can confirm the determination. The Tribunal had no power to do anything about the charge over the Appellant's property or the money he said he was still owed (beyond the power to award compensation). The Tribunal also noted that it was not considering the merits of the appeal at this stage. The only question before it was whether the appeal should be allowed to proceed following the death of the Second Respondent.

The Tribunal considered that there was force in the Fiscal's arguments and that it would be inappropriate to allow this case to proceed. Although the appeal would proceed by way of a review of the Professional Conduct Sub Committee's decision making, at its heart, this is a disciplinary case involving an individual solicitor. That solicitor must have the opportunity to defend himself against the complaint in any disciplinary proceedings. The First Respondent should be able to call him as a witness if required. It would not be fair to proceed with the appeal without these safeguards in place. Although the Tribunal has the power to award compensation, this power is ancillary to the disciplinary decision. There are no Tribunal Rules or legislative provisions which would allow executors to be sisted to the case to allow an order for compensation to be made against them in the place of the Second Respondent.

The Tribunal had sympathy for the Appellant who said he was seeking vindication for himself. However, the Tribunal is of the view that unfortunately there is no mechanism for him to achieve this now through the disciplinary proceedings. Other remedies may be available to him. For example, he may be able to raise proceedings against the Second Respondent's estate to the extent that the claim is not covered by the Second Respondent's indemnity insurers. He may also be able to apply to the court to have the charge removed from his home.

Therefore, on the First Respondent's motion, the Tribunal dismissed the appeal. Following submissions on expenses and publicity, it found no expenses due to or by any party. Publicity will be given to the decision and this publicity will include the names of the parties.



Nicholas Whyte
Chair