

THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(SSDT RULES 2024)

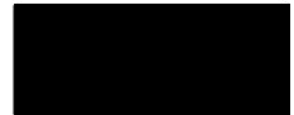
I N T E R L O C U T O R

in Application for an Order to Restore his
name to the Roll of Solicitors in Scotland

by

NOEMAAN FAROOQ BUTT, 6 Thornhill
Gardens, Newton Mearns, Glasgow
(hereinafter referred to as "the Applicant")

By Video Conference, 1 September 2025. The Tribunal having considered the submissions of both the Applicant and the Law Society of Scotland; Allows the Applicant to withdraw the Application; Refuses the motion of the Law Society of Scotland for expenses to be awarded against the Applicant; and Allows both parties 14 days from the intimation of this Interlocutor to make submissions in writing in relation to any order for publicity.



Colin Bell
Chair

NOTE

The Applicant lodged an Application dated 5 June 2025 under Rule 55(b) of the SSDT Rules 2024 (“2024 Rules”) for his name to be restored to the Roll of Solicitors, he having previously been struck off by decision of the Tribunal dated 19 February 2015.

In terms of Rule 56 of the 2024 Rules, the Tribunal set down a virtual hearing of the Application on 27 August 2025 and notices thereof were sent to the Applicant and the Law Society of Scotland.

The Law Society of Scotland lodged objections, under Rule 57(1)(c), dated 17 July 2025.

By email dated 27 July 2025, the Applicant notified the Tribunal that he was withdrawing his Application.

By email dated 28 July 2025, the Law Society intimated (a) their objection of the purported withdrawal of the Application, on the basis that it was not competent and (b) their intention to seek an award of expenses.

Following an exchange of correspondence, both parties were advised that the Application would call on the date already set, for parties to make submissions.

At the virtual hearing on 27 August 2025, the Applicant was present and represented himself. The Law Society were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. Prior to the hearing, the Applicant had lodged a List of Authorities, and the Law Society had lodged a copy of one case. The Tribunal heard submissions from both parties.

SUBMISSIONS FOR THE APPLICANT

The Applicant stated that it was his position that he had withdrawn his Application on 27 July 2025. This withdrawal was intimated exactly one month prior to this hearing. However, this was objected to by the Fiscal and, following an exchange of emails, the “Clerk” had directed that the matter be heard at this hearing. The Applicant stated that he was opposed to this hearing taking place as it was fundamentally unnecessary.

The Applicant stated that the Tribunal Rules are wholly silent on the matter of withdrawal of Applications for Restoration and the matter of expenses. The Applicant accepted that the Tribunal required to comply with its overriding objective set out in Rule 4 of the 2024 Rules but submitted that the purpose of the objective would have been met by granting his withdrawal without the necessity of this hearing. He submitted that the Tribunal would have been dealing with the case “efficiently” if it had simply granted his Application to withdraw.

The Applicant advised the Tribunal that the Fiscal had written to him at an earlier stage, indicating that his Application for Restoration would be opposed, but if he withdrew the Application within 10 days of the letter, the Law Society would not pursue him for expenses. He considered this letter to be unjust and to amount to coercion and intimidation. He submitted that the 10 days’ time limit was a period self-imposed by the Fiscal and was an unfair time limit.

He had required to take independent legal advice from Counsel and as a result he had decided to withdraw his Application.

He stated that the Law Society had expressed the view to him that they were obliged to protect their members from expense. He submitted that it should have been obvious that common sense, fairness and justice dictated that they should have accepted his withdrawal.

The Applicant invited the Fiscal to make his motion in relation to expenses, whilst reserving his right to respond thereafter.

The Chair asked the Applicant if he wished to refer to any of the authorities he had lodged. The Applicant drew the Tribunal’s attention to Somerville-v-Scottish Ministers [2007] UKHL 44 which he stated he had lodged in relation to the interpretation of the 2024 Rules. At paragraph 11 of that case, Lord Hope stated:-

“It is idle to speculate as to whether it is likely or unlikely that Parliament intended that a just satisfaction remedy was to be available under the Scotland Act without saying so expressly. The answer is to be found in the words used by the statutes, to which careful attention must be paid in order to discover the intention of Parliament.”

Where the Rules are silent, the Applicant stated that it could not be assumed that it was a matter for the Tribunal to decide whether to grant withdrawal or not. He argued that if the Rules are silent then there was no compulsion to hold a hearing on the issue of his application to withdraw.

He explained that he had lodged the case of Ms L Campbell-v-OCS Group UK Ltd & Ors UKEA T/0188/16/DA as an authority that when a claimant withdraws a case, the case is at an end. He accepted that the Campbell case related to the interpretation and construction of the rules of the Employment Tribunal. However, it was his position that he lodged the Application for Restoration, he had the right to withdraw it and this is not dependant on the position of the Law Society of Scotland.

The Tribunal asked the Applicant if he was suggesting that the Tribunal was bound to allow the withdrawal. He responded that there is nothing in the Rules to prevent his withdrawal of the Application and so his position was that the Tribunal was bound to allow it.

SUBMISSIONS FOR THE LAW SOCIETY

The Fiscal submitted that the Tribunal was a creature of statute and as such was restricted by the Solicitors (Scotland) Act 1980 (“the 1980 Act”) and the Tribunal Rules. He submitted that as there was nothing in either allowing the withdrawal of an Application for Restoration, it was not competent. He argued that the Tribunal can only grant or dismiss an Application for Restoration. If the Applicant was no longer insisting in his Application, then the Tribunal should dismiss it and the Law Society have a motion for expenses.

The Fiscal drew the Tribunal’s attention to Rules 33 and 47 of the 2024 Rules, which provide that a Complaint or Appeal can only be withdrawn with the leave of the Tribunal and with such conditions as to expenses or otherwise as the Tribunal thinks fit. He emphasised that there was no equivalent provision in the Rules in relation to Applications for Restoration.

With regard to his motion for expenses, the Fiscal drew the Tribunal’s attention to Rule 25 of the 2024 Rules which states at Rule 25(1):-

The Tribunal may make an order for such expenses as it sees fit against a party following any decision in the case.

Rule 3 of the 2024 Rules sets out the interpretation of “case” which includes Applications for Restoration under Part 4 of the Rules.

The Fiscal explained that this Application for Restoration was intimated to the Law Society on 20 June 2025. As a result, the Law Society began its investigations as to whether the Application should be resisted. Prior to lodging the written objections to the Application, the Fiscal had written to the Applicant offering an extra-judicial settlement. He had invited the Applicant to withdraw his Application within 10 days of his letter, as a result of which there would be no consequences in expenses. He disputed that his letter amounted to coercion or threat. He emphasised that the letter was in the usual style of an offer of extra-judicial settlement. He confirmed to the Tribunal that the letter was not sent “without prejudice” and that he was happy to provide a copy of it to the Tribunal.

The Tribunal asked the Fiscal how his current objection to the Applicant’s withdrawal was consistent with his letter inviting him to withdraw his Application. The Fiscal explained that his invitation to withdraw was an attempt to save expenses and avoid lodging a formal written objection. His letter had set out the Law Society’s objections in detail. He considered that the Tribunal may have been able to deal with the matter under Rule 5 of the 2024 Rules. He explained that the period of 10 days had expired on 11 July 2025, with no request from the Applicant to extend the period. The Law Society lodged their written objection a week later.

The Fiscal invited the Tribunal to conclude that the absence of a provision in the Rules relating to the withdrawal of an Application for Restoration was deliberate. He submitted that it was the general law that any live, quasi-legal proceedings should be subject to a judicial decision. In this case, the decision should be to refuse the Application as not insisted upon.

He emphasised that it was important to consider the difference between the effects of withdrawal in contrast to an order of dismissal. If the Applicant was allowed to withdraw the Application then he would be able to reapply at any time thereafter. If the Tribunal dismissed the Application, the Fiscal submitted that the Application could not be renewed without a material change in circumstances.

The Tribunal asked the Fiscal if he had any authority supporting this submission given that the 1980 Act and the Tribunal Rules were silent on this matter. He responded that the overriding objective in Rule 4 would support his submission. He argued that his submission was a

“highbrow” position rather than one supported by a specific rule. He explained that it would not be in the interests of justice to allow repeated Applications for Restoration on the same grounds.

With regard to his motion for expenses, he submitted that the Application for Restoration in this case was wholly misplaced and without merit. He took the Tribunal through his grounds for objection. He argued that the extent of the list of objections made by the Law Society was such that he would be justified in moving for punitive expenses on a solicitor client basis. However, he was restricting his motion to expenses on a party party basis.

He drew the Tribunal’s attention to Section 1(2) of the 1980 Act which set out the object of the Society, to promote the interests of the public. It was important to protect the public by objections to this Application and in doing so the Law Society were complying with their statutory obligations. The Applicant chose not to engage with the Law Society following its offer of settlement. He submitted that it was in the interests of justice for the Tribunal to grant expenses to the Law Society. He referred the Tribunal to Rule 25 of the 2024 Rules and directed the Tribunal’s attention to paragraph 12 of the case of Hawes-v-Thomas, Sheriffdom of Tayside, Central and Fife at Stirling A201/10 which referred to the “inherent, discretionary, common law power” of the “court” to determine whether to make an award of expenses. He submitted that when an Applicant seeks a judicial decision and then, part way through procedure, seeks to end proceedings, this should be subject to an award of expenses.

The Tribunal asked the Fiscal if the Tribunal had an inherent jurisdiction in relation to expenses. He responded that Rule 25 gave the Tribunal the power to award expenses.

The Fiscal invited the Tribunal to refuse the Application for Restoration and award expenses to the Law Society.

RESPONSE BY APPLICANT

The Applicant emphasised that he was not arguing the merits of his Application. He had withdrawn it. However, he disputed that his Application was without merit. He submitted that this Application was not a case raised against the Law Society. It was an Application made to the Scottish Solicitors Discipline Tribunal. In correspondence the Law Society had mistakenly identified itself as a defender. He submitted that he had withdrawn his Application and that the

Fiscal's objection to this was an attempt to use the Tribunal in a punitive way, to obtain an award of expenses against him.

The Applicant submitted that the 10 day time limit imposed by the Law Society was not in the interests of justice. He insisted that he had taken advice and withdrawn his Application within a reasonable time. He stated that the Fiscal's submissions in the course of this hearing had been about the Law Society attempting to discredit him and not about the last 10 years of rehabilitation.

It was his submission that the Tribunal should accept his withdrawal and refuse the motion for expenses.

The Tribunal referred the Applicant to earlier correspondence from him and asked him if he wanted to refer to any authorities confirming an Applicant's general right to withdraw an application. The Applicant responded that this was well established in court procedure and natural justice required that what he requested should be allowed. He submitted that the Tribunal was not entitled to assume that the right to withdraw had been deliberately left out of the Tribunal Rules.

The Fiscal drew the Tribunal's attention to Rule 23 of the Sheriff Court Ordinary Cause Rules which provides for withdrawal subject to expenses being paid. The Applicant emphasised that that procedure relates to a different category of litigation where there is a pursuer and defender. He emphasised that this case was one of a simple Application made by him, which he had subsequently withdrawn.

The Tribunal asked the Applicant if he conceded that the expenses from the date of his Application up to the date of its withdrawal might be viewed in a different light to expenses incurred after the withdrawal. The Applicant insisted that the Rules were silent on expenses. He submitted that he had withdrawn the Application in a timely manner, one month prior to the hearing. He submitted that this was not a matter for the Tribunal to make a decision upon but was a simple matter of an Application being withdrawn.

DECISION

The Tribunal gave careful consideration to all of the submissions and information before it. After deliberating for some time, it became apparent that the Tribunal required further time to complete its deliberations and parties were advised that the Tribunal was making avizandum.

Thereafter, the members of the Tribunal met virtually on 1 September 2025 to continue their deliberations.

The Applicant submitted that he had withdrawn his Application for Restoration by email dated 27 July 2025. The Fiscal's position was that it was not competent to withdraw an Application for Restoration to the Roll and he sought support for this from the 2024 Rules. He invited the Tribunal to conclude that the absence of any provision for withdrawal of Applications for Restoration, where there were specific provisions made for the withdrawal of Complaints and Appeals, demonstrated that the withdrawal of Applications for Restoration was not competent.

The Tribunal did not accept that this was an inevitable conclusion. The Tribunal considered that the Rules could be interpreted as either (a) giving the right to withdraw or (b) restricting an existing right of withdrawal. The Tribunal considered that this was an Application made by the Applicant. The Tribunal accepted the Applicant's proposition that, as the Applicant, he had the right to withdraw it. However, the Tribunal considered that it required to comply with the overriding objective, set out in Rule 4(1), and deal with cases "fairly, justly and efficiently". An Application for Restoration falls within the definition of "case" within Rule 4. As a result, the Tribunal determined that the Applicant's right to withdraw was not an unfettered one, but one that had to be exercised fairly and justly, as well as efficiently. The Tribunal concluded that Rule 4 provided authority for the Tribunal to attach such conditions to an Application to withdraw as might be appropriate having regard to the terms of the overriding objective. The Tribunal considered the Rules of the Tribunal in relation to Complaints and Appeals, and the Rules of the Sheriff Court and Employment Tribunal, and concluded that such a condition might, in relevant circumstances, be an award of expenses. The Tribunal required to assess the issue of fairness to both parties. Whilst the Law Society were not "defenders", as such, they have a clear role to play in these proceedings, as can be seen from the terms of Rules 56 and 58 and in the exercise of their statutory duty under Section 1 of the 1980 Act.

The Tribunal required to consider whether an award of expenses in this case was an appropriate condition to attach to the Applicant's withdrawal. The Tribunal required to consider its power to award expenses, in general, in relation to Applications for Restoration to the Roll. The Tribunal's discretion to award expenses derived from the 1980 Act and the Tribunal Rules, which for the purposes of this case are the 2024 Rules. Rule 25 provides:-

The Tribunal may make an order for such expenses as it sees fit against a party following any decision in the case.

Whilst the Tribunal accepted the definition of 'case' within the Rules includes applications under Part 4 of the Rules, it noted that the 1980 Act, Schedule 4 at paragraph 19 and 23 gives the Tribunal discretion to award expenses in Complaints and Appeals only. Schedule 4 is silent on the issue of expenses for Applications for Restoration. From a review of these provisions, the Tribunal concluded that it was not satisfied that it had the power, in general terms, to award expenses in Applications for Restoration. The Tribunal went on to note that the Regulation of Legal Services (Scotland) Act 2025, by paragraph 23 of Schedule 3, will amend Schedule 4 of the 1980 Act to include a provision for awards of expenses in relation to Applications for Restoration to the Roll.

Having concluded that the Tribunal did not have the discretion, in general, to award expenses in Applications for Restoration, it followed that it would not be appropriate to make such an award as a condition of the withdrawal of the Application.

The Tribunal allowed the Applicant's withdrawal of 27 July 2025 and refused the Law Society's motion for expenses.

Parties will have 14 days from the intimation of this Interlocutor and Note to lodge written submissions regarding publicity and the members of the Tribunal will meet, without the presence of the parties, to consider these.



Colin Bell
Chair