

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

INTERLOCUTOR

in Appeal under Section 42ZA(10) of the
Solicitors (Scotland) Act 1980 as amended

by

WESLEY MITCHELL, Glenwarren,
Shanmullagh, Ballinamallard (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 Respondents")

and

HUGH COLIN SOMERVILLE, 39 Bridge
Street, Musselburgh (hereinafter referred to
as "the Second Respondent")

By Video Conference, 26 January 2022. The Tribunal, Refuses the Appellant's motion to call witnesses at the hearing fixed for 15 March 2022; Converts said hearing from a hearing in-person to a remote hearing; and Reserves all questions of publicity and expenses meantime.



**Beverley Atkinson
Vice Chair**

NOTE

This matter called for a virtual procedural hearing on 26 January 2022. The Appellant was present and represented himself. The First Respondents were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Second Respondent was not present nor represented. He had previously indicated to the Tribunal that he did not intend to take part in these proceedings.

The Appellant indicated that he wished to proceed with the appeal hearing fixed for 15 March 2022 and that he intended to call two witnesses whom he identified by name. The Tribunal asked the Appellant to explain the purpose of calling these individuals since most appeals before the Tribunal proceeded by way of legal debate following the principles in Hood, Petitioner [2017] CSIH 21. The Appellant indicated that the witnesses would speak to the wills of 16 May 2012 and 2 July 2012. The witnesses were in direct contact with the deceased at that time and have relevant information regarding the preparation and execution of the wills. The Appellant submitted that the medical evidence relied upon by the Sub Committee was factually incorrect. He wished to lead evidence about that from witnesses who were present with the deceased at the relevant time. In his submission, the Sub Committee had disregarded the evidence provided by those witnesses in their statements submitted to the Law Society. Hearing from them would assist the Tribunal in identifying where the Sub Committee went wrong. It was clarified with the Appellant during the course of the virtual procedural hearing that the witness statements were submitted to the Law Society and are referred to in the reporter's report at paragraphs 43(r) and (s).


The Fiscal opposed the calling of witnesses in this case for the reasons given by the Tribunal in its decision in Section 42ZA Appeal by Campbell Thomas. According to him, the whole matter revolves around the information before the Sub Committee, what it did with that information, and whether it can be criticised. The Appellant's motion to recover the unredacted report was rightly refused by the Tribunal. He cannot be allowed to lead evidence in addition to that before the Sub Committee.

According to Rule 40 of the Tribunal's Rules, the procedure for dealing with a case, including the procedure at any hearing, shall be such as the Tribunal may determine (subject to the provisions of the 1980 Act, 1980 Act and the 2008 Rules). Since Hood, Petitioner, the Tribunal has consistently applied the test set out in that decision to its own appeal cases. Before Hood, consistent with the approach of other appellate bodies, the Tribunal's usual approach in appeal

cases was not to hear the matter of new but to consider the reasonableness of the Sub Committee decision.

The Appellant submits that the Sub Committee erred in its decision-making by disregarding the witness statements of two individuals. He wishes to call them to give evidence at the appeal hearing. This is inappropriate and unnecessary in an appeal of this nature. The Tribunal's function at the hearing is to assess the Sub Committee's decision-making in the framework provided in Hood. It is not to rehear the case. If the Appellant seeks to persuade the Tribunal that the Sub Committee erred on the basis of the information before it, there is no requirement to hear directly from the witnesses, and calling those individuals who gave statements is likely to lead to confusion and additional evidence being led before the Tribunal which was not available to the Sub Committee.

Following submissions on other sundry matters, the Tribunal converted the hearing in-person on 15 March 2022 to a virtual hearing. It confirmed that all documents, including written submissions or Notes of Argument should be lodged with the Tribunal by 1 March 2022. All questions of publicity and expenses will be reserved meantime.



Beverley Atkinson
Vice Chair