

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

**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

LYNSAY KELLY, 29 St Vincent Crescent, Ayr  
(hereinafter referred to as "the Respondent")

By Video Conference, 20 January 2025. There being no appearance by the Respondent, the Tribunal grants the motion of the Complainers in terms of Rule 9 of the Scottish Solicitors Discipline Tribunal Rules 2024 (hereinafter referred to as "the 2024 Rules") to proceed in the absence of the Respondent; on the motion of the Complainers, fixes a virtual substantive hearing for 8 April 2025 at 10am; grants the Complainers' motion in terms of Rule 15 of the 2024 Rules to lead evidence by way of Affidavit, and under Rule 22 of the 2024 Rules waives the requirement of notices under Rule 15(2); and directs the Complainers to lodge the Affidavits no later than 14 days prior to the hearing.

  
**Colin Bell**  
Chair

## NOTE

This Complaint had been set down for a virtual procedural hearing on this date. The Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was not present. The Fiscal submitted that he intended to make a motion under Rule 9 of the 2024 Rules for the Tribunal to proceed in the absence of the Respondent. In order to do that, he recognised that the Tribunal required to be satisfied that notice of the hearing had been duly served in terms of the Rules and that the overriding objective set out in Rule 4 had been met. The Tribunal proceeded to hear evidence from the Depute Clerk who indicated that the Complaint and notice were sent to the Respondent by recorded delivery post to the address on the Complaint and that the Royal Mail track and trace system confirmed that these were delivered on 8 November 2024, signed for by “Kelly”. She confirmed that a notice of the virtual procedural hearing was sent by recorded delivery post to the same address and that the track and trace system of the Royal Mail confirmed that this was delivered on 7 December 2024 and signed for by “Kelly”. The Depute Clerk confirmed that no contact had been made by the Respondent with the Tribunal Office. The Fiscal invited the Tribunal to be satisfied that the notice of hearing had been duly served within the terms of the Rules. He turned to the overriding objective set out in Rule 4 and referred the Tribunal to the case of GMC v Adeogba [2016] EWCA Civ 162 and submitted that it was appropriate for the Tribunal to proceed in the absence of the Respondent. The Tribunal gave careful consideration to the information before it. It noted that in terms of Rule 4 it required to deal with cases “*fairly, justly and efficiently, always in accordance with the law and rules of natural justice.*” The Tribunal noted that two notices had been served upon the Respondent and there had been no communication received in response. The Tribunal had regard to the case referred to by the Fiscal, GMC v Adeogba, and also the case of R v Jones [2002] UKHL 5. The Tribunal concluded that there seemed little to be achieved by delaying in proceeding with the Complaint. There was nothing to suggest that the Respondent would be likely to engage with further procedure. In these circumstances, the Tribunal concluded that the fair and appropriate order was to proceed in the absence of the Respondent.

The Fiscal invited the Tribunal to fix a virtual full hearing of one day’s duration. He indicated that he was likely to require evidence from seven to 10 witnesses. If that evidence was by way of Affidavit, one day would be sufficient. The Fiscal moved the Tribunal in terms of Rule 15 of the 2024 Rules to be permitted to lead evidence by way of Affidavit. The Tribunal gave careful consideration to the motions of the Fiscal. It concluded that the appropriate order was to fix a virtual hearing for 10am on 8 April 2025. The Tribunal noted that Rule 15(2) makes provision for a form of notice procedure in relation to the intention to lead Affidavit evidence. Having regard to the lack of engagement by the Respondent to date, and the content of the overriding objective set out in Rule 4, the Tribunal considered it appropriate to waive the notice requirements under Rule 22(1) of the 2024 Rules.

The Fiscal made a motion, which he then withdrew, to be allowed to intimate only a List of the Affidavits to be relied upon and not the Affidavits themselves. He said he had concerns regarding personal information such as addresses that would be contained within the Affidavits. The Tribunal indicated to the Fiscal that, as he was asking the Tribunal to exercise its discretion to digress from normal procedure, it would require more detailed submissions from him. In the circumstances, he withdrew his motion and indicated that, if he later decided that this was appropriate, he would lodge a motion with the Tribunal Office. The Tribunal directed the Complainers to lodge the Affidavits to be relied upon no later than 14 days prior to the hearing.

The Tribunal enquired of the Fiscal as to whether he had an email address for the Respondent. The Fiscal confirmed that he did have an email address on file but there was nothing to suggest that the Respondent had replied in relation to any communication sent to that email address over the past four years. He confirmed that he would provide the Tribunal Office with that email address.

  
**Colin Bell****Chair**