

**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")

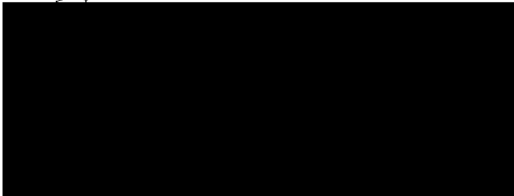
against

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, 15 March 2022. The Tribunal, having considered the Appellant's motion to adjourn the hearing which was opposed by the First Respondents; Directs the Respondent to produce by 12 April 2022 medical evidence to demonstrate why he was unable to attend and present his appeal on 15 March 2022; Continues the virtual hearing to 25 April 2022; and Reserves all questions of publicity and expenses meantime,



Ben Kemp
Vice Chair

NOTE

On 14 March 2022, the Appellant sent an email to the Tribunal Office seeking an adjournment of the hearing on grounds of his ill health. The Fiscal indicated by email that the motion to adjourn was opposed. After considering the email correspondence, the Chair directed that the matter would call at the hearing set for 15 March 2022, and the Tribunal would consider the motion to adjourn at the start of those proceedings. The Chair indicated it would be helpful to the Tribunal to have more information from the Appellant in support of his motion, particularly any medical evidence available. No further communication was received from the Appellant.

The matter called for a virtual hearing on 15 March 2022. The Appellant was not present or represented. 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 Fiscal made submissions opposing the Appellant's motion to adjourn. He referred to a catalogue of delay and prevarication both in these proceedings and during the Law Society investigation. He noted that the appeal process began in December 2020. At a virtual procedural hearing on 22 April 2021, the matter was continued for the Appellant to consider amending his appeal. The Appellant tendered documents on the morning of the next virtual procedural hearing on 22 June 2021. He sought and was granted further time to amend his appeal but did not do so. He sought to lodge an amended appeal on 14 September 2021, but this was refused. The Tribunal dealt with the Appellant's motion to recover the unredacted Law Society report on 23 September 2021. A preliminary hearing was set for 29 September 2021. On the morning of that hearing, the Appellant emailed the Tribunal to say he was not well. No supporting evidence was produced. The Tribunal took his position at face value and granted the motion to adjourn. On 9 November 2021, the Tribunal refused the Appellant's motion to receive an amended appeal. Two of his four grounds of appeal were dismissed. On 26 January 2022, the Tribunal refused the Appellant's motion to call witnesses at the hearing. In the final paragraph of the Tribunal's Interlocutor and Note of that date, it noted that all documents were to be produced by 1 March 2022. The Fiscal noted that the Appellant had not lodged anything since December 2020. That would be the position even if he was present. In the Fiscal's submission, the Appellant was either ill-prepared for the hearing or was looking to push on the hearing again for no real reason than to delay the inevitable refusal of the appeal.

He reminded the Tribunal that party litigants must follow the same rules as represented parties (AW Applicant [2018] CSIH 25). Even if the Appellant was present, he could not take things further.

It was clarified that the Fiscal sought dismissal of the appeal for want of insistence. He did not consider that the appeal could proceed in the appellant's absence without someone to present it. The Appellant had been told by the Clerk that the case was going to call and he was not present. If the Tribunal adjourned the hearing, there was not much more it could do by way of direction.

The Tribunal retired to consider the Appellant's motion. The case had a long history. The matter had previously been adjourned once before on the ground of the Appellant's ill health. The Appellant had not taken opportunities given to him to amend his appeal. The Tribunal noted that on 26 January 2022, it had directed that any documents including notes of argument should be lodged by 1 March 2022 and that the Appellant had not lodged anything. It had some sympathy for the Fiscal's position and gave consideration to dismissing the appeal.

However, the Tribunal also noted that the Appellant had only had a limited time to produce medical evidence in support of his motion to adjourn. In the interests of fairness, the Tribunal considered that he should have an opportunity to provide this. The Tribunal therefore directed that a medical report on soul and conscience should be provided to the Tribunal by 12 April 2022. Following the guidance contained in McCallion-v-Apache North Sea Limited [2018] SCA (Civ) 1, the report should:

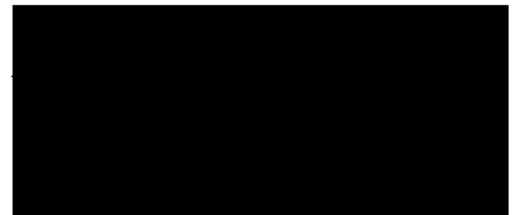
- Identify the medical practitioner and give details of familiarity with the Appellant's medical condition, detailing all recent consultations;
- Specify the health condition assessed, detailing the nature and extent of any medical condition from which he was suffering;
- Specify for how long the condition had been suffered and for how long it might continue;
- Provide a reasoned prognosis;
- Identify with particularity the features of that condition which in the opinion of the doctor prevented attendance at, or participation in, the Tribunal process (it should

specify in particular why the health condition rendered the Appellant unfit to attend the Tribunal on 15 March 2022 as well as his ongoing fitness to participate in these proceedings).

The report should also address when the Appellant might be fit to participate in a hearing and whether he is fit to instruct a representative.

The Tribunal continued the virtual hearing to 25 April 2022. On that date, it will consider any medical evidence lodged by the Appellant as regards his non-attendance on 15 March 2022. In the absence of satisfactory medical evidence, the Tribunal may refuse the appeal, in which case it may be dismissed without the Tribunal hearing submissions on the substantive issues.

All questions of publicity and expenses were reserved. The Tribunal noted in its deliberations that the First Respondents' submissions referred to the Tribunal having the unredacted Law Society report before it. The Tribunal takes this opportunity to clarify that on 23 September 2022, it was determined that the unredacted report would not be provided to future tribunals and that the members who dealt with the case on 14 and 23 September 2022 would not sit on any other hearing of this appeal. The Tribunal as now composed accordingly has access only to the redacted version of the report.



**Ben Kemp
Vice Chair**