

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

INTERLOCUTOR

in Section 42ZA Appeal

by

ROBERT KIDD, 12 Mykinon, Germasogeia,
Limassol 4045, Cyprus (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

SCOTT ALLAN, Solicitor, c/o Shepherd &
Wedderburn LLP, Commercial House, 2 Rubislaw
Terrace, Aberdeen (hereinafter referred to as "the
Second Respondent")

By Video Conference, 30 September 2020. The Tribunal having considered parties' submissions; fixes a hearing for 14 December 2020 at 11:30am; and reserves all questions of publicity and expenses meantime.



Ben Kemp
Vice Chair

NOTE

At the virtual procedural hearing on 30 September 2020, the Appellant was not present but was represented by Andrew Smith, Q.C. instructed by Graham Horsman, Solicitor, Glasgow. The First Respondent was represented by Elaine Motion, Solicitor Advocate, Edinburgh. The Second Respondent was present and represented by Roddy Dunlop, Q.C. instructed by Christopher Garden, Solicitor, Aberdeen. The Second Respondent had lodged a note of proposals in advance of the virtual procedural hearing. This had been adopted by the First Respondent. The Appellant lodged a note of proposals in response. The Second Respondent lodged a supplementary note of proposals. Parties addressed the Tribunal.

Mr Smith for the Appellant moved the Tribunal to fix a full evidential hearing. He was content the matter could be dealt with remotely. He noted it would be sensible for the Second Respondent to give evidence but did not intend to call him and would rest on the documentation. He moved for expenses of the preliminary hearing, including sanction for Senior Counsel. He anticipated that two days would be required if the Second Respondent was to give evidence. He denied making any concession regarding “actual knowledge” and the scope of the appeal at the preliminary hearing.

Ms Motion for the First Respondent formally adopted the note of proposals lodged by the Second Respondent. The Chair confirmed that the Tribunal had listened to an extract of the recording of the preliminary hearing. The Tribunal’s provisional view having listened to the recording and considered parties’ notes, was that Mr Smith did not make a clear and unequivocal statement to the extent of a formal concession. The Tribunal did not understand him to have made a concession at the time and neither of the Respondents made comment on it at the preliminary hearing. Ms Motion said her notes indicated that Mr Smith said he could not push so far as to say the Second Respondent knew of Mr Gordon’s actions. The concession was made and not retracted. If the Tribunal was not with her on this, she understood it would fix a hearing. She submitted that the evidence at the hearing should be limited to the documents which were available to the Professional Conduct Sub Committee. She said these had been made available to the Appellant. She said the basis of the Appellant’s arguments needed to be set out very clearly. She was content the case could take place remotely in half a day if written submissions were provided in advance. She moved for the expenses of the preliminary hearing.


Mr Dunlop for the Second Respondent invited the Tribunal to play the recording. Mr Smith objected to this because he said the excerpt had to be understood in context. As a matter of fairness, the whole

recording would have to be played. In any case, he did not think even a clear and unequivocal concession regarding actual knowledge could affect the outcome. The Tribunal had already made its decision and it would not be competent to reverse it. If the point was worthy of being made it ought to have been raised at the time. Ms Motion said she would appreciate hearing the recording.

The Tribunal retired to consider whether or not to play the excerpt of the recording. The Tribunal decided it was not necessary nor appropriate to play a limited extract at this stage. Although the submissions were in places unclear and contradictory, the Tribunal did not consider at the time that a concession was made, and having heard the extract, was of the same view. Even if it were competent to revisit the issue, the submissions did not constitute a concession. On balance, it was not appropriate to play it, particularly without hearing all of Mr Smith's submissions in context.

Mr Dunlop said if he was right and there was a concession, there would be no point in a further hearing and it would be appropriate for the Tribunal to refuse the appeal. However, he could not press this point given that the Tribunal did not think there was an unequivocal concession. Mr Dunlop said the hearing must be limited to the question of actual knowledge. The Appellant must make good his challenge under the Hood principles and the Law Society of Scotland-v-Donaldson. The Second Respondent did not intend to give evidence. He cannot add anything to the Sub Committee's decision. Mr Dunlop said a half day remote hearing would be sufficient. He moved for the expenses of the preliminary hearing including sanction for Senior Counsel.

The Tribunal retired to discuss the matter. On its return, it set a hearing for 14 December 2020 at 11:30am. The hearing will be restricted to the question of actual knowledge, consistent with and for the reasons set out in the decision of this Tribunal following the Preliminary Hearing. The Appellant should submit written submissions by 30 October 2020 addressing the basis for the appeal in light of this decision and having regard to the Hood principles. Both Respondents should submit written submissions by 20 November 2020. All documents to be relied upon at the hearing should be lodged by 30 November 2020. Parties were reminded to keep to this timetable. The Tribunal reserved all questions of expenses meantime.



Ben Kemp
Vice Chair