

**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

FIONA MCKINNON, 60 Crosslees Drive,
Thornliebank, Glasgow (hereinafter referred to
as "the Respondent")

Edinburgh, 25 June 2025. On the opposed motion of the Respondent, the Tribunal adjourns the Hearing fixed for this date to 11 September 2025 at 10am to take place in person; Reserves the question of expenses; In terms of Rule 35 of the SSDT Rules 2024 makes the following Case Management Directions:-

- (i) Within 28 days of today's date, the Respondent must confirm whether or not she will actively participate in these proceedings; and
- (ii) If the Respondent is participating and intends to defend the Complaint, she must lodge Answers and intimate same within 28 days of today's date.
- (iii) The Respondent must lodge any documents upon which she intends to rely, together with any Productions, Affidavits and List of Witnesses at least 21 days before the date of the adjourned Hearing on 11 September 2025.



**Colin Bell
Chair**

NOTE

This Complaint was set down for a substantive in person Hearing on 25 June 2025. The Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was absent and unrepresented.

At 15:38 hours on 24 June 2025 the Tribunal Office received an email from the Respondent together with two attached files (described below). The email requested an adjournment of the Hearing on 25 June 2025 as follows:-

“Dear Sirs,

I have received a letter dated 18 June 2025 from Mr Stewart indicating the above mentioned hearing [on 25 June 2025] which I was previously unaware of.

I am unable to attend and seek an adjournment.

Please see the attached Medical certificate confirming I have long covid, together with letter confirming my husband is in hospital tomorrow for a heart procedure.

Without prejudice.

Yours faithfully,

Fiona Mckinnon.”

The Fiscal opposed the motion and asked the Tribunal to proceed in absence of the Respondent in terms of Rule 9 of the 2024 Rules.

The Clerk to the Tribunal gave evidence on oath that formal notice of today’s Hearing was sent to the Respondent at the address on the Complaint by Royal Mail ‘Signed For’ post under cover of letter dated 2 April 2025. Also enclosed was a certified true copy of the Tribunal’s interlocutor dated 25 March 2025 which fixed a one day hearing in this case. The online Royal Mail ‘track and trace’ system confirmed that the items had been signed for by ‘Mckinnon’ on 3 April 2025.

Based on the evidence of the Clerk, the Fiscal submitted that service of the Notice of Hearing had been properly effected in terms of Rules 7 and 8 of the 2024 Rules. He added that the address on the Complaint was noted to be the same address as that on the correspondence accompanying the Respondent's motion to adjourn.

With reference to the 'fit note' provided by the Respondent in support of her motion to adjourn, the Fiscal noted that it was not a 'soul and conscience' medical certificate. He submitted that the information provided by the Respondent was unlikely to suffice or satisfy the Tribunal in terms of medical evidence required under Rule 10 of the 2024 Rules.

The Fiscal also referred to the procedural history of the case; in particular that the Respondent had not lodged Answers, did not appear (and was not represented) at the virtual procedural hearing on 25 March 2025 and had not commented on the Complainer's productions which had been lodged and intimated. The Fiscal argued that the request for an adjournment at this stage was an attempt by the Respondent to frustrate Tribunal proceedings. He referred to the pleadings and, in particular, to the events with Hazel Docherty and the last minute notice given by the Respondent there.

Turning to the letter about the Respondent's husband's medical procedure, the Fiscal observed that it is not clear whether the person named on the letter was, in fact, the Respondent's husband. The Fiscal said he was not aware of the Respondent's marital status although he conceded that married persons may bear different surnames. In any event, the Fiscal noted that the letter from the hospital was dated 26 May 2025 and, therefore, it was likely that the Respondent would have received it at the start of June 2025. However, she had only provided intimation of it to the Tribunal office very late which, the Fiscal submitted, was indicative of the Respondent's further attempts to frustrate these proceedings.

In all the circumstances, the Fiscal asked the Tribunal to refuse the Respondent's motion and proceed with the Hearing in her absence.

A Tribunal member asked the Fiscal to address the panel on the following points, bearing in mind the overall consideration of fairness:-

- (i) Why any issues of fairness could not be reflected in an award of expenses; and
- (ii) Protection of the public given that the Respondent was suspended from practice.

The Fiscal responded as follows:-

- (i) Although Courts and Tribunals often consider expenses as being a way of redressing issues of fairness, in this case, that would be insufficient as an adjournment granted in the present circumstances would allow the Respondent to continue her misconduct. In the Fiscal's submission, an award of expenses was not an appropriate response in these circumstances as the Respondent's alleged conduct was now occurring in relation to Tribunal proceedings also.
- (ii) The Fiscal accepted that the Respondent was suspended and, therefore, conceded there was no immediate risk to clients *per se*. However, he asked the Tribunal to consider the wider public interest and argued that it was not acceptable to the profession that the Respondent only gave one hour of notice of non-urgent medical issues in order to adjourn a Hearing.

The Tribunal adjourned to consider whether it was fair and just to grant the Respondent's motion. It accepted the Clerk's evidence in relation to service of the Notice of today's Hearing and, therefore, that service had been properly effected. It was deemed that the Respondent was aware of today's Hearing.

However, the Tribunal also had to consider the additional information submitted by the Respondent in support of her motion to adjourn. It noted that the information was incomplete and somewhat vague; for example, it did not provide any detail on the exact nature of her condition or symptoms experienced by the Respondent and how this would affect her participation in a Hearing of which she had been given proper notice. Although the letter regarding her husband's appointment referred to a 'cardiac' procedure, there was no detail given on this and the Tribunal members are not medically qualified. The Tribunal had to consider whether to simply accept the Respondent's outline position that her husband was undergoing a medical procedure, but had no indication of the nature or severity of same and this was most unsatisfactory.

The Tribunal drew attention to its Health Guidance issued on 1 September 2024 and which applies to these proceedings. The guidance is very clear in terms of what is required of parties wishing to raise a health issue before the SSDT. A copy of the guidance had been provided to

the Respondent in previous correspondence. Lack of detailed information sent at the last minute made the decision of the Tribunal very difficult to reach as it did not have all the information required before it. The Tribunal was most displeased with this and commented that it was unacceptable for the Respondent to provide limited illumination in relation to such an important matter.

In addition, the Tribunal had significant concerns about the lateness of the request. This indicated a lack of respect for the Tribunal and an overall cavalier attitude towards proceedings. This caused great concern to the Tribunal which emphasised the gravity and importance of these proceedings, not least to the Respondent.

The Tribunal was very clear that its decision on this motion to adjourn was very finely balanced indeed. It had great sympathy for the position the Respondent had put the Complainers in today, both in terms of attendance and preparation. It fully acknowledged the need to protect the public and the profession. The behaviour of the Respondent by lodging a late motion with vague documentary support is damaging to the profession overall and the Tribunal takes a dim view of any party who does not fully engage and, indeed, causes proceedings to be stalled, particularly without full argument and details. The Tribunal considered the judgement of Mr Justice Elias in the case of Brabozon-Drenning v United Kingdom Central Council for Nursing and Midwifery [2000] EWHC J1031-1. It stated that, *"save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee [viz. Tribunal] which has the livelihood and reputation of a professional individual in the palm of its hands, to go on with a hearing when there is unchallenged medical evidence that the individual is simply not fit to withstand the rigours of the disciplinary process"*.

Although the information provided by the Respondent was severely lacking in detail, the Tribunal considered that the interests of fairness meant that the adjournment still had to be considered carefully and it was genuinely vexed on the question of whether or not to grant it. However, on balance, it concluded that the balance was very finely tipped in favour of the Respondent on this occasion and reluctantly decided to grant the adjournment. However, the Tribunal expressed its deep displeasure at the actions of the Respondent in relation to this matter and made it clear that it would be hesitant to grant any further adjournments lodged in this manner.

Given the procedural history of the case, and with a view to ensuring that matters are not elongated unnecessarily, the Tribunal fixed a date for the adjourned Hearing on the first available date. It did consider holding the Hearing virtually, however, concluded that it would be most efficient for the Respondent to be present given the volume of productions. Therefore, the adjourned Hearing will take place in person.

In addition, the Tribunal decided it was appropriate to make Case Management Directions to include a timeline for responses from the Respondent.

In fairness to all parties, and given that the Respondent's participation in the proceedings is unclear, the Tribunal decided to reserve the question of expenses until conclusion of the case.



Colin Bell

Chair