

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

INTERLOCUTOR

in Complaint

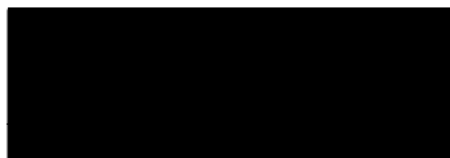
by

THE COUNCIL OF THE LAW SOCIETY OF  
SCOTLAND, Atria One, 144 Morrison Street,  
Edinburgh (hereinafter referred to as "the  
Complainers")

against

SAAIMA KHALID, JKR Law Limited, 103  
West Regent Street, Glasgow (hereinafter  
referred to as "the Respondent")

By Video Conference, 19 April 2022. The Tribunal, having heard parties' submissions; Refuses the Complainers' motion for the Tribunal to sanction the Respondent in terms of Rule 50(1); Refuses the Respondent's motion for a further procedural hearing; and Continues the case to a hearing in person on a date to be afterwards fixed.



**Catherine Hart**  
**Vice Chair**

## NOTE

### Background

A Complaint against the Respondent was lodged on 16 July 2021. Answers were received. At a procedural hearing on 4 October 2021, the Respondent's agent produced an email dated 3 October 2021 from the Respondent's former accountant. In that email, the accountant explained that, at the request of the Respondent's husband, and without consulting anyone else, a junior employee of the accountancy firm updated the Register at Companies House transferring shares in the Respondent's firm to the Respondent's husband. Mr Foster also sent an email to the Fiscal and the Tribunal Clerk on 4 October 2021 stating that he had spoken to the Respondent's husband, and he had confirmed the accountant's narrative. The Respondent's husband had explained to Mr Foster that since he had provided start-up capital, he felt he should have shares in the Respondent's firm. The Fiscal sought a continuation of the procedural hearing to make enquiries regarding the information in the emails. This was granted, given the potential relevance of this information to the Respondent's defence, and the matter was continued to 21 January 2022.

The Fiscal sought further information from Mr Foster which was not forthcoming. The Tribunal made an order under Rule 13 for production of documents on 21 January 2022 (Interlocutor and note of 21 January 2022 refers). The documents were not produced.

Following the continued procedural hearing on 17 March 2022, the Tribunal issued a notice under Rule 50(2) giving the Respondent 21 days to comply with its order or to send representations in writing as to why it should not take action under Rule 50(1) (Interlocutor and Note of 17 March 2022 refers). No documents or representations were produced.

The case called for a continued procedural hearing on 19 April 2022. On that date, the Complainers were represented by their Fiscal, James Campbell, Solicitor, Edinburgh. The Respondent was not present but was represented by her solicitor, Michael Foster, Glasgow.

### Parties' Submissions

According to Mr Foster, the Respondent does not have the documents which were the subject of the Tribunal's order. He suspects that they are in the hands of the Respondent's former accountant. The accountant had confirmed in an email of 20 March 2022 the error regarding the share transfer. Mr Foster had asked the accountant to provide that information in a letter on

headed notepaper. Mr Foster had written to the Judicial Factor and the Respondent's former accountant on 19 April 2022. Mr Foster asked for a further continuation of the virtual procedural hearing.

The Fiscal opposed the Respondent's motion for a continued procedural hearing and moved the Tribunal to sanction the Respondent for her non-compliance with its orders under Rule 50(1). That Rule provides as follows:

*"50(1) If any direction, order or other requirement given by the Tribunal to a party under these rules is not complied with by that party, the Tribunal may before or at the hearing*

*(a) dismiss or strike out the whole or part of the complaint, appeal or application or other submission made by that party, and where appropriate,*

*(b) direct that such party shall be barred from proceeding with, or contesting, the complaint, appeal or application altogether."*

The Fiscal invited the Tribunal to strike out the words "*which will include explanation that she did not expressly authorise the conduct but*" where they appear in paragraphs 4 and 5 of the Answers. The Respondent would therefore be barred from proceeding with the submission that she did not know of or instruct the conduct in the Complaint. The Fiscal submitted that there should be a sanction in terms of Rule 50 in addition to asking the Tribunal to draw an adverse inference in respect of the failure to produce the documents. The Fiscal noted that the Respondent made no representations in response to the Rule 50 notice. She did not produce a medical report outlining her health difficulties and whether they prevented compliance. Her agent did not contact the Judicial Factor until the morning of this continued procedural hearing. The Fiscal sought a full hearing. In answer to a question from the Chair, the Fiscal noted that although there was scope for stronger sanction in Rule 50, his motion was simply for the Respondent to be prevented from leading in mitigation the position described.

Mr Foster objected to the Fiscal's motion on the grounds that it would be grossly unjust for the Tribunal to sanction the Respondent. There would be no point in her attending if she could not lead her defence or mitigation. It would make a mockery of the proceedings. The Respondent accepts she is responsible for the conduct because she was in charge of her firm. However, she ought to be able to make explanation in mitigation. The documents in question are not in the Respondent's possession. It is not her ill-health that precludes production, although it does mean that she cannot deal with things quickly. Mr Foster said he was not trying to excuse the delay.

However, he submitted that it was not fair that the Respondent should be asked to prove her defence in advance of the hearing.

The Fiscal noted that a Judicial Factor had been appointed to the firm. It could be that it was the Respondent's own delay that has prevented her from complying with the Tribunal's order. She has had many months to back up her position.

Mr Foster explained that he had received pertinent information from the accountant on 20 March 2022. He believes that the accountant might be reluctant to provide information as his own regulatory body might wish to investigate his conduct.

The Chair asked Mr Foster whether that information might constitute a defence to the Complaint. Mr Foster said the explanation was only to be given in mitigation. Someone must be responsible for the conduct, and it was the Respondent.

The Fiscal noted that the Rules provide sanction for non-compliance. If the Respondent is allowed to make her explanation and this is accepted, she will benefit from ignoring the Tribunal's orders. He suggested that the Tribunal could grant his motion with the caveat that the Respondent can still make submissions in mitigation following a finding of professional misconduct.

### Decision

The Tribunal carefully considered the history of the case and parties' submissions. The Respondent, despite repeated opportunities, has failed to produce documents as ordered by the Tribunal in support of her position regarding her knowledge of her husband's conduct, as advanced by her agent on 4 October 2021 and thereafter. In most cases, sanction under Rule 50(1) would follow as a direct and natural consequence of the Respondent's repeated and disrespectful failure to comply with the orders of the Tribunal. The Respondent is not, as Mr Foster suggested, being required to produce her defence or mitigation in advance of the hearing. She put the question in issue in the Answers and her agent has repeatedly made reference to it at various hearings. The Complainers cannot be criticised for following up on it. It was appropriate that they investigate a potential defence set out by the Respondent. The Respondent has failed to produce the documents which should have been easily accessible to her at least in the early stages of this case. The Complainers' request for sanction arises from a situation entirely of the

Respondent's own making. It could so easily have been avoided by the Respondent producing the documents when they were within her control.

However, the Tribunal also noted that preventing the Respondent from putting her position at a hearing might result in significant unfairness to her, and incomplete information being available to the Tribunal which will hear and determine the Complaint. Evidence from the Respondent, her husband and the accountant could potentially raise questions about the degree of the Respondent's culpability and could be relevant to the issue of professional misconduct (Sharp-v-Law Society of Scotland 1984 SLT 313 and MacColl-v-Law Society of Scotland 1987 SLT 524). Mr Foster has indicated that the Respondent no longer has custody or control of the documents now that a Judicial Factor has been appointed to her firm.

The Tribunal gave serious consideration to granting the Fiscal's motion. However, it ultimately came to the view that the requested sanction was too severe in the circumstances as it was likely to prejudice the Respondent who was said to be unwell, not in possession of the documents, and was relying on her agent to represent her in these proceedings. The potential significance of the complete or partial defence or mitigation was too great for the Tribunal to strike it out and still maintain the fairness of these proceedings. However, this decision should not be seen as a precedent for future motions brought under Rule 50 in other cases.

The Respondent should be aware that if the documents are never produced, the Fiscal can invite the Tribunal to draw adverse inferences from that fact, given the many opportunities the Respondent has had to provide them. The Complainers can investigate the defence independently and cite witnesses if required. They can petition the court to recover documents if necessary. They can invite the Tribunal to make a finding of expenses against the Respondent in relation to the additional time and cost incurred.

Taking all these circumstances into account therefore, the Tribunal refused the Complainers' motion to sanction the Respondent in relation to her non-compliance, and made no direction under Rule 50(1). It continued the matter to a hearing in-person on a date to be afterwards fixed. However, it should be noted that the failure of the Respondent and her agent to conduct this case properly is of grave concern to the Tribunal. The Rule 13 order ought to have been followed. The Rule 50 notice should have been obtempered or alternatively, representations made to the Tribunal. The Tribunal received no explanation from Mr Foster as to why he failed to make representations within 21 days of the Rule 50 Notice or why he had only written to the Judicial

Factor on the morning of the continued procedural hearing. The conduct of this case on behalf of the Respondent has undoubtedly and unnecessarily created additional time, expense and inconvenience to the Complainers and the Tribunal.



**Catherine Hart**  
**Vice Chair**