

**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

JOHN DAVID MAIR, 5 Whittingehame  
Gardens, 1097 Great Western Road, Glasgow  
(hereinafter referred to as "the Respondent")

By Video Conference, 23 April 2024. The Tribunal, on the motion of the Complainers, sets down a virtual preliminary hearing to take place on a date to be afterwards fixed in September 2024, with a virtual procedural hearing to call approximately eight weeks in advance of the virtual preliminary hearing; Directs that the Respondent lodge a written note of argument no later than two weeks prior to the virtual procedural hearing and that the Complainers lodge a written note of argument in response no later than one week before the virtual procedural hearing; and Directs that Lists of Authorities and Productions to be referred to by the parties at the virtual preliminary hearing be lodged no later than 48 hours prior to the virtual procedural hearing.

  
**Beverley Atkinson**  
**Vice Chair**

## NOTE

At the virtual procedural hearing on 23 April 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was neither present nor represented. The Tribunal heard evidence from the Depute Clerk regarding intimation of this hearing to the Respondent. It was confirmed that a notice of hearing was sent by recorded delivery post with a letter dated 19 March 2024 to the Respondent at the address 5 Whittingehame Gardens. The Royal Mail track and trace system disclosed that this item was delivered on 22 March 2024 and signed for by someone giving the name Gibson. The notice was also sent by the Tribunal Office to four different email addresses used by the Respondent. These emails were sent by Egress and had not been accessed by the Respondent. Joining instructions for this hearing were sent to the Respondent by the Tribunal Office on 15 April 2024 to four email addresses used by the Respondent. The Respondent emailed the Tribunal Office on the morning of 22 April 2024. The email address used by the Respondent was one that was not used for sending the notice of hearing but was used for the joining instructions. The email from the Respondent indicated that he had moved address but did not give an up-to-date one. The Office responded to that email and referred the Respondent to today's hearing. A further email was sent by the Respondent using the same email address but making no reference to the procedural hearing or the earlier email sent to him by the Tribunal Office. The Depute Clerk telephoned the mobile telephone number held for the Respondent on a number of occasions and on each occasion received a response that the number was not available. A text message was sent to the Respondent.

The Tribunal gave careful consideration to the information before it and concluded that it was fair and appropriate to proceed in the absence of the Respondent.

The Fiscal invited the Tribunal to fix a preliminary hearing and to direct that the Respondent lodge written submissions and that the Complainers be allowed to lodge written submissions in response.

In response to a question from the Tribunal, Mr Whyte confirmed that correspondence from him to the Respondent in relation to obtaining a psychiatric report was emailed to the Respondent at multiple email addresses. The Fiscal submitted that it was reasonable to assume that the Respondent received some of these emails, as the Respondent had himself obtained an email address for the psychiatrist appointed and had emailed that psychiatrist on 10 March 2024 when the Fiscal had not provided the psychiatrist's email address to the Respondent, only his name.

Mr Whyte believed that the psychiatrist was prepared to fix a further appointment and Mr Whyte was prepared to write to the Respondent to discuss arranging a further appointment.

Mr Whyte considered that one day should be sufficient for the preliminary hearing and that it could proceed on a virtual platform.

The Tribunal asked the Fiscal if he had made any enquiries with regard to the documents and files referred to by the Respondent. Mr Whyte confirmed that he had made enquiries with the Society's Registry Department. They had confirmed that the inspection files were no longer with the Society. He believed that they had probably been destroyed. With regard to the books and records for the Respondent's firm, Mr Whyte confirmed that these will have originally gone to the Judicial Factor. He had confirmed with "Registry" that the Society no longer have the files available.

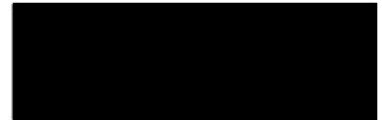
The Fiscal made a motion to amend the address in the Complaint by deleting the word "Drive" and inserting in place thereof the word "Gardens". The Tribunal noted that this was a matter previously raised by the Respondent and granted that motion.

The Tribunal gave careful consideration to the information before it. It noted that the Respondent, in an email sent to the Tribunal Office on 22 April 2024, indicated a preference for a preliminary hearing. The Respondent had indicated that he expected to be physically fit to proceed with a preliminary hearing by September. The Tribunal noted that the Respondent had previously made reference to mobility and financial issues. Having regard to all of the information before it, the Tribunal set down a preliminary hearing to take place on a date to be afterwards fixed in September 2024. Having regard to the whole circumstances and in particular, the circumstances of the Respondent, it considered it appropriate that a preliminary hearing take place virtually. The Tribunal considered it appropriate to fix a procedural hearing to call approximately eight weeks before the preliminary hearing. It directed that the Respondent lodge a written note of argument at least two weeks before the procedural hearing. The Complainers should lodge a written note of argument in response no later than one week before the procedural hearing. Both parties were directed to lodge Lists of any Authorities or Productions to be referred to in the preliminary hearing at least 48 hours before the procedural hearing.

Following today's hearing the Tribunal office will request that the Respondent provide (a) a postal address to which any correspondence can be sent by the Tribunal Office (b) a single email

address to be used for all correspondence with the Tribunal Office and (c) an up-to-date mobile telephone number.

The Tribunal requested that Mr Whyte respond in writing to the Respondent to advise him what had happened to the documents and what the Society had available to be disclosed to the Respondent.



**Beverley Atkinson**  
**Vice Chair**