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

INTERLOCUTOR

in Section 42ZA(12) Appeal of the Solicitors (Scotland) Act 1980 as amended

by

REHAM EL MENSHAWY

Appellant

against

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND, Atria One, 144 Morrison Street,

First Respondents

and

JOSEPH HANN, Solicitor, Hann & Co, 1 Bridgend, High Street, Annan

Second Respondent

By Video Conference 29 November 2022. Having heard submissions from both parties in the Section 42ZA(12) Appeal by Reham El Menshawy dated 29 March 2021; Find the Appellant liable in the expenses of the First Respondents and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00 and to include the costs of the interpreter, all modified by a reduction of 30%; Direct that publicity will be given to this decision, the decision of 2 September 2022, and the Interlocutors and Notes dated 3 August 2021 and 14 December 2021 and that this publicity will include the names of the Appellant and the Second Respondent but not the address for the Appellant.

[redacted]

Beverley Atkinson
Vice Chair

NOTE

On 2 September 2022 the Tribunal refused the Section 42ZA Appeal by Reham El Menshawy dated 29 March 2021 and continued the questions of expenses and publicity to a date after both parties had had an opportunity to consider the detailed findings. The written Decision was intimated to both parties and a virtual hearing was set down for 2 December 2022.

At the virtual hearing on 2 December the Appellant was present and represented herself. The First Respondents were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Second Respondent was not present, having indicated previously that he did not intend to enter the proceedings. An interpreter was present in order to translate proceedings for the Appellant. The Tribunal had before it the written submissions lodged in advance of the hearing by both parties. Additionally, the Tribunal had before it three emails sent by the Appellant to the Tribunal office on Sunday 27 November 2022. The Tribunal confirmed to the Appellant that medical records attached to one of these emails were not before it as the Appellant had declined to intimate them to the First Respondents. The Appellant indicated that she was now prepared to share these documents with the First Respondents. The Tribunal explained to the Appellant that it considered it inappropriate and unfair to the First Respondents to allow these documents to be received at such a late stage in proceedings. However, the Appellant was advised that she could still refer to the subject matters of these documents in her submissions, if she considered it appropriate.

The Tribunal indicated to both parties that all of the members had read the written submissions and documents before it and, therefore, it only required to hear oral submissions providing supplementary information.

In her written submissions the Appellant sought an award of expenses in her favour. In them she argued that the Fiscal had intentionally wasted the time and effort of both the Tribunal and herself throughout the proceedings by repeatedly making the same irrelevant allegations and by lodging irrelevant, lengthy authorities including the case referred to by him in the present hearing. By contrast, it was submitted that she had gone to great efforts to save Tribunal time, including by not attempting to adjourn hearing dates even though she was unwell. They set out her financial circumstances including that she has no income and has incurred significant expenses for ongoing medical treatments. They explained that the exchange rate between the British and Egyptian pounds was extremely unfavourable to her and, given the current economic climate, likely to get worse.

With regard to publicity, her written submissions invited the Tribunal to direct that there be no publicity at all. The submissions described previous threats and harassment that occurred during the original litigation and described in her earlier supporting documents. They set out that the Appellant feared that publishing her name and address would adversely affect both her and her parents given the Egyptian cultural reaction to women being involved in litigation. It was feared that the fact that she lost the case would be used to defame her. It was alleged that the Second Respondent would use the published decision to harm her.

In his written submissions, the Fiscal confirmed he was seeking an award of expenses in favour of the First Respondents on the premise that expenses should follow success. The Appeal was unsuccessful. It was submitted that the Appellant should not be treated more favourably by the Tribunal because she is unrepresented and reference was made to the case of AW [2018] CSIH 25.

With regard to publicity, his written submissions stated that there was no reason for the Decision not to be published.

The Tribunal turned firstly to the Fiscal and asked him if he accepted that in fact there had been a degree of mixed success in the Appeal given that the Tribunal at page 37 of the Decision identified an error or fact and/or law by the Sub-committee. He did not accept that there had been any success. The Appeal was against the level of compensation awarded. The Appeal was refused.

The Tribunal drew the Fiscal's attention to the refusal of his motions at the Preliminary hearing on 14 December 2021 and asked him how he considered the Tribunal should deal with that. He responded that no motion for or award of expenses was made at the time. He submitted that the Preliminary Hearing had been of assistance to the Tribunal in helping matters be focussed.

He was asked if he had anything to add to his submissions today. He responded that all he would add is that the Appellant had lodged lengthy submissions for today, none of which he considered was relevant to the question of expenses.

The Tribunal invited the Appellant to make any supplementary oral submissions.

The Appellant directed the Tribunal to the Preliminary Hearing of 14 December and submitted that the hearing was fixed to consider three motions for the First Respondents all of which were refused. She did not accept that the hearing assisted the Tribunal to focus on the proper grounds of her appeal on the basis that they were clearly set out in her written grounds of appeal. She submitted that the expenses should be awarded to her.

The Appellant reminded the Tribunal that she had requested that no interpreter be instructed for today in order to save on cost.

The Tribunal invited the Appellant to expand upon her concerns regarding publicity. The Appellant confirmed that she was asking for no publicity to be given to the Decision at all as she feared a resurgence of the type of harassment she had faced in the original litigation. The Tribunal asked if anonymising her personal details would be sufficient to address these concerns. She responded that she feared that the Second Respondent would use such a published Decision to harm her. She stated that the Second Respondent had a relationship with the Defender in the original litigation and the Decision would be used by that person to harass the Appellant.

DECISION

Paragraph 23(d) of Schedule 4 of the 1980 Act amends and applies paragraph 19 to appeal proceedings. This provides that "the Tribunal may make such order as it thinks fit" with regard to expenses. The Tribunal accepted that the usual starting position is that expenses should follow success but this is a matter for the Tribunal's discretion and not an absolute rule.

The Tribunal gave careful consideration to all of the information before it.

The Tribunal did not accept the submissions made by the Appellant that the Fiscal had intentionally wasted hers and the Tribunal's time by his approach to proceedings. It did recognise that the motions by the First Respondents to dismiss the Appeal, or order caution to be found or a mandatory sisted were all refused. However, it noted that the Note of the Preliminary Hearing identified the core grounds of appeal, confirmed that the Appeal was against the level of compensation only, and drew the Appellant's attention to her misplaced reliance on the comparison of the tables given in the Law Society guidance.

The Tribunal noted the Appellant's financial circumstances described in her written submissions but concluded that this had to be considered in the light of the Appellant raising proceedings in the full understanding of the risks of an award of expenses being made against her should the Appeal fail. The Tribunal noted that, at the Preliminary Hearing, the Appellant acknowledged she understood the risk of and her ability to pay such an award of expenses.

The Tribunal accepted that the facts of the case of AW referred to by the Fiscal were quite different to this case. However, it accepted that it was an example of an unrepresented litigant not being more favourably treated simply by virtue of that fact.

The Tribunal gave careful consideration to the detailed reasons for its Decision on the Appeal and concluded that there was an element of mixed success in that the Tribunal had concluded that the Sub-committee had made an error of fact and or law in relation to its failure to consider the issue of lost opportunity. Whilst, at the end of the day, this had no practical effect on the eventual result of the Appeal, the Tribunal considered it appropriate and fair to have regard to this when considering the issue of expenses.

With regard to the costs of the interpreter for today's hearing, the Tribunal noted that the Appellant had requested to dispense with this requirement for today's hearing. However, having regard to the communication difficulties identified by the Appellant, and referred to by her at paragraph 19 of her written submissions for today, the Tribunal was duty bound to ensure that the Appellant had a full understanding of these proceedings.

Taking into account all of the information before it, the Tribunal concluded that the appropriate order was one of expenses in favour of the First Respondents whilst giving recognition to the degree of success achieved by the Appellant both at the Preliminary Hearing and the Full Hearing. In the circumstances the Tribunal determined that this degree of success was appropriately reflected in a modification of the whole amount of expenses by a reduction of 30%.

With regard to publicity, the duty to publish decisions in full under paragraph 14 of Schedule 4 of the 1980 Act is applied to appeal proceedings by paragraph 23 of that Schedule. By paragraphs 14A and 23 of said Schedule, the Tribunal is given a discretion to "refrain from publishing any names, places or other facts" it is of the opinion that publication of which might be likely to damage the interests of any individual, including the Appellant. This discretion must be fairly and proportionately applied having regard to a

balancing of the principles of open justice and the interests of the individual. The Court of Session has often emphasised that the principle of open justice is not to be interfered with lightly. It is important that Tribunal proceedings be open and transparent.

The Appellant referred the Tribunal to harassment she experienced during the original litigation. The Tribunal noted that the examples given dated back to 2009. All of the hearing dates in the Appeal had been public hearings, albeit no one other than the two parties present had requested joining instructions. The Appellants name had been published on the Tribunal's website for each hearing date. Careful consideration was given to the contents of the Decision from September and the two previous notes. The Tribunal considered that there was very little information given in relation to the original litigation.

The Appellant invited the Tribunal to give careful consideration to cultural differences in the view taken of female litigants. The Tribunal considered there was little in the way of sensitive, personal information within the documents to be published.

The Appellant had made very serious accusations against the Second Respondent which the Tribunal concluded were not supported by any of the other information before it.

However, the Tribunal recognised the Appellant's concerns and considered that the proportionate and fair approach, balancing its duty to publish with the rights and concerns of the Appellant, whilst adopting the least restrictive approach, was to order that publicity should take place, including the name of the Appellant but not including her address.

Beverley Atkinson
Vice Chair