



## **Scottish Solicitors' Discipline Tribunal Rules 2024**

### **Arrangement of Rules**

#### **Part 1 – General**

1. Citation, commencement and revocation
2. Application
3. Interpretation
4. Overriding objective
5. Procedure
6. Proceedings in public and private
7. Notice of Hearing
8. Service on a party or parties to a case
9. Non-attendance of a party or parties to a case
10. Ill health of a party or parties to a case
11. Absence of a Tribunal member
12. Exclusion from hearings
13. Postponement or adjournment
14. Evidence
15. Affidavit evidence
16. Expert evidence
17. Witnesses
18. Vulnerable witnesses
19. Amendment
20. Production or recovery of documents
21. Retention of documents
22. Waivers, variations and failures to comply
23. Recording of proceedings
24. Corrections
25. Expenses

#### **Part 2 – Complaints**

26. Complaints to which Part 2 applies
27. Notification of certain complaints made by the Council
28. Complaint made by the Council on behalf of others
29. Manner in which complaints are to be made
30. Whether complaint discloses a case on the face of it
31. Service of complaint and lodging of answers

32. Dismissal without hearing
33. Withdrawal of complaint
34. Conjoining
35. Case Management Directions
36. Procedural Hearings
37. Preliminary Hearings
38. Appointment of a solicitor by the Tribunal
39. Notice of hearing
40. Presence of parties at the hearing
41. Decision of the Tribunal
42. Remission of certain complaints after inquiry

### **Part 3 – Appeals**

43. Appeals to which Part 3 applies
44. Manner in which appeals are to be made
45. Admission of appeal
46. Service of appeal and lodging of answers
47. Withdrawal of appeal
48. Case Management Directions
49. Procedural Hearings
50. Preliminary Hearings
51. Notice of Hearing
52. Presence of parties at the hearing
53. Decision of the Tribunal

### **Part 4 – Applications for Restoration**

54. Applications to which Part 4 applies
55. Manner in which applications are to be made
56. Notice of Hearing
57. Notice of application
58. Procedure at hearing
59. Decision of the Tribunal

### **Part 5 – Exercise of functions and appointments**

60. Appointment of Chair and Vice-Chairs
61. Appointment of a Convener to a particular tribunal
62. Exercise of functions of the Tribunal by a particular tribunal
63. Exercise of functions of the Tribunal by the Chair or Vice-Chair

### **Part 6 – Transitional and savings provisions**

64. Transitional and savings provisions

## **Schedule 1 – Forms**

Form A - Form of Complaint

Form B - Form of Notice of Complaint

Form C - Form of Notice of Hearing for Complaint

Form D - Form of Appeal

Form E - Form of Notice of Appeal

Form F - Form of Notice of Hearing for Appeal

Form G - Form of Application for Restoration

Form H - Form of Notice of Hearing for Application for Restoration

Form I - Form of Objection to Application for Restoration

Form J - Form of Procedural Application (*e.g. adjournment, postponement, late documents, vulnerable witness, hearing in private*)

The Scottish Solicitors' Discipline Tribunal, in exercise of the powers conferred upon it by section 52(2) of the Solicitors (Scotland) Act 1980 and with the concurrence of the Lord President of the Court of Session, hereby makes the following rules:-

## **Part 1 – General**

### **Citation, commencement and revocation**

**1(1)** These rules are the Scottish Solicitors' Discipline Tribunal Rules 2024.

**1(2)** These rules shall come into force on 1 September 2024.

**1(3)** The 2008 Rules are revoked, except where Part 6 of these rules applies.

### **Application**

**2** These rules shall apply to any complaint, appeal or application for restoration to which Parts 2, 3 or 4 apply, which is made to the Tribunal on or after 1 September 2024, except where the 2008 Rules continue to apply, as set out in Part 6 of these rules.

### **Interpretation**

**3(1)** In these rules –

“**the 1980 Act**” means the Solicitors (Scotland) Act 1980 (c. 46);

“**the 1990 Act**” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);

“**the 2007 Act**” means the Legal Profession and Legal Aid (Scotland) Act 2007 (ASP 5);

“**the 2008 Rules**” means the Scottish Solicitors' Discipline Tribunal Rules 2008;

“**appellant**” means, in relation to any appeal to which Part 3 applies, the practitioner, complainer or legal practice making the appeal;

“**applicant**” means, in relation to any application to which Part 4 applies, the solicitor, registered European lawyer or registered foreign lawyer, who wishes to have his name restored to the roll or register;

“**case**” means a complaint, appeal or application under Part 2, 3, or 4, and “part of a case” includes, without prejudice to that generality, the holding of any procedural hearing or preliminary hearing or the determination of any procedural or substantive issue in the case;

“**case management directions**” means the directions given by the Chair or the Tribunal under Parts 2 and 3;

“**Chair**” includes any other person presiding at the proceedings of the Tribunal;

“**Clerk**” means the Clerk to the Tribunal and includes any depute clerk appointed by the Tribunal;

“**complainer**” means the person who makes the complaint and, for the purpose of these rules, those persons are the Council under section 51(1) of the 1980 Act or any of those persons mentioned in section 51(3) of the 1980 Act;

“**complaint**” means any complaint or report made under section 51(1) or 51(1A) of the 1980 Act by the Council or by those persons mentioned in section 51(3);

“**convener**”, in relation to a particular tribunal, shall be construed in accordance with rule 61;

“**conveyancing practitioner**” means a person registered under section 17 of the 1990 Act in the register of conveyancing practitioners;

“**the Council**” means the Council of the Law Society of Scotland;

“**the court**” means the Court of Session;

“**decision**” includes any decision, order, determination or direction of the tribunal;

“**executry practitioner**” means a person registered under section 18 of the 1990 Act in the register of executry practitioners;

“**functions**” includes powers and duties;

“**hearing**” means any hearing of the tribunal and includes procedural and/or preliminary hearings;

“**legal practice**” means:

(a) *a firm of solicitors*, whether or not there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner or the firm has ceased to practise since the time when it is suggested the conduct complained of occurred;

(b) *an incorporated practice*, whether or not there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) of the 1980 Act or has been wound up since the time when it is suggested the conduct complained of occurred; or

(c) *a multi-national practice*, whether or not there has been any change in the members of the partnership or body corporate or the practice has been wound up or otherwise ceased to practise since the time when it is suggested the conduct complained of occurred;

“**overriding objective**” means the overriding objective of these rules as set out at rule 4;

“**particular tribunal**” means the tribunal hearing a particular case in accordance with rule 62;

**“party or parties to a case”** means:

- (a) in the case of a complaint, the complainer and the respondent or respondents;
- (b) in the case of an appeal, the appellant and the respondent or respondents; and
- (c) in the case of an application, the applicant, the Council and any objector or objectors; and
- (d) in the case of a complaint, any party claiming compensation, but only after a finding of professional misconduct has been made;

**“practising certificate”** has the meaning given by section 4 of the 1980 Act;

**“practitioner”** means:

- (a) a conveyancing practitioner, whether or not registered at the time when it is suggested the conduct complained of occurred and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;
- (b) an executry practitioner, whether or not registered at the time when it is suggested the conduct complained of occurred and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;
- (c) a registered European lawyer, whether or not the European lawyer was registered with the Law Society of Scotland at the time when it is suggested the conduct complained of occurred and notwithstanding that subsequent to that time the registration has been withdrawn or suspended;
- (d) a registered foreign lawyer, whether or not the foreign lawyer was registered under section 60A of the 1980 Act at the time when it is suggested the conduct complained of occurred and notwithstanding that subsequent to that time the registration has been withdrawn or suspended; or
- (e) a solicitor, whether or not the solicitor had a practising certificate in force at the time when it is suggested the conduct complained of occurred and notwithstanding that subsequent to that time the name of the solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;

**“preliminary hearing”** means a hearing in terms of rule 37 or rule 50;

**“private”**, in the context of a hearing of a particular tribunal, means in the absence of the public; and in the context of the tribunal’s deliberations, means in the absence of the public, the parties and, where relevant, their representatives;

**“procedural hearing”** means a hearing in terms of rule 36 or rule 49;

**“respondent”:**

- (a) in relation to any complaint to which Part 2 applies, means –
  - (i) the practitioner who is, or
  - (ii) the legal practice which is, the subject of the complaint;
- (b) in relation to any appeal to which Part 3 applies which is made by a practitioner or legal practice, means the Council, and any person who made the complaint as defined in section 46 of the 2007 Act; and
- (c) in relation to any appeal to which Part 3 applies which is made by the person who made the complaint as defined in section 46 of the 2007 Act, means the Council, and the practitioner or legal practice which is the subject of the complaint.

**“the roll”** means the roll of solicitors kept by the Council by virtue of section 7(1) of the 1980 Act;

**“Tribunal”** means the Scottish Solicitors’ Discipline Tribunal and includes, in relation to a particular case or part of a case, a particular tribunal which is hearing that case or part of a case; and

**“unsatisfactory professional conduct”** has the same meaning as it has in section 46(1) of the 2007 Act.

**3(2)** Unless the context otherwise requires, any reference in these rules:

- (a) to a numbered rule or part refers to the rule or part bearing that number in these rules; or
- (b) to a schedule refers to the schedule/s to these rules; or
- (c) to a numbered paragraph refers to the paragraph bearing that number in that rule.

**3(3)** Unless otherwise stated, all references to legislation and subordinate legislation in these rules shall be construed as including any amendments to the said legislation and subordinate legislation.

**Overriding Objective**

**4(1)** The overriding objective of these rules is to enable the Tribunal to deal with cases fairly, justly and efficiently, always in accordance with the law and the rules of natural justice.

**4(2)** The Tribunal shall give effect to this objective in exercising its powers under these rules.

**Procedure**

**5** Subject to the provisions of the 1980 Act and the 1990 Act, the overriding objective, and otherwise the relevant provisions of these rules, the Tribunal may determine the procedure for dealing with a case, including the procedure at or in advance of any hearing.

**Proceedings in public and private**

**6(1)** Subject to the provisions below, hearings of the Tribunal shall be held in public and decisions shall be pronounced in public or otherwise in writing in terms of rules 41, 53 and 59.

**6(2)** The Tribunal may, of its own volition or on the application of any of the parties, either at a procedural hearing or at the particular hearing, decide that a part or all of a particular hearing shall be heard in private, provided that this is in the interests of justice and that to do so outweighs the public interest in holding the hearing in public.

**6(3)** Applications by parties to whom these rules apply for a part or all of a particular hearing to be heard in private shall be made in accordance with the relevant rules under Parts 2, 3 or 4 and using Form J of Schedule 1.

### **Notice of Hearing**

**7(1)** The Tribunal shall give notice of the date, time and location of the hearing to the parties to a case in a Notice of Hearing in accordance with the relevant rules under Parts 2, 3 or 4.

**7(2)** In any case, save in exceptional circumstances or when the case has been dismissed or withdrawn, a hearing shall be fixed for a date no later than three months after the date when the case was lodged with the Tribunal.

### **Service on a party or parties to a case**

**8(1)** Any notice or document which these rules require to be served on a party or parties to a case, may be served:

- (a) by recorded delivery post to the last known business or residential address of that party; or
- (b) by personal service effected by sheriff officers; or
- (c) by electronic mail to an electronic mail address which has been provided by that party to the Tribunal Office with confirmation that the email address may be used for such document service, together with an electronic delivery receipt request.

**8(2)** Where any party to whom (1), above, applies is represented, service of any notice or document referred to at (1) may be served:

- (a) by recorded delivery post to the last known business or residential address of that party's representative, or
- (b) by personal service effected by sheriff officers on that party's representative; or
- (c) by electronic mail to an electronic mail address which has been provided by that party's representative to the Tribunal Office with confirmation that the email address may be used for such document service, together with an electronic delivery receipt request.

**8(3)** Where service of a notice of complaint or notice of hearing in terms of (1) and (2) has failed, "deemed service" may be effected by giving notice in the Journal of the Law Society of Scotland and/or website of the Tribunal.

**8(4)** Where confirmation of service in terms of (1) or (2) is required, such service may be proved by



- (a) in the case of (1)(a) or (2)(a), the relevant postal delivery confirmation, as spoken to by the Clerk who may give evidence regarding service at any hearing;
- (b) in the case of (1)(b) or (2)(b), the relevant execution of service or equivalent written confirmation of service by sheriff officers, as spoken to by the Clerk who may give evidence regarding service at any hearing;
- (c) in the case of (1)(c) or (2)(c), the relevant electronic delivery receipt, as spoken to by the Clerk who may give evidence regarding service at any hearing.

**Non-attendance of a party or parties to a case**

**9** If a party to a case fails to attend or to be represented at the hearing, the Tribunal may, after being satisfied that notice of the hearing has been duly served in terms of these rules and that the overriding objective is met, proceed to hear and determine the case in the absence of that person.

**Ill health of a party or parties to a case**

**10(1)** If the Tribunal

- (a) is satisfied, following receipt of medical evidence whether orally or in documentary form; or
- (b) considers that a question arises as to the ability of a party or parties to participate in and/or attend the hearing of their case and may be so unable in the future, by reason of ill health, the Tribunal may make such orders as are best suited in all the circumstances of the case, to deal fairly with the case, including but not limited to:
  - (i) postponing or adjourning proceedings for a specified period of time;
  - (ii) seeking medical evidence;
  - (iii) seeking updated medical evidence after a specified period of time;
  - (iv) disposing of the case, fairly and justly, including making a final determination or dismissing the case.

**10(2)** Where (1) applies, the Tribunal may determine its own procedure in terms of rule 5 or make case management directions under rule 35 in Part 2 cases or rule 48 in Part 3 cases always acting in accordance with the overriding objective.

**Absence of a Tribunal member**

**11** If, after the hearing of the case has begun, a member of the Tribunal is absent and the Tribunal is then not properly constituted in terms of paragraph 5 of Schedule 4 to the 1980 Act, the convener shall adjourn the proceedings.

**Exclusion from hearings**

**12** The Tribunal may exclude any person, including a party to the proceedings and/or the party's representative, whose conduct in its opinion has disrupted the hearing or otherwise interfered with the administration of justice.

### **Postponement or adjournment**

**13(1)** The Tribunal may on its own initiative or on the application of any of the parties at any time postpone or adjourn a hearing or sist a case, provided that the parties have had an opportunity to make representations on the matter and it is satisfied that it is in the interests of justice to do so.

**13(2)** In considering an application of any of the parties for a postponement, adjournment, or sist, the Tribunal shall have regard to the terms of the overriding objective and inconvenience caused to others, including other parties and witnesses.

**13(3)** The Tribunal shall make orders as to expenses, or otherwise, as appear just in the circumstances of the application for the postponement, adjournment or sist.

### **Evidence**

**14(1)** Subject to the requirements of relevance and fairness, and to any specific provisions to the contrary, the Tribunal may admit oral, documentary or other evidence, whether or not such evidence would be admissible in other civil or criminal proceedings.

**14(2)** At any hearing the Tribunal may depart from the strict rules of evidence.

**14(3)** Where the respondent has been convicted of a criminal offence or offences in the United Kingdom,

- (a) production of an extract conviction or certificate of conviction, certified by a competent officer of the relevant court, will be conclusive proof of the conviction and will constitute evidence that the person in question was guilty of the offence, save in exceptional circumstances;
- (b) any court record of the findings of fact upon which the conviction is based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be conclusive proof of those facts, save in exceptional circumstances.

**14(4)** Nothing in this rule prevents the respondent from presenting evidence to explain the circumstances of any such conviction and/or in mitigation of it.

**14(5)** The judgement of a civil court or tribunal or a certified copy of a decision of a body responsible under enactment and exercising professional regulatory or disciplinary functions in the United Kingdom will be admissible both as evidence of the judgement or decision itself, and of the findings of fact on which that judgement or decision was based.

### **Affidavit evidence**

**15(1)** Evidence of a witness may be provided in the form of an affidavit, subject to the overriding objective, any case management directions or any other orders under these rules which the Tribunal may issue.

**15(2)** Where a party intends to submit and rely on evidence in the form of an affidavit:

- (a) the intention to rely on such evidence and the affidavit must be intimated to the Tribunal and any other party no later than 14 days before the hearing;
- (b) the other party shall intimate to the Tribunal and to the intimating party no later than 7 days before the hearing, whether or not they intend to object to such affidavit evidence being admitted and/or their intention to call the witness themselves;
- (c) where the parties do not agree on the admission of the affidavit evidence, the Tribunal may call a procedural hearing to determine whether or not to admit the proposed affidavit evidence, and shall otherwise make an order allowing or not allowing the affidavit evidence.

### **Expert evidence**

**16(1)** Evidence of an expert witness shall be provided by submitting a report from that expert witness and calling the expert witness to give oral evidence, subject to the overriding objective of rule 4(1), any case management directions or any other orders under these rules which the Tribunal may issue.

**16(2)** Where a party intends to submit and rely on expert evidence:

- (a) the intention to rely on such expert evidence and the report of the expert must be intimated to the Tribunal and any other party no later than 14 days before the hearing;
- (b) the other party shall intimate to the Tribunal and to the intimating party no later than 7 days before the hearing whether or not they intend to object to such expert evidence being admitted;
- (c) where the parties do not agree on the admission of the expert evidence, the Tribunal may call a procedural hearing to determine whether or not to admit the proposed expert evidence, and shall otherwise make an order allowing or not allowing the expert evidence.

### **Witnesses**

**17(1)** A party may cite witnesses using the procedure in paragraph 12 of Schedule 4 to the 1980 Act.

**17(2)** A witness will be required to take the oath or to affirm before giving their evidence.

**17(3)** A party proposing to call a witness may, on cause shown, apply to the Tribunal for that witness to give their evidence by electronic video-link.

### **Vulnerable witnesses**

**18(1)** The Tribunal may, on the application of any party to the case, or of its own volition, give a direction that a witness is to be treated as a vulnerable witness.

**18(2)** In reaching its decision at (1), above, the Tribunal shall take into account the nature and circumstances of the particular case and, where relevant, but not limited to:

- (a) the nature of the evidence the party or witness will give;
- (b) the relationship between the parties;
- (c) the social and cultural background of the party or witness;
- (d) the sexual, religious or political orientation of the party or witness;
- (e) any disability or impairment of the party or witness.

**18(3)** Where the Tribunal designates a witness as a vulnerable witness, it may order such arrangements for that witness to give evidence as it considers are appropriate to the circumstances, including but not limited to:

- (a) the use of screens;
- (b) the use of remote video-link;
- (c) the attendance of a supporter.

**18(4)** Where –

- (a) a witness is designated as a vulnerable witness;
- (b) the respondent is not represented; and
- (c) the Tribunal considers it necessary;

the respondent shall not be allowed to examine or cross-examine the witness and in such circumstances, examination or cross-examination of the witness shall be undertaken by a representative appointed by the Tribunal.

**18(5)** The expenses of a representative appointed by the Tribunal under Rule 18(4), so far as not recoverable from the Respondent, shall be paid out of the funds of the Tribunal.

#### **Amendment**

**19(1)** At any time prior to making its final determination on the application of a party to the case, or of its own volition if it appears to the Tribunal that:

- (a) a complaint or answers to which Part 2 applies; or
- (b) any statement of appeal or answers to which Part 3 applies; or
- (c) any application to which Part 4 applies;

should be amended, the Tribunal may permit or make any such amendment.

**19(2)** In respect of an appeal under Part 3, the Tribunal may permit a respondent to withdraw their answers.

#### **Production or recovery of documents**

**20(1)** The Tribunal may, on the application of a party or parties to the case or of its own volition, order a party to produce any document in their custody or under their control within such a period of time as the Tribunal may specify where the Tribunal determines that such a document may be necessary for the proper consideration of the case.

**20(2)** A party may recover documents using the procedure in paragraph 12 of Schedule 4 to the 1980 Act.

### **Retention of documents**

**21** Any complaint, appeal or application made under these rules and any documents lodged in a case held under these rules shall be kept by the Clerk, and shall be retained pending the expiry of the appeal period or until the appeal has been heard and disposed of, all as subject to the Tribunal's retention policy and the requirements of the relevant data protection legislation in place from time to time.

### **Waivers, variations and failures to comply**

**22(1)** The Tribunal may dispense with any requirements of these rules respecting notices, documents, service or timescales, where it appears to the Tribunal to be just to do so.

**22(2)** The Tribunal may extend, or, with consent of parties, may reduce, the timescale for doing anything under these rules.

**22(3)** Where a party has failed to comply with the provisions of these rules or with any order, requirement or direction issued under case management directions in terms of these rules, the Tribunal may make such orders as appear fair and just in all the circumstances, including but not limited to:

- (a) varying the order, requirement or direction;
- (b) varying the timescale for that party's compliance;
- (c) refusing to admit evidence, whether oral or documentary, to which the failure relates;
- (d) refusing to admit submissions to which the failure relates;
- (e) dismissing or striking out any part or all of the case;
- (f) directing that a party be barred from proceeding with or contesting the case.

**22(4)** The Tribunal shall not make an order or orders under (a) – (f), above, without making provision for the parties in the particular case to make submissions on the order or orders proposed, either in documentary form or at a procedural hearing called for this purpose.

**22(5)** This rule is without prejudice to powers of the Tribunal as otherwise set out in these rules.

**22(6)** The Tribunal may take account of the failures of a party or parties to comply with the rules, orders, requirements or directions when making an award of expenses.

### **Recording of proceedings**

**23(1)** Hearings of the Tribunal shall be recorded electronically, unless the Tribunal has directed that shorthand notes are to be taken by a shorthand writer.

**23(2)** On application by a party to the case, the Tribunal may direct:

- (a) that a transcript of the recording or shorthand notes be made;
- (b) who is to pay the cost of the transcription as set by the transcriber.

## Corrections

**24(1)** The Chair may correct any clerical error contained in the Tribunal's decision, notwithstanding that a copy of that decision has been sent to the parties, provided that this is done before the expiry of the days of appeal and before any appeal is lodged against that decision.

**24(2)** Where any clerical error contained in the decision is corrected in accordance with (1), the Clerk shall send a copy of the amended decision to the parties together with a notice informing them that they may appeal to the Court of Session against that amended decision, and the time limit for lodging an appeal shall run from the date on which the amended decision is intimated to that party.

**24(3)** This rule is without prejudice to paragraphs 14 and 14A of Schedule 4 to the 1980 Act and those provisions as applied by section 21B of the 1990 Act.

## Expenses

**25(1)** The Tribunal may make an order for such expenses as it sees fit against a party following any decision in the case.

**25(2)** For the avoidance of doubt, the following circumstances may also give rise to awards of expenses:

- (a) where a party has failed to comply with the rules, directions or orders of the Tribunal;
- (b) where a postponement, adjournment or amendment has been occasioned by a party.

## Part 2 – Complaints

### Complaints to which Part 2 applies

**26(1)** This Part applies to any complaint made to the Tribunal –

- (a) by the Council under section 51(1) or (1A) of the 1980 Act (whether or not on behalf of any other person); and/or
- (b) by any person mentioned in section 51(3) where section 51(2) of the 1980 Act applies.

**26(2)** The complaints which may be made by the Council under (a), above, include but are not limited to any complaint alleging:

- (a) that a practitioner may have been guilty of professional misconduct; or
- (b) that a practitioner may have been convicted by any court of an act involving dishonesty (other than a conviction for an economic crime offence), or may have been fined an amount equivalent to level 4 on the standard scale or more (other than in relation to a conviction for an economic crime offence), or may have been sentenced to a term of imprisonment of not less than 12 months (other than in relation to a conviction for an economic crime offence);  
or
- (c) that a practitioner may have been convicted by any court of an economic crime offence; or

- (d) that a legal practice, which is an incorporated practice, may have been convicted by any court of an offence which renders it unsuitable to continue to be recognised under section 34(1A) of the 1980 Act; or
- (e) that a legal practice, which is an incorporated practice, may have been convicted by any court of an economic crime offence which renders it unsuitable to continue to be recognised under section 34(1A) of the 1980 Act; or
- (f) that a legal practice, which is an incorporated practice, may have failed to comply with any provision of the 1980 Act or of rules made under that Act which apply to it.

**Notification of certain complaints made by the Council**

**27(1)** Paragraph (2) of this rule shall apply in any case where:

- (a) a complaint is about to be made to the Tribunal by the Council (whether or not on behalf of any other person) that a practitioner may have been guilty of professional misconduct; and
- (b) the Council considers that there may be a person or persons who may have been directly affected by that misconduct and who might be eligible to seek compensation for any loss, inconvenience or distress resulting from it.

**27(2)** The Council shall:

- (a) inform any person who it considers may be so affected in terms of (1)(b), above, that it is proposing to make such a complaint and give that person an opportunity of deciding whether to request that the Council make the complaint on behalf of that person; and
- (b) include a statement in its complaint that it has done so.

**Complaint made by the Council on behalf of others**

**28** Where a complaint is made by the Council on behalf of another person or persons,

- (a) the Tribunal shall deal only with the Council, except where it is otherwise expressly provided in these rules; and
- (b) it shall be the duty of the Council -
  - (i) in the case where the complaint is that a practitioner may have been guilty of professional misconduct, to ascertain from every person whom it considers may be affected in terms of rule 27(1)(b) whether or not that person claims to have been directly affected by that misconduct and, if so, wishes to seek compensation for any loss, inconvenience or distress resulting from it;
  - (ii) to keep every person whom it considers may be affected in terms of rule 27(1)(b) informed of any action taken by the Tribunal which may affect the interests of that person;
  - (iii) to take account, where relevant, of any comments made by every person whom it considers may be affected in terms of rule 27(1)(b) in any comments or representations made by it to the Tribunal;

- (iv) where the Council receives a Notice of Hearing under rule 39, to send a copy of that notice, by first class recorded delivery post, to every person whom it considers may be affected in terms of rule 27(1)(b);
- (v) in a case where paragraph (b)(i) applies and the person whom the Council considers may be affected in terms of rule 27(1)(b) is claiming compensation, to include, along with the copy of the Notice of Hearing, a notice that the person is entitled to appear and to lead evidence on their claim, either at the hearing or at a date, time and place to be fixed by the Tribunal;
- (vi) to inform the Clerk in writing at least seven days before the hearing that the duties mentioned in (i) to (v) have been carried out.

#### **Manner in which complaints are to be made**

**29(1)** Any complaint by the Council shall be made in writing in the Form of Complaint as set out in Form A of Schedule 1, or as close to the requirements of that Form as the circumstances of the complaint permit.

**29(2)** Where the Tribunal considers that the complaint is not one made in accordance with this rule, the Tribunal may dismiss the complaint and request that the Council submit a new complaint which complies with this rule.

**29(3)** Where the complaint is one to which the 2008 Rules apply, the Tribunal shall dismiss the complaint and request that the Council submit the Complaint in accordance with the 2008 Rules.

**29(4)** Where the complaint is not one made on behalf of any other person in terms of rule 27, the Council shall include a statement within the statement of facts on which the complaint is based that it has complied with rule 27.

**29(5)** Any complaint made by the Council under section 51(1) or 51(1A) or any of the persons mentioned in section 51(3) of the 1980 Act shall:

- (a) be in writing;
- (b) contain the name and address of the complainer;
- (c) contain the name and address (or the last address known to the complainer) of the respondent;
- (d) contain a brief statement of the allegations made by the complainer against the respondent;
- (e) contain a brief statement of the facts upon which the complaint is based;
- (f) in the case of a complaint made by the Council under section 53(1)(a) of the 1980 Act, contain a brief statement of the relevant duties applicable to the respondent as they relate to the statement of facts;
- (g) in the case of a complaint made by the Council under section 53(1)(a) of the 1980 Act, contain a statement made in accordance with rule 27(2)(b) including the names and



- addresses of any persons who claim to have been directly affected by the misconduct and who wish to seek compensation;
- (h) contain a list of documents accompanying the complaint on which the complainer intends to rely;
  - (i) be signed by the complainer; and
  - (j) be lodged with the Clerk to the Tribunal.

#### **Whether complaint discloses a case on the face of it**

**30(1)** Following receipt of a complaint properly made in accordance with rule 29, the Tribunal shall consider whether the complaint discloses on the face of it, a case against the respondent, that is to say a *prima facie* case as referred to at paragraph 9 of schedule 4 to the Solicitors (Scotland) Act 1980.

**30(2)** For this purpose, the Tribunal may require the complainer to supply such further information and documents in support of the complaint as it thinks fit.

**30(3)** Where the Tribunal considers that the complaint, together with any further information and documents submitted in accordance with (2), above, does not disclose on the face of it, a case against the respondent, it shall:

- (a) send notice to the complainer that the complaint does not on the face of it, disclose a case against the respondent; and
- (b) provide the complainer with an opportunity to make representations in writing within 21 days from the date of the Tribunal sending of such notice.

**30(4)** If, after considering any representations submitted in accordance with (3), above, the Tribunal remains of the view that the complaint does not disclose on the face of it, a case against the respondent, the Tribunal shall make an order dismissing the complaint and inform the complainer accordingly.

#### **Service of complaint and lodging of answers**

**31(1)** Where a complaint and any further documents obtained by the Tribunal in accordance with rule 30(2) disclose on the face of it, a case against the respondent, the Tribunal shall:

- (a) serve a copy of the complaint and any documents to the respondent in accordance with rule 8; and
- (b) include a notice in Form B of Schedule 1 informing the respondent of their right to answer the complaint within 21 days of the date of the notice, and setting out the manner in which they should do so.

**31(2)** Any respondent shall, at the same time as lodging any answers with the Clerk, send a copy of those answers to the complainer and shall also inform the Clerk in writing that this has been done.

### **Dismissal without hearing**

**32(1)** Where the respondent lodges answers and any other documents in accordance with rule 31(1)(b) the Tribunal shall consider the complaint and the answers and any other documents as lodged with the Clerk, and determine if a hearing into the complaint is necessary.

**32(2)** If the Tribunal, having considered the case in accordance with (1), above, is of the opinion that no hearing into the complaint is necessary because the complaint is without merit, the Tribunal shall give notice to the complainer accordingly and provide the complainer with an opportunity to make representations in writing within 21 days from the date of sending of such notice.

**32(3)** If, after considering any representations from the complainer submitted in accordance with (2), above, the Tribunal remains of the view that no hearing into the complaint is necessary because the complaint is without merit, the Tribunal shall make an order dismissing the complaint and inform the complainer and respondent in writing accordingly.

### **Withdrawal of complaint**

**33(1)** No complaint shall be withdrawn by the complainer after it has been received by the Clerk, except with the leave of the Tribunal.

**33(2)** In granting leave to withdraw, the Tribunal may attach such conditions as to expenses or otherwise as it thinks fit.

### **Conjoining**

**34** Where two or more complaints have been lodged in respect of the same respondent, the Tribunal may, on the application of a party to the proceedings or on its own initiative, direct that the complaints be conjoined and heard together.

### **Case management directions**

**35(1)** The Tribunal may at any time following service of the complaint and the expiry of the period for lodging answers, issue case management directions, including at any procedural hearing under rule 36 or preliminary hearing under rule 37, which directions may include but are not limited to:

- (a) requiring a party or the parties, within the timescale set by the directions, to provide in accordance with these rules:
  - (i) written notice of the witnesses on whom they propose to rely;
  - (ii) written notice of the documents on which they propose to rely;
  - (iii) written notice of any intention to rely on affidavit evidence;
  - (iv) written notice of any intention to rely on expert evidence;
  - (v) written notice of any intention to make a vulnerable witness application;
  - (vi) written notice of any evidence which is admitted or agreed;
  - (vii) any document which is in the custody or control of the party;
  - (viii) any other matter which the Tribunal considers is required to meet the overriding objective of rule 4(1);

- (b) setting a timetable for the parties to intimate to the Tribunal and the other parties and to lodge with the Clerk,:
  - (i) a list of witnesses on whom that party intends to rely; and
  - (ii) a list of productions, duly numbered and paginated, on which that party intends to rely.

### **Procedural hearings**

**36(1)** At any time following the service of complaint on the respondent and the expiry of the period for lodging answers, including where the Tribunal has issued case management directions and before the hearing of the complaint, the Tribunal may of its own accord, or on the application of a party, fix a procedural hearing for reasons which may include but are not limited to:

- (a) non-compliance or an inability to comply with any case management direction;
- (b) amendment to the complaint or answers;
- (c) matters relating to affidavit or expert evidence; a vulnerable witness or any other witness or documentary evidence;
- (d) matters relating to the non-attendance or ill health of the respondent in terms of rules 9 or 10.

**36(2)** Where the Tribunal determines that a procedural hearing is necessary for the expeditious progress of the case and/or to resolve procedural issues which have arisen, the Tribunal shall give the parties no less than 21 days' notice of the date, time and location of such a procedural hearing, which notice shall be served in terms of rules 7 and 8.

**36(3)** The Tribunal may direct the parties to make written submissions in advance of the procedural hearing, and where it does so the Tribunal shall set the timescale for the intimation and lodging of those submissions and any supporting documents.

**36(4)** The Tribunal may give its decision orally at the end of the procedural hearing, or reserve its decision, but where it reserves its decision, will issue the decision in writing duly signed by the Chair.

**36(5)** In the case of a written decision under (4), save in exceptional circumstances, the Tribunal's decision shall be issued to parties within three months of the date of the hearing.

### **Preliminary hearings**

**37(1)** The Tribunal may direct that any question of fact or law which appears to be in issue may be decided at a preliminary hearing.

**37(2)** the Tribunal shall give the parties no less than 21 days' notice of the date, time and location of such a preliminary hearing, which notice shall be given in terms of rules 7 and 8.

**37(3)** The Tribunal may direct the parties to make written submissions in advance of the preliminary hearing, and where it does so the Tribunal shall set the timescale for the intimation and lodging of those submissions and supporting documents.

**37(4)** The Tribunal may either give its decision orally at the end of the preliminary hearing, or reserve its decision, but in either event will issue the decision in writing, duly signed by the Chair.

**37(5)** In the case of a written decision issued under (4), save in exceptional circumstances, the Tribunal's decision shall be issued to parties within three months of the date of the hearing.

**37(6)** If, in the opinion of the Tribunal, a decision on the preliminary question of fact or law mentioned in (1) substantially disposes of the whole case, the Tribunal may treat the preliminary hearing as a hearing of the case and may give such direction as it thinks fit to dispose of the case, always in accordance with these rules.

#### **Appointment of a solicitor by the Tribunal**

**38(1)** Where a report is made to the Tribunal under section 51(2) of the 1980 Act by any of the persons mentioned in section 51(3) of that Act, the Tribunal may appoint a solicitor to act as prosecutor in the complaint.

**38(2)** The expenses of such a solicitor, so far as not recoverable from the respondent, shall be paid out of the funds of the Tribunal.

#### **Notice of hearing**

**39(1)** The Tribunal shall give the complainer and respondent notice of the date, time and place of the hearing which notice shall:

- (a) be in the Form of Notice of Hearing of the Complaint in Form C of Schedule 1, or as near thereto as circumstances permit;
- (b) be served in accordance with rules 7 and 8;
- (c) give not less than 21 days' notice of the date of the hearing, unless both the complainer and respondent agree to a shorter period of notice.

**39(2)** Where the list of documents and list of witnesses for the parties have not been the subject of case management directions and have not been intimated or lodged, the Form of Notice of Hearing of the Complaint shall set the timescale for the lodging of the said lists, which shall, in any event, be not less than 14 days before the date of the hearing.

#### **Presence of parties at the hearing**

**40(1)** The parties mentioned in (2), are entitled to be present, whether or not they may also be represented, and to lead their evidence on the date, time and place appointed for the hearing under rule 39.

**40(2)** The parties mentioned are –

- (a) the complainer;
- (b) the practitioner, in the case where the respondent is a practitioner.

**40(3)** Where the respondent is a legal practice, the legal practice is entitled to be represented and to lead its evidence, on the date, time and place appointed for the hearing under rule 39.

**40(4)** If any party, including the respondent, fails to appear or to be represented at the hearing, the Tribunal may proceed in terms of rule 9.

#### **Decision of the Tribunal**

**41(1)** Every decision issued by the Tribunal shall be issued in writing and shall:

- (a) set out the facts proved;
- (b) have appended to it the written reasons for its decision;
- (c) be signed by the Chair; and
- (d) subject to paragraph 14A of Schedule 4 to the 1980 Act, be published in full.

**41(2)** The Tribunal shall announce its decision as soon as reasonably practicable, which may include announcing its decision at the conclusion of the hearing or in writing later.

**41(3)** If the decision of the Tribunal is not announced on the day of the hearing or any adjourned hearing, it shall not be necessary to hold a hearing for the purpose of announcing its decision.

**41(4)** Following receipt of the written signed decision from the Chair, the Clerk shall forthwith send a copy of the decision duly certified by the Clerk to the complainer, any person on whose behalf the complaint was made, and the respondent, together with a notice intimating the right of appeal available from that decision to the Court of Session under the 1980 Act or the 1990 Act.

**41(5)** Where the decision of the Tribunal is not announced at the conclusion of the hearing, the Tribunal shall, following the issuing of its decision, allow parties to lodge submissions in writing on the matter of expenses and may arrange to hear parties if the Tribunal considers it necessary.

**41(6)** If the complaint is one where a claim for compensation is being made, the Tribunal may, where it has made a finding of professional misconduct and has not yet determined the issue of compensation, arrange to hear parties on the matter of compensation, issuing such directions for evidence as it considers necessary.

**41(7)** In any case, save in exceptional circumstances, the Tribunal's written signed decision shall be issued to parties within three months of the date of the hearing.

**41(8)** This rule is without prejudice to paragraphs 13 to 15 of Schedule 4 to the 1980 Act and to those provisions as applied by section 21B of the 1990 Act.

#### **Remission of certain complaints after inquiry**

**42(1)** Where, after holding an inquiry under section 53(1) of the 1980 Act or, as the case may be, section 20(2A) of the 1990 Act into a complaint of professional misconduct against a practitioner, the Tribunal

- (a) is not satisfied that the practitioner has been guilty of professional misconduct; but
- (b) considers that the practitioner may be guilty of unsatisfactory professional conduct,

the Tribunal must remit the complaint to the Council in accordance with section 53ZA of the 1980 Act or, as the case may be, section 20ZA of the 1990 Act.

**42(2)** Where the Tribunal remits a complaint to the Council under paragraph (1), the Tribunal may make available to the Council any of its findings in fact in its inquiry into the complaint.

### **Part 3 – Appeals**

#### **Appeals to which Part 3 applies**

**43** This Part applies to any appeal made to the Tribunal against a decision of the Council under the 1980 Act or the 1990 Act

#### **Manner in which appeals are to be made**

**44** Any appeal shall:

- (a) be in writing;
- (b) be in the Form of Appeal set out in Form D of Schedule 1, or as near thereto as circumstances permit;
- (c) contain the name and address of the appellant and of every respondent;
- (d) be accompanied by a copy of the decision appealed against;
- (e) contain, in concise numbered paragraphs, a statement of the grounds upon which the appeal is made;
- (f) be accompanied by any relevant documents on which the appellant intends to rely;
- (g) be signed by the appellant; and
- (h) be lodged with the Clerk within the time limit allowed by the statutory provision under which the appeal is made, and in any event not later than 21 days from the date of decision being sent to the respondent in writing.

#### **Admission of Appeal**

**45(1)** Where an appeal is made outwith the time limit given at rule 44(h), the Tribunal shall dismiss the appeal and inform the appellant accordingly, unless it determines that the appellant has shown exceptional circumstance for the appeal being made outwith the said time limit, in which case the Tribunal may allow the appeal to be received.

**45(2)** Where the appeal is one to which the 2008 Rules apply, the Tribunal shall inform the appellant accordingly and may allow the appellant 21 days to amend the appeal to conform to the 2008 Rules.

**45(3)** Where the Tribunal considers that the appeal is either not made in accordance with rule 44 or is manifestly ill-founded, it shall allow the appellant a period of 21 days to amend their appeal and/or lodge such additional information as may be required.

**45(4)** Where the Tribunal considers that the amended appeal, together with any additional information lodged, is either not in accordance with rule 44 or is manifestly ill-founded, it may dismiss the appeal and shall inform the parties of its decision in writing.

#### **Service of appeal and lodging of answers**

**46(1)** Where an appeal has not been dismissed under rule 45, the Tribunal shall:

- (a) serve the appeal and any documents which the appellant has lodged with their appeal on every respondent named in the appeal in accordance with rule 8; and
- (b) include a notice in the Form of Appeal in Form E of Schedule 1 informing the respondents of their right to answer the appeal and setting out the manner in which and the timescale within which they should do so.

**46(2)** If any respondent lodges answers with the Clerk in accordance with paragraph 1(b), the respondent may, at the same time, lodge with the Clerk any documents upon which the respondent proposes to rely.

**46(3)** Any respondent shall, at the same time as lodging any answers and any documents with the Clerk, send a copy of those answers and documents to the appellant and to any other respondent and shall also inform the Clerk in writing that this has been done.

#### **Withdrawal of appeal**

**47(1)** No appeal shall be withdrawn by the appellant after it has been received by the Clerk, except with the leave of the Tribunal.

**47(2)** In granting leave to withdraw, the Tribunal may attach such conditions as to expenses or otherwise as it thinks fit.

#### **Case management directions**

**48(1)** The Tribunal may at any time following service of the appeal and the expiry of the period for lodging answers, issue case management directions, including at any procedural hearing under rule 49 or preliminary hearing under rule 50, which directions may include but are not limited to:

- (a) requiring a party or the parties, within the timescale set by the directions, and in accordance with these rules, to:
  - (i) provide written notice of the witnesses on whom they propose to rely;
  - (ii) provide written notice of the documents on which they propose to rely;
  - (iii) provide written notice of any intention to rely on affidavit evidence;
  - (iv) provide written notice of any intention to rely on expert evidence;
  - (v) provide written notice of any intention to make a vulnerable witness application;
  - (vi) provide written notice of any evidence which is admitted or agreed;
  - (vii) produce any document which is in the custody or control of the party;
  - (viii) take any step which the Tribunal considers is required to meet the overriding objective;

- (b) setting a timetable for the parties to intimate to the Tribunal and any other party and to lodge with the Clerk:
  - (i) a list of witnesses on whom that party intends to rely; and
  - (ii) a list of productions, duly numbered and paginated, on which that party intends to rely.

### **Procedural hearings**

**49(1)** At any time following the service of appeal on the respondent and the expiry of the period for lodging answers, including where the Tribunal has issued case management directions and before the hearing of the appeal, the Tribunal may of its own accord, or on the application of a party, fix a procedural hearing for reasons which may include but are not limited to,:

- (a) non-compliance or an inability to comply with any case management direction;
- (b) amendment to the appeal or answers;
- (c) matters relating to affidavit or expert evidence; a vulnerable witness or any other witness or documentary evidence;
- (d) matters relating to the non-attendance or ill health of a party in terms of rules 9 or 10.

**49(2)** Where the Tribunal determines that a procedural hearing is necessary for the expeditious progress of the case and/or to resolve procedural issues which have arisen, the Tribunal shall give the parties no less than 21 days' notice of the date, time and location of such a procedural hearing, which notice shall be given in terms of rules 7 and 8.

**49(3)** The Tribunal may direct the parties to make written submissions in advance of the procedural hearing, and where it does so the Tribunal shall set the timescale for the intimation and lodging of those submissions and any supporting documents.

**49(4)** The Tribunal may give its decision orally at the end of the procedural hearing, or where it reserves its decision, issue the decision in writing, duly signed by the Chair, to be sent to the parties as soon as reasonably practicable.

### **Preliminary hearings**

**50(1)** The Tribunal may direct that any question of fact or law which appears to be in issue may be decided at a preliminary hearing.

**50(2)** the Tribunal shall give the parties no less than 21 days' notice of the date, time and location of such a preliminary hearing, which notice shall be given in terms of rules 7 and 8.

**50(3)** The Tribunal may direct the parties to make written submissions in advance of the preliminary hearing, and where it does so the Tribunal shall set the timescale for the intimation and lodging of those submissions and supporting documents.

**50(4)** The Tribunal may give its decision orally at the end of the preliminary hearing, or where it reserves its decision, issue the decision in writing, duly signed by the Chair, to be sent to the parties as soon as reasonably practicable.



**50(5)** If, in the opinion of the Tribunal, a decision on the preliminary question of fact or law mentioned in (1) substantially disposes of the whole case, the Tribunal may treat the preliminary hearing as a hearing of the case and may give such direction as it thinks fit to dispose of the case, always in accordance with these rules.

#### **Notice of hearing**

**51(1)** The Tribunal shall give the appellant and each respondent notice of the date, time and place of the hearing which notice shall -

- (a) be in the Form of Notice of Hearing of the Appeal in Form F of Schedule 1, or as near thereto as circumstances permit;
- (b) be served in accordance with rules 7 and 8;
- (c) give not less than 21 days' notice of the date of the hearing, unless both the appellant and every respondent who has lodged answers agree to a shorter period of notice.

**51(2)** Where the list of documents and list of witnesses for the parties have not been the subject of case management directions and have not been intimated or lodged, the Form of Notice of Hearing shall set out the timescale for the lodging of the said lists, which shall, in any event, be not less than 14 days before the date of the hearing.

#### **Presence of parties at the hearing**

**52(1)** Subject to (2) below, the appellant and every respondent who has lodged answers in accordance with rule 46 are entitled to be present, whether or not they are also represented, and to lead evidence on the date, time and place appointed for the hearing under rule 51.

**52(2)** If any of the respondents do not wish to appear or be represented at the hearing, they shall notify the Clerk accordingly seven days before the date appointed for the hearing.

**52(3)** If any party fails to appear or to be represented at the hearing, the Tribunal may proceed in terms of rule 9.

#### **Decision of the Tribunal**

**53(1)** Every decision of the Tribunal shall be issued in writing and shall:

- (a) set out the facts proved;
- (b) have appended to it the written reasons for its decision;
- (c) be signed by the Chair; and
- (d) subject to paragraph 14A of Schedule 4 to the 1980 Act, be published in full.

**53(2)** The Tribunal shall announce its decision as soon as reasonably practicable, which may include announcing its decision at the conclusion of the hearing or in writing later.

**53(3)** If the decision of the Tribunal is not announced on the day of the hearing or any adjourned hearing, it shall not be necessary to hold a hearing for the purpose of announcing its decision.

**53(4)** Following receipt of the signed written decision from the Chair, the Clerk shall forthwith send a copy of the decision duly certified by the Clerk to the appellant, and the respondents, together with a notice intimating the right of appeal available from that decision to the Court of Session under the 1980 Act or the 1990 Act.

**53(5)** Where the decision of the Tribunal is not announced at the conclusion of the hearing, the Tribunal shall, following the issuing of its decision, allow the parties to lodge submissions in writing on the matter of expenses and may arrange to hear parties if the Tribunal considers it necessary.

**53(6)** In any case, save in exceptional circumstances, the Tribunal's written signed decision shall be issued to parties within three months of the date of the hearing.

**53(7)** This rule is without prejudice to paragraphs 13 to 15 of Schedule 4 to the 1980 Act and to those provisions as applied by section 21B of the 1990 Act.

#### **Part 4 – Applications for restoration**

##### **Applications to which Part 4 applies**

**54** This Part applies to any application made to the Tribunal

- (a) under section 10(1) of the 1980 Act by a solicitor, whose name has been struck off the roll (other than by order of the court), to have his or her name restored on the roll;
- (b) under section 12D(1) of the 1980 Act by a registered European lawyer, whose name has been removed from the register, to have his or her name restored to the register; and
- (c) under section 60A(4D) of the 1980 Act by a foreign lawyer, whose name has been removed (other than by the Council under section 60A(4B) of that Act) from the register of foreign lawyers, to have their name restored to the register.

##### **Manner in which applications are to be made**

**55** Any application shall -

- (a) be in writing;
- (b) be in the Form of Application in Form G of Schedule 1, or as near thereto as circumstances permit;
- (c) contain the name and address of the applicant;
- (d) set out the occupation or occupations of the applicant since the applicant was struck off the roll or removed from the register;
- (e) set out any complaints or proceedings arising from the applicant's conduct since the applicant was struck off the roll or removed from the register;
- (f) be supported by letters from two solicitors who at the date of the application are in practice in Scotland and who declare that they know the applicant and state the applicant's suitability for restoration to the roll;
- (g) be signed by the applicant;
- (h) be sworn before a notary public or justice of the peace; and

- (i) be lodged with the Clerk.

### **Notice of Hearing**

**56(1)** The Tribunal shall give the Council and the applicant notice of the date, time and place of the hearing which notice shall:

- (a) be in the Form of Notice of Hearing of the Application in Form H of Schedule 1, or as near thereto as circumstances permit;
- (b) be served in accordance with rules 7 and 8;
- (c) give not less than 42 days' notice of the date of the hearing, unless both the Council and the applicant agree to a shorter period of notice.

### **Notice of application**

**57(1)** The Tribunal may, if it thinks fit, direct the applicant to give notice by way of advertisement in publications as it may specify, or otherwise, at least 21 days in advance of the date of the hearing:

- (a) that the applicant has made such an application to the Tribunal;
- (b) of the date, time and place which the Tribunal has appointed for the hearing of the application under rule 56; and
- (c) that, if any person objects to the application, the objector shall give notice in writing to the applicant and to the Clerk in the Form of Objection in Form I of Schedule 1, or as near thereto as circumstances permit at least 10 days before the date appointed for the hearing specifying the grounds of the objection.

### **Procedure at hearing**

**58(1)** At the hearing, the Tribunal shall afford the applicant and the Council an opportunity of being heard by the Tribunal and to lead evidence.

**58(2)** The Tribunal may receive written and/or oral evidence concerning the identity and character of the applicant, the applicant's conduct since their name was struck off the roll or the register as the case may be, and the applicant's suitability for restoration to the roll or the register.

**58(3)** If any objector appears on the day appointed for the hearing and if the Tribunal is of the opinion, after considering the notice of objection and after hearing the applicant (if it thinks fit to do so), that the notice discloses on the face of it, a case for inquiry, the Tribunal shall afford the objector an opportunity of being heard by the Tribunal and leading evidence.

### **Decision of the Tribunal**

**59(1)** Every decision of the Tribunal shall be issued in writing and shall:

- (a) set out the facts proved;
- (b) have appended to it the written reasons for its decision;
- (c) be signed by the Chair; and
- (d) subject to paragraph 14A of Schedule 4 to the 1980 Act, be published in full.

**59(2)** The Tribunal shall announce its decision as soon as reasonably practicable, which may include announcing its decision at the conclusion of the hearing or in writing later.

**59(3)** If the decision of the Tribunal is not announced on the day of the hearing or any adjourned hearing, it shall not be necessary to hold a hearing for the purpose of announcing its decision.

**59(4)** Following receipt of the signed written decision from the Chair, the Clerk shall forthwith send a copy of the decision duly certified by the Clerk to the applicant, the Council and any objector who gave notice under rule 57(1)(c).

**59(5)** In any case, save in exceptional circumstances, the Tribunal's written signed decision shall be issued to parties within three months of the date of the hearing.

**59(6)** Where the Tribunal orders that the name of the applicant should be restored to the roll or the register, as the case may be, the Clerk shall send a copy of the decision to the appropriate registrar who shall forthwith give effect thereto.

## **Part 5 – Exercise of functions and appointments**

### **Appointment of Chair and Vice Chairs**

**60** Without prejudice to paragraph 4 of Schedule 4 to the 1980 Act, the Tribunal may appoint from among its members persons to be the Chair and Vice Chairs of the Tribunal.

### **Convener to a particular tribunal**

**61(1)** One member of a particular tribunal shall act as convener of that tribunal.

**61(2)** In the event of a particular tribunal being unable to reach a majority decision, the convener shall have a casting vote.

### **Exercise of functions of the Tribunal by a particular tribunal**

**62(1)** The functions conferred by these rules upon the Tribunal may be exercised on behalf of the Tribunal in relation to a particular case, or part of a case, by any particular tribunal constituted in accordance with paragraph 5 of Schedule 4 to the 1980 Act to deal with that case or part of a case.

**62(2)** Where (1) applies, any reference in these rules to the Tribunal or the Chair shall be construed as a reference to the particular tribunal and the convener or other person presiding at the proceedings of that particular tribunal.

**62(3)** Subject to (4), below, the particular tribunal constituted to deal with any part of a case is not required to deal with all the proceedings relating to that case and, accordingly, different particular tribunals may be constituted to deal with different parts of that case.

**62(4)** The particular tribunal constituted to deal with any part of a case must complete that part by coming to a decision upon it before another particular tribunal is constituted to deal with any

subsequent part of the case.

#### **Exercise of functions of the Tribunal by the Chair or Vice Chairs**

**63(1)** Subject to paragraph (3), the functions conferred by these rules upon the Tribunal in relation to a particular case or any particular part of a case may be exercised, on behalf of the Tribunal, by the Chair or any of the Vice Chairs of the Tribunal, or by the convener of a particular tribunal.

**63(2)** Paragraph (1) applies irrespective of whether or not:

- (a) the Chair or the Vice Chair is the convener or member of the particular tribunal constituted to exercise those functions; or
- (b) a particular tribunal has been constituted to exercise those functions.

**63(3)** Decisions on substantive matters made after a complaint or appeal is served, or after an application is lodged, shall be made by a particular tribunal properly constituted.

#### **Part 6 – Transitional and savings provisions**

**64(1)** The 2008 Rules shall continue to apply on and after 1 September 2024 as if they had not been revoked where any complaint, appeal or application was made under those rules before the said date.

## FORM A

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024****FORM OF COMPLAINT**

to the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

by

**[insert name and address of complainer]****Complainer**

against

**[insert name and address, or last known address, of the person against whom the complaint is made]**

**Respondent**

*(Under the 2024 Rules a complainer is either the Law Society of Scotland (the Council) under section 51(1) of the 1980 Act or any of those persons mentioned in section 51(3) of the 1980 Act; a complaint is any complaint or report made under section 51(1) or 51(1A) of the 1980 Act by the Council or by those persons mentioned in section 51(3); the person against whom the complaint is made (respondent) may be a practitioner or legal practice, and where the complaint is against a legal practice, the names and addresses of all partners or members of that practice at the relevant time should be given.)*

**To the Clerk to the Tribunal**

**1. I, [insert name of complainer]** hereby submit a complaint to the Scottish Solicitors Discipline Tribunal (the Tribunal) that **[insert name of respondent]** [*\*insert the nature of the complaint, which may be, but is not limited to:*

- may have been guilty of professional misconduct; or
- may have been convicted by any court of an act involving dishonesty or may have been fined an amount equivalent to level 4 on the standard scale or may have been sentenced to a term of imprisonment of not less than 12 months; or
- (where a legal practice) may have failed to comply with any provision of the 1980 Act or of rules made under that Act which apply to it; or
- (where a legal practice, which is an incorporated practice), may have been convicted by any court of an offence which renders it unsuitable to continue to be recognised under section 34(1A) of the 1980 Act]

[*\*delete as appropriate*]

## 2. Statements

**Statement of the allegations made by the complainer against the Respondent** *(these should be clearly and briefly stated in numbered paragraphs and each paragraph should identify the specific professional standard alleged to have been breached)*

**Statement of facts upon which the complaint is based** *(these should be clearly and briefly stated, bullet points and sub-headings may be used)*

**In the case of a complaint made by the Council under section 53(1)(a) of the 1980 Act, statement of duties applicable to the respondent as they relate to the statement of facts** *(these should be clearly and briefly stated, bullet points and sub-headings may be used)*

**in the case of a complaint made by the Council under section 53(1)(a) of the 1980 Act, statement made in accordance with rule 27(2)(b) including the names and addresses of any persons who claim to have been directly affected by the misconduct and who wish to seek compensation** *(this should be clearly and briefly stated, bullet points and sub-headings may be used)*

## 3. Documents on which the complainer intends to rely

*(\*insert name and details of each document on which the complainer seeks to rely in terms of the complaint being made, using numbering for each one)*

*(\*this does not preclude the submission of further documents at any later stage which may follow)*

Signed (on behalf of the complainer).....

Full name & Designation.....

Date.....

FORM B

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF NOTICE OF COMPLAINT**

to the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

by

**[insert name and address of complainer]**

**Complainer**

against

**[insert name and address, or last known address, of the person against whom the complaint is made]**

**Respondent**

**To [insert name of the respondent]**

I attach a copy of a complaint which has been made to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") against you by **[insert name/designation of complainer]** [\*together with the copy supporting documents as listed on the complaint] [\*delete as appropriate]

If you wish to answer the complaint, you are required to do so by lodging answers in writing with the Clerk to the Tribunal within 21 days of the date of this notice. Your answers should follow the numbered paragraphs in the Complaint. You should admit or deny each allegation and statement of fact and provide reasons for any denials. You may also lodge at the same time any documents you wish the Tribunal to take into account.

You should also send, at the same time, a copy of your answers and any documents you intend to rely on to **[insert name of complainer]** and inform the Clerk in writing that you have done so.

Signed .....

*Clerk to the Tribunal*

Date.....

*(Note: Relevant statutory references relating to the Tribunal and its powers are contained in sections 50–54 of the Solicitors (Scotland) Act 1980, as amended, Part 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, as amended and the Scottish Solicitors' Discipline Tribunal Rules 2024. A copy of the 2024 Rules is enclosed for your information and guidance.)*



FORM C

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF NOTICE OF HEARING**

by the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

of the complaint by

**[insert name and address of complainer]**

**Complainer**

against

**[insert name and address, or last known address, of the person against whom the complaint is made]**

**Respondent**

*(In accordance with rule 39(1)(c) of the 2024 Rules notice must be given no less than 21 days prior to the date appointed for the hearing, unless the parties agree to a shorter period)*

**To [insert name of the complainer and respondent]**

The Scottish Solicitors' Discipline Tribunal has appointed the hearing of the above complaint to take place on: **[insert date]**

Under rule 40 of the 2024 Rules, you, and your representative (if you have appointed one) are entitled to be present and lead evidence at the hearing. If you do not attend the hearing, the Tribunal may proceed to hear and determine the complaint in your absence, in accordance with rule 9 of the 2024 Rules.

Where the list of documents and list of witnesses for the parties to the complaint have *not* been the subject of case management directions and have *not* yet been intimated or lodged, any list of documents (and those documents) and/or list of witnesses (which shall contain the names and designations of the said witnesses) of a party shall be sent to the Clerk to the Tribunal no less than 14 days prior to the date appointed for the hearing.

You are required to send, at the same time as sending to the Tribunal, a copy of your list of documents and/or list of witnesses to the other party, and to confirm to the Clerk in writing that you have done so.

Where a party wishes to require the other party to produce a document or documents, they shall apply to the Tribunal under rule 20.

Signed .....

*Clerk to the Tribunal*

Date.....

*(Note: A copy of the 2024 Rules is enclosed for your information and guidance.)*

FORM D

**SCOTTISH SOLICITORS’ DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF APPEAL**

to the

**SCOTTISH SOLICITORS’ DISCIPLINE TRIBUNAL**

by

A.B. [*name and address of the person making the appeal*]

Appellant

against

the decision of the Council of the Law Society of Scotland dated [*specify date*]

**To the Clerk to the Tribunal**

I, A.B., hereby appeal to the Scottish Solicitors’ Discipline Tribunal (“the Tribunal”) against the decision of the Council of the Law Society of Scotland (“the Council”) dated [*specify date*] and intimated to me on [*specify date*], a copy of which is attached.

The grounds upon which the appeal is made are as set out in Appendix 1 to this Form.

The documents upon which I intend to rely are listed in Appendix 2 to this Form and are included with this appeal.

The respondents in this appeal are

(a) the Council;

[(b) [*where the appeal is being made by a practitioner or a legal practice*], the name and address of the person(s) who made the original complaint as defined in section 46 of the Legal Profession and Legal Aid (Scotland) Act 2007]\*

[(c) [*where the appeal is being made by a complainer as defined in section 46 of the Legal Profession and Legal Aid (Scotland) Act 2007*] the name and address of the practitioner or legal practice and any other complainer].

[\*Delete as appropriate]

.....

Signature of Appellant

Date:

**Appendix 1 to Form D**  
**Grounds of Appeal**

\*Grounds of appeal should be set out clearly and concisely in numbered paragraphs using the table below. Additional rows should be added if necessary.

1.
2.
3.
4.
5.
6.
7.
8.

## **Appendix 2 to Form D**

### **List of Documents accompanying the Grounds of Appeal**

Documents to be relied on as part of the appeal must be listed here and included with Form D and the Grounds of Appeal. Additional numbers should be added as required.

1. [insert document name]
2. [insert document name]
3. [insert document name]
4. [insert document name]

FORM E

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF NOTICE OF APPEAL**

to the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

by

**[insert name and address of complainer]**

**Appellant**

against

**[insert details of the decision being appealed]**

**To [insert name of every respondent]**

I attach a copy of an appeal which has been made by **[insert name of appellant]** to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") against **[insert details and date of the decision being appealed]**

[I also attach the copy supporting documents as listed in the Form of Appeal.]  *[\*delete as appropriate]*

If you wish to answer the appeal, you are required to do so by lodging answers in writing with the Clerk to the Tribunal within 21 days of the date of this notice. Your answers should follow the numbered grounds of appeal as set out in the Form of Appeal and also be numbered accordingly using Appendix 1 to this Form.

You may also lodge at the same time any documents you wish the Tribunal to take into account. These should be listed and numbered accordingly using Appendix 2 to this Form.

You should also send, at the same time, a copy of your answers and any documents you intend to rely on to **[insert name of appellant]**, and inform the Clerk in writing that you have done so.

Signed .....  
*Clerk to the Tribunal*

*Date*.....

*(Note: A copy of the 2024 Rules is enclosed for your information and guidance.)*

**Appendix 1 to Form E**  
**Answers to Grounds of Appeal**

\*Answers to grounds of appeal should be set out clearly and concisely in numbered paragraphs and following the numbering in the grounds of appeal, using the table below.

1.
2.
3.
4.
5.
6.
7.
8.

*[\*add or delete rows as appropriate]*

## **Appendix 2 to Form E**

### **List of Documents accompanying the Answers to the Grounds of Appeal**

Documents to be relied on in answering the appeal must be listed here and included with Form E and the answers to the grounds of appeal.

1. [insert document name]
2. [insert document name]
3. [insert document name]
4. [insert document name]

*[\*Add or delete numbers as appropriate]*

FORM F

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF NOTICE OF HEARING**

by the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

of the appeal by

**[insert name and address of appellant]**

**Appellant**

against

**[insert details of the decision being appealed]**

*(In accordance with rule 51(1)(c) of the 2024 Rules, notice must be given no less than 21 days prior to the date appointed for the hearing, unless the parties agree to a shorter period)*

**To [insert name of the appellant and every respondent]**

The Scottish Solicitors' Discipline Tribunal has appointed the hearing of the above complaint to take place on: **[insert date]**

Under rule 52 of the 2024 Rules, you, and your representative (if you have appointed one) are entitled to be present and lead evidence at the hearing. If you do not attend the hearing, the Tribunal may proceed to hear and determine the appeal in your absence, in accordance with rule 9 of the 2024 Rules.

Where the list of documents and list of witnesses for the parties to the appeal have *not* been the subject of case management directions and have *not* yet been intimated or lodged, any list of documents (and those documents) and/or list of witnesses (which shall contain the names and designations of the said witnesses) of a party shall be sent to the Clerk to the Tribunal no less than 14 days prior to the date appointed for the hearing.

You are required to send, at the same time as sending to the Tribunal, a copy of your list of documents and/or list of witnesses to the other party, and to confirm to the Clerk in writing that you have done so.

Where a party wishes to require the other party to produce a document or documents, they shall apply to the Tribunal under rule 20.

Signed .....  
Clerk to the Tribunal

Date.....

*(Note: A copy of the 2024 Rules is enclosed for your information and guidance.)*



FORM G  
**SCOTTISH SOLICITORS’ DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**  
**FORM OF APPLICATION**

by  
**[insert name and address of applicant]**  
**Applicant**

**To the Clerk to the Tribunal**

1. I, **[insert name]**, hereby apply to the Scottish Solicitors’ Discipline Tribunal (“the Tribunal”) under

[\*section 10(1) of the Solicitors (Scotland) Act 1980 for an order of the Tribunal to have my name restored to the roll of solicitors]

[\*section 12D(1) of the Solicitors (Scotland) Act 1980 for an order of the Tribunal to have my name restored to the register of European lawyers]

[\*section 60A(4D) of the Solicitors (Scotland) Act 1980 for an order of the Tribunal to have my name restored to the register of foreign lawyers]

*[\*delete as appropriate]*

2. I was [\*admitted as a solicitor] [\*registered as a European lawyer] [\*registered as a foreign lawyer] on [insert date]. *(\*delete as appropriate)*

3. My name was [\*struck off the roll] [\*removed from the register] by order of the Tribunal on [insert date]. *(\*delete as appropriate)*

4. Since then, my occupation(s) have been as follows:

Occupation	Employer	Dates from/to

*[Specify each employment, the name and address of the employer, the nature of the work on which the applicant was employed and the period of employment. Add or delete rows as appropriate.]*

5. I am not aware and do not know of any cause of complaint or proceedings which might have arisen out of my conduct since my name was [\*struck off the roll] [\*removed from the register]. (*\*delete as appropriate*). Where any complaint or proceedings have arisen, these must be listed here.

6. My application is supported by letters from the following two solicitors who are currently in practice and who declare that they know me and state my suitability for restoration [insert names and designations of the said solicitors]

Signed.....(Applicant)

Date.....

At [insert place] on [insert date] in presence of [insert name], [\*notary public] [\*one of His Majesty's Justices of the Peace for..... ], compeared [insert name of applicant] who being solemnly sworn and interrogated, depones that the statements made in the above application are true as the deponent shall answer to God. (*\*delete as appropriate*)

Signed.....

Date.....

FORM H

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF NOTICE OF HEARING**

by the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

of the application for restoration by

**[insert name and address of applicant]**

**Applicant**

*(Under rule 56(1)(c) the Tribunal must give not less than 42 days' notice of the date of the hearing, unless both the Council and the Applicant agree to a shorter period of notice.)*

To **[insert name of applicant]**

The Scottish Solicitors' Discipline Tribunal ("the Tribunal") has appointed the hearing of the above application to take place on **[insert date, time and place of hearing]**.

You are required to give notice to the Council of the Law Society of Scotland and by advertisement in the Journal of the Law Society of Scotland and in [specify any other newspapers or journal] informing them:

- (a) of the application which you have made to the Tribunal;
- (b) of the date, time and place which the Tribunal has appointed for the hearing of the application; and
- (c) that, if any person desires to object to the application, the objector is to give you and the Clerk to the Tribunal notice in writing in Form I set out in the Schedule 1 to the Scottish Solicitors' Discipline Tribunal Rules 2024 (or as near thereto as circumstances permit) at least 10 days before the date appointed for the hearing specifying the grounds of the objection.

Signed .....

Clerk to the Tribunal

Date.....

FORM I

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF OBJECTION**

to the application made by

**[insert name and address of applicant]**

**Applicant**

**To the Clerk to the Tribunal and [insert name of applicant]**

I, **[insert name and address of objector]** hereby give notice that I object to the application made by **[insert name of applicant]** to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") for an order to have their name restored to the [\*roll of solicitors] [\*register of European/foreign lawyers] (*\*delete as appropriate*) on the following grounds:

*[Specify the grounds of objection clearly and in numbered paragraphs here]*

Signed.....

Full name and designation

Date.....

FORM J

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF PROCEDURAL APPLICATION**

to be used in incidental or miscellaneous applications to the

**SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

**To the Clerk to the Tribunal and [insert name/s of any other relevant party to the proceedings under the 2024 Rules]**

Where a party to any proceedings under the 2024 Rules wishes to make an application in respect of incidental or miscellaneous procedural matters, this form should be used. The completed form, together with any supporting documents, should be sent to the Clerk to the Tribunal and any other relevant party.

At the same time as sending this form (with any supporting documents) to the Clerk, the applicant must send it to all other relevant parties and confirm in writing to the Clerk that they have done so.

Type of application	Reasons for the application
<b>Insert application type:</b> e.g. hearing in private; ill health; postponement or adjournment; affidavit evidence; expert evidence; vulnerable witnesses; amendment; recovery of documents; procedural or preliminary hearings; case management directions ( <i>this list is not exhaustive</i> )	<b>State reasons for the application and refer to/list any supporting documents to be attached to the form:</b>

Signed .....

Name and designation of applicant

Date.....