

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

INTERLOCUTOR

in Section 42ZA(10) Appeal of the Solicitors  
(Scotland) Act 1980 as amended

by

DR DAVID LANC, 5 Netherbank View,  
Alnwickhill, Edinburgh (hereinafter referred  
to as "the Appellant")

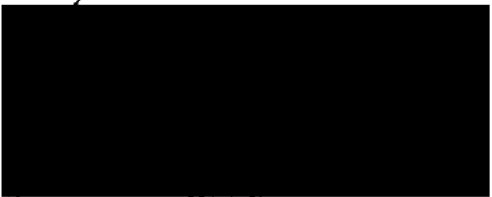
against

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

and

MARTIN NOLAN, c/o his agent Laura  
Irvine, Davidson Chalmers Stewart, 12 Hope  
Street, Edinburgh (hereinafter referred to as  
"the Second Respondent")

By Video Conference, 1 November 2021. The Tribunal, having considered parties' submissions in relation to the Appellant's First and Second Inventories of Productions, Refuses to admit the Appellant's First Inventory of Productions and Production 7 of the Appellant's Second Inventory of Productions; Fixes a hearing on 17 January 2021 at 10am; Orders that any productions to be lodged for the hearing are lodged within 21 days of the date of this Interlocutor; and Finds the Appellant liable in the expenses of the Respondents and of the Tribunal including expenses of the Clerk, in respect of preparation for and attendance at the procedural hearing on 1 November 2021, 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.

  
Ben Kemp  
Vice Chair

**NOTE**

An appeal and amended appeal were lodged by the Appellant. Answers and adjusted answers were lodged for the Respondents. The matter called for virtual procedural hearings on 10 June 2021, 21 July 2021, 4 October 2021 and 1 November 2021.

At the procedural hearing on 4 October 2021, the Appellant was not present but was represented by Scott Milne, Solicitor, Dundee. The First Respondents were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Second Respondent was not present but was represented by Laura Irvine, Solicitor, Glasgow.

Ms Motion objected to the Tribunal receiving the Appellant's First Inventory of Productions and Production 7 in the Appellant's Second Inventory of Productions. Her objection had four grounds. Firstly, she said these documents were not before the Sub Committee; secondly, they were irrelevant; thirdly, they could not be verified or spoken to due to their nature; and fourthly, the documents were obtained from another process (Iomega Corporation-v-Myraca (UK) Limited 1998 SC 363).

Mr Milne clarified that the sole ground of appeal related to issue 23. He said he had not been able to take instructions from the Appellant regarding the Respondents' adjusted Answers. Mr Milne was not able to say which documents in Inventory 1 were before the Sub Committee. He said the documents in Inventory 1 demonstrated that communication took place between the Second Respondent and Mr Paterson-Brown after the Second Respondent's employment had ceased. This "gave colour" to the facts. He said the documents were relevant to the veracity of the Second Respondent's position that he did not remember sending the emails in question. The Appellant is entitled to lead circumstantial evidence. It was for the Tribunal to decide on relevance once it has heard the evidence.

Ms Irvine aligned herself with the Fiscal's submissions but indicated that her instructions were to be reactive rather than proactive and to assist the Tribunal where possible. She did not consider a debate on the GDPR issue was necessary because the question was not considered by the Sub Committee and the legislation was not in force at the relevant time.

The Tribunal expressed its disappointment that more progress had not been made. It noted that it expected all parties to expedite matters, including by taking timeous instructions. The

Tribunal granted the First Respondent's motion for Production 7 of the Appellant's Second Inventory of Productions to be excluded from consideration on the basis that the Appellant had not been able to explain its relevance and the item had not been before the Sub Committee. The Tribunal informed parties that this document would not be made available to future Tribunals.

The Tribunal directed that the Appellant should, no later than 18 October 2021, provide a full detailed inventory of all items contained in the Appellant's First Inventory of Productions. If the Appellant wished to rely on emails, copies of the complete emails should be lodged. The emails should contain information as to sender, addressee, time and date. It was noted that it was unlikely the Tribunal would admit emails which did not contain this information. The Appellant was also ordered to clarify which of these documents were before the Sub Committee.

The Tribunal allowed the Appellant until 18 October 2021 to adjust the appeal in relation to the adjustments made to the Respondents' Answers. It reminded parties that all relevant issues should be focused in the pleadings. The Tribunal continued the virtual procedural hearing to 1 November 2021 at 2pm. The Appellant did not adjust his appeal or follow the Tribunal's directions regarding his productions.

On 1 November 2021, shortly before the case was due to call, Ms Waughman for the Appellant lodged the first three pages of the SLCC's decision on the Appellant's handling complaint. According to that extract, the SLCC had found the First Respondents' reporting and decision-making to have been unsatisfactory.

At the continued virtual procedural hearing on 1 November 2021, the Appellant was represented by Kirsty Waughman, Solicitor, Dundee. The First Respondents were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Second Respondent was not present but was represented by Laura Irvine, Solicitor, Glasgow.

Ms Waughman suggested that the virtual procedural hearing was continued to another date to allow the First Respondents to deal with the handling complaint decision. She apologised that no action had been taken regarding the pleadings or the Productions as directed by the Tribunal on the last occasion.

Ms Motion noted there had been no progress or communication from the Appellant's agent since the last virtual procedural hearing. Her motion from the last occasion had been continued and she asked for it to be granted. She noted that according to its previous minute, the Tribunal had refused to admit Production 7 in the Appellant's Second Inventory of Productions because it was not before the Sub Committee and the Appellant's agent had been unable to explain its relevance. She clarified that the document had been before the Sub Committee. She moved the Tribunal to fix a hearing. Ms Irvine adopted Ms Motion's submissions.

Ms Waughman opposed the First Respondents' motion to strike out the First Inventory of Productions for the Appellant. The matter was highly important to her client. She suggested the Tribunal personally ordained her to lodge the documents in proper form and appear at the next hearing.

The Tribunal invited parties to address it again regarding Production 7 of the Appellant's Second Inventory of Productions. Ms Motion submitted that it did not matter if the document was not before the Sub Committee because the Tribunal had decided it was not relevant. Ms Irvine and Ms Waughman had nothing further to add.

The Tribunal fixed a substantive hearing of the appeal to take place on 17 January 2022 at 10am. It will take place remotely, parties having indicated that they will proceed by way of submissions.

The Tribunal was concerned regarding the Appellant's failure to address the directions it had given on 4 October 2021. On that basis, the Tribunal refused to admit the Appellant's First Inventory of Productions in its current form. The Tribunal's previous decision regarding Production 7 of the Appellant's Second Inventory of Productions stands on the basis of relevancy.

Any Productions for the hearing should be lodged within 21 days. The Tribunal declined at this stage to stipulate that only Productions before the Sub Committee would be admitted. Ms Motion reserved her position regarding additional Productions.

Ms Motion and Ms Irvine moved for the expenses of the virtual procedural hearing. This was opposed by Ms Waughman who suggested the expenses became that of the cause. The Tribunal decided it was appropriate that the Appellant bore the expenses of the most recent procedural

hearing and preparation for it. The Appellant has failed to use the opportunities given to him to comply with the directions of the Tribunal, leading to a waste of time and expense for the Respondents and the Tribunal. Therefore, the Tribunal found the Appellant liable in the expenses of the Respondents and the Tribunal in respect of preparation for and attendance at the virtual procedural hearing on the usual basis.



**Ben Kemp**  
**Vice Chair**