

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

**DECISION**

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

**by**

**NAZAR SINGH, 0/1, 11 Southcroft Street,  
Glasgow**

**Appellant**

**against**

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

**First Respondents**

**and**

**GURJIT S PALL, Livingstone Brown, 265  
Victoria Road, Glasgow**

**Second Respondent**

**And**

**RIZWAN LIAQUAT, Anderson Rizwan  
Solicitors, James Millar House, 98 West George  
Street, Glasgow**

**Third Respondent**

1. An Appeal was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42ZA(10) of the Solicitors (Scotland) Act 1980 as amended, by Nazar Singh, 0/1, 11 Southcroft Street, Glasgow (hereinafter referred to as "the Appellant") against the Determinations made by the Council of the Law Society, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the First Respondents") dated 12 October 2017 not to uphold a complaint of unsatisfactory professional conduct made in respect of two heads of complaint against Gurjit S Pall, Livingstone Brown Limited, 365 Victoria Road, Glasgow (hereinafter referred to as "the Second Respondent") and one head of complaint against Rizwan Liaquat, Anderson Rizwan

Solicitors, James Millar House, 98 West George Street, Glasgow (hereinafter referred to as “the Third Respondent”).

2. In accordance with the Rules of the Tribunal, the Appeal was formally intimated to the three Respondents. Answers were lodged for the First Respondents together with a motion for caution. The Second and Third Respondents intimated that they were not intending to enter the proceedings.
3. Having considered the Appeal with the Answers, the Tribunal resolved to set the matter down for a procedural hearing on 7 March 2018 and notice thereof was duly served upon all parties.
4. The procedural hearing took place on 7 March 2018. The Appellant was present but not represented. The First Respondents were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Second and Third Respondents were neither present nor represented. An interpreter was present.

The Fiscal made submissions in support of the First Respondents’ motion for dismissal. The Fiscal’s preliminary plea was that the appeal should be dismissed as the grounds of appeal disclosed no *prima facie* basis being irrelevant *et separatim* lacking in specification. The Fiscal submitted that the grounds of appeal did not disclose any basis upon which the Tribunal could quash the determination. Therefore, the appeal was manifestly unfounded and should be dismissed. He indicated that if the Tribunal was not with him on that matter, he would not insist upon his motion for caution as that motion was based upon the inadequacy of the appeal. The Appellant made submissions with the assistance of the interpreter to the effect that his appeal should be allowed to proceed.

The Tribunal considered the first ground of appeal (“Issue 3”) and noted that it did not satisfy any of the tests laid out in Hood-v-Law Society of Scotland [2017] CSIH 21. It was not alleged that the Sub Committee made a finding for which there was no evidence or was contradictory of the evidence; that the Sub Committee’s reasoning proceeded on an error of law or the application of law to the facts; or that the Sub Committee made a fundamental error in its approach such as by asking the wrong question or taking into account manifestly irrelevant considerations or arriving at a decision that no reasonable

Sub Committee could properly reach. The Tribunal therefore upheld the plea of the First Respondents in relation to the first ground of appeal (“Issue 3”).

The Tribunal considered the second ground of appeal (“Issue 4”). The Tribunal recognised that one interpretation of that ground of appeal was that the Sub Committee had erred as a matter of law by failing to apply the test for unsatisfactory professional conduct appropriately. An appellant, particularly an unrepresented party, did not have to use the specific words “error of law” for that ground of appeal to be accepted for consideration. This ground of appeal was sufficiently relevant and specific. Therefore, the Tribunal repelled the plea of the First Respondents in relation to the second ground of appeal (“Issue 4”).

The Tribunal allowed the First Respondents to withdraw their motion for caution.

A hearing was fixed for 17 August 2018 at 12pm in relation to the second ground of appeal (“Issue 4”) only.

5. At the hearing on 17 August 2018, the Appellant was present and represented himself. The First Respondents were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. An interpreter was present. The Appellant gave evidence. The Tribunal heard submissions from the Appellant and the First Respondents.
6. Having given careful consideration to the evidence and submissions, the Tribunal refused the ground of appeal and confirmed the Determination of the Law Society in respect of the remaining head of complaint.
7. Having heard further submissions from the parties in relation to expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 17 August 2018. The Tribunal in respect of the Appeal under Section 42ZA(10) of the Solicitors (Scotland) Act 1980 as amended by Nazar Singh, 0/1, 11 Southcroft Street, Glasgow (“the Appellant”) against the Determinations made by the Council of the Law Society, Atria One, 144 Morrison Street, Edinburgh (“the First Respondents”) dated 12 October 2017 not to uphold a complaint of unsatisfactory

professional conduct made in respect of a of complaint against Gurjit S Pall, Livingstone Brown Limited, 365 Victoria Road, Glasgow (“the Second Respondent”); Confirm the Determination of the Law Society of Scotland in respect of the complaint; Find the Appellant liable in the expenses of the First Respondents and of the Tribunal including expenses of the Clerk, restricted to one half, 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Appellant.

**(signed)**

**Nicholas Whyte**

**Chairman**

8. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Appellant and Respondents by recorded delivery service on 6 SEPTEMBER 2018 .

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**  
**Chairman**

**NOTE**

Only one ground of appeal remained before the Tribunal at the hearing on 17 August 2018.

This ground of appeal was as follows:-

“In relation to issue 4 the Sub Committee the committee agreed that the solicitor had not right to exercise a lien over the complainer’s file. They also agreed that there was an undue delay in releasing the file. The Sub Committee also agreed that there is a case to answer as to why the solicitor took 4 weeks to release a file. But they could not conclude that this was a misconduct issue, which is questionable since there is clear evidence of misconduct. This is because the solicitor intentionally delayed release of my file and if you look at the initial complaint the solicitor (firm) also delayed to inform me of a negative decision with serious detrimental consequences. Thus the argument that the solicitor had misinterpreted the guidance seems to be offering leniency considering their previous actions.” (sic)

This ground of appeal related solely to the conduct of the Second Respondent.

Prior to the hearing, the Appellant had intimated to the Tribunal the details of a witness. The Tribunal confirmed that the witness was not in attendance. The Appellant confirmed that the witness had indicated to him that he was not in a position to attend the hearing and would not therefore be going to give evidence. The Appellant confirmed that he wished to give evidence to tell the Tribunal himself what had happened.

The Fiscal for the First Respondents confirmed to the Tribunal that he was not leading evidence and would proceed solely on the basis of submissions.

**EVIDENCE OF THE APPELLANT**

The Appellant described difficulties experienced with the Second and Third Respondents in relation to his application to remain in the UK. He explained that his caseworker had been the one to direct him to the Third Respondent and that the caseworker had been assisting him in his dealings with the firm. The Appellant had not trusted anyone and so had taken documents to the solicitor himself. The caseworker had indicated that if the solicitor did not do anything then he would sort the matter out. Later the Appellant had learned that the caseworker was working for the same solicitor.

The Appellant had signed an application which had been forwarded to the Home Office. The Appellant was contacted by the Home Office who indicated that the documents had not been filled in correctly. The Home Office had written to him advising that paperwork had not been forwarded to them. The Appellant had gone to see his solicitor and advised that he wanted to instruct a new solicitor. The new solicitor had told the Appellant that his old solicitor was not forwarding the paperwork. The Appellant had gone to see the Second Respondent who had advised that he could not give the Appellant his papers until the Appellant had provided him with copy bank statements. The Appellant had asked the Second Respondent to confirm this in writing which he had done. That letter was forwarded to the Law Society.

In response to a question from the Tribunal, the Fiscal confirmed that he agreed that the mandate for the papers was signed on 11 September and the file was forwarded to the new agents on 9 October.

The Tribunal directed the Appellant's attention to the Sub Committee decision that the decision to retain the paperwork was due to a mistake on the part of the solicitor which did not amount to unsatisfactory professional conduct. The Appellant confirmed to the Tribunal that it was his position that the Second Respondent had deliberately held onto his papers. At a later stage, the Second Respondent had said to the Appellant that he needed £5,000 to be deposited at first instance but he did not have any money. The Appellant had intimated to the Second Respondent that he was going to write a letter of complaint to the Law Society. Thereafter, the Appellant had had no contact with the Second Respondent and any contact was through his new solicitor only.

## **SUBMISSIONS FOR THE APPELLANT**

The Tribunal invited the Appellant to make submissions. He indicated that he had already mentioned what had happened and that his life had been very badly affected by it all.

## **SUBMISSIONS FOR THE FIRST RESPONDENTS**

The Fiscal submitted that the Tribunal required to establish that there was an identifiable error on the part of the Law Society in dealing with the complaint. The Tribunal had advised the Appellant at the last calling of the case of the three possible criteria, namely (1) a finding for which there was no evidence, (2) that the Sub Committee reasoning proceeded on an error of law, or (3) that the Committee

made a fundamental error in its approach to the case. In the absence of any of these factors, the Tribunal must refuse the Appeal.

Whilst conceding that the Appellant has no formal legal qualifications, the Fiscal drew the Tribunal's attention to the fact that these matters were explained to him by the Tribunal on the last occasion. The Appellant had been unable to explain his ground of appeal then and he had failed to present any argument under any of these headings today.

The Fiscal submitted that in the absence of any submission or evidence presented by the Appellant relating to any of these three criteria, the Tribunal could take the matter no further.

The Tribunal asked the Fiscal if the Appellant's ground of appeal was open to being interpreted as questioning whether a misunderstanding or error in interpretation of the guidelines made by the solicitor in deciding to retain the file was sufficient to mean that the facts did not amount to unsatisfactory professional conduct within the statutory definition.

The Fiscal responded that it was his submission that the Appellant was required to submit that this was an error on the part of the Sub Committee and that it was not for the Tribunal to do that for the Appellant. His primary position was that the Tribunal should not consider the Appeal in the absence of specific submissions by the Appellant.

#### **SUBMISSIONS IN RESPONSE BY THE APPELLANT**

The Tribunal invited the Appellant to make any final comments. The Appellant submitted that the Law Society should have presented his case properly as he had already submitted his paperwork and evidence to them. Whatever was done was done by the Law Society and not him. He had been unable to instruct a solicitor to represent him in this matter. No solicitor would take on his case as it was against the Law Society and Livingstone Brown. He had presented his case as best he could.



## DECISION

This case was an Appeal in terms of Section 42ZA(10) of the Solicitors (Scotland) Act 1980 which states “A complainer may, before the expiry of 21 days beginning with the day on which the determination under sub section (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the tribunal against the determination.”.

The powers of the Tribunal in relation to this Appeal are set out in Section 53ZB(2) of the Solicitors (Scotland) Act 1980 which states that the Tribunal “(a) may quash the determination being appealed against and make a determination upholding the complaint; (b) if it does so, may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct; (c) may confirm the determination.”.

In exercising its function in terms of Section 42ZA, it is not for the Tribunal simply to review any complaint afresh. In this respect, the Tribunal bore in mind the statements made within the case of Hood, Petitioner [2017] CSIH21. There it was stated that the court could interfere with the decision of the Tribunal or Sub Committee in three main situations: (1) where the Tribunal’s or Sub Committee’s reasoning disclosed an error of law; (2) where the Tribunal or Sub Committee made a finding for which there was no evidence or which is contradictory of the evidence; or (3) where the Tribunal or Sub Committee had made a fundamental error in its approach to the case, as by asking the wrong question, or taking account of manifestly irrelevant considerations, or arriving at a decision that no reasonable Tribunal or Sub Committee could properly reach. The Tribunal took the view that this was the appropriate approach for the Tribunal to take when considering an Appeal against a decision/determination of the Sub Committee of the Law Society.

At the earlier hearing of this case, the Tribunal had dismissed one ground of the appeal but had continued the present ground of the appeal to a full hearing on the basis that the Tribunal was prepared to interpret this ground of appeal as one saying that the Sub Committee had made an error in law in its application of the test for unsatisfactory professional conduct. At the last hearing, the Tribunal had concluded that the ground of appeal did not have to specifically use this terminology but simply had to be capable of such interpretation. Whilst the Tribunal accepted that the Appellant had not made specific oral submissions directed towards this basis for the Appeal, on the basis that the Tribunal was prepared

to interpret the written ground of appeal in this way then the Tribunal concluded that it was not necessary for the Appellant in his oral submissions to use this specific terminology.

From what was before the Tribunal, it was clear that the core facts of the complaint were not in dispute. A mandate dated 11 September 2015 was sent by the new solicitor to the Second Respondent. A discussion took place between the Second Respondent and the Appellant on 30 September 2015 when the Appellant was advised that the Second Respondent would retain the file until some documentation was produced. This was confirmed in writing. The documentation was produced and the Appellant's file was forwarded to his new agents on 9 October 2015.

The Sub Committee agreed in its report that the delay in producing the file was undue. The Sub Committee considered the statutory test for unsatisfactory professional conduct. This test is set out in Section 46 of the Legal Profession and Legal Aid (Scotland) Act 2007 as "Professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor" but which does not amount to professional misconduct and which does not comprise merely inadequate professional services.

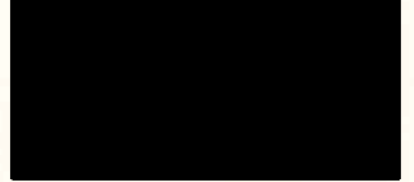
The Sub Committee had before it the explanation of the Second Respondent that he had misinterpreted the relevant guidance with regard to obtempering mandates and had held the honest belief that he had a right to exercise a lien over the file pending receipt of the Appellant's financial information which was to be forwarded to the Scottish Legal Aid Board. The Sub Committee went on to assess the conduct against the statutory test and concluded that it was not sufficiently disreputable to satisfy the test.

Nothing was said in evidence or in submissions for the Appellant to suggest that the Sub Committee had applied the wrong test or had misapplied the correct test. There was nothing in the evidence before the Tribunal to suggest that the Second Respondent had not acted simply in error. In the Hood case, the court described the consideration of the question of whether conduct amounts to unsatisfactory professional conduct as "an evaluative question" in which a court should be slow to interfere. There was nothing before the Tribunal to entitle it to hold that the Sub Committee had erred in this evaluative process. Consequently, the Tribunal concluded that the Appeal should be refused and the Determination of the Sub Committee confirmed.

The Fiscal for the First Respondents moved for expenses. The Appellant opposed that motion and himself asked the Tribunal to award him expenses. Having regard to all of the circumstances of this

particular case, the Tribunal concluded that the appropriate and fair decision was to award expenses to the First Respondents, restricted to 50%.

The Fiscal submitted to the Tribunal that the usual order with regard to publicity was appropriate. The Appellant made no objection and accordingly the Tribunal so ordered.



**Nicholas Whyte**  
**Chairman**