



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2024] CSIH 5
XA55/23

OPINION OF THE COURT

by LADY PATON

in the Application for Leave to Appeal

by

JENNIFER CHINWO

Applicant

against

SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondent

Applicant: Party

Respondent: D Welsh, Advocate; Burness Paull LLP

12 April 2024

Introduction

[1] In February 2023, the applicant lodged a complaint against a solicitor Marcus Whyte (“MW”) by way of an online form delivered to the Scottish Legal Complaints Commission (“SLCC”). The SLCC categorised the complaint as a “services” complaint, and identified five issues, namely:

1. [MW] failed to act in my best interests by not identifying or informing me at our meeting held on or around 17 November 2021 that the title deed for my

property he had obtained was fraudulent as it had a fake business and fake business address on the deed.

2. [MW] continued to use my daughter's email account which I was using on a temporary basis, despite me advising them two weeks later (at the end of December 2021) that my iCloud email was now back in use.
3. [MW] failed to send me invoices and letters of demand prior to me receiving the court papers on 28 July 2022 and it was only 6 months later, by order of the sheriff, that he sent them to me in February 2023.
4. [MW] failed to provide me with proof of sending of those invoices and letters of demand to me, despite my email of 28 July 2022 seeking that evidence.
5. [MW] wrongly stated in his email to me of 14 September 2022 that I had accused all three solicitors of fraud when in actual fact I had only accused the lenders.

[2] The five issues were agreed with the applicant. A sifting procedure took place. In May 2023, Issue 1 was accepted for investigation. Issues 2 to 5 were found to be "totally without merit", in the sense that even if the facts alleged were proved, that would not amount to unprofessional service on the part of the solicitor. In particular:

In Issue 2, there was no express instruction to continue to use the iCloud address and not to use the email address that the applicant was emailing from.

In Issue 3, the solicitors' firm would reasonably assume that the applicant was receiving their correspondence, since it was the last known email address they had corresponded on.

In Issue 4, a court had been satisfied that the applicant was aware that she owed fees to the firm. The firm would have no way of knowing that a reminder email had not

been received, unless it had been rejected (and there was no evidence to suggest that).

In Issue 5, the information before the SLCC confirmed that the applicant had indeed alleged fraud against all three solicitors.

The case investigator

[3] Issue 1 was sent to a case investigator (Craig White) for investigation and report. In September 2023, the case investigator reported to the applicant as follows:

“My findings and recommendations

20. The first thing to say here is that it is not the SLCC’s role to reach any view as to whether or not there has been fraud on Miss Chinwo’s title deeds. That would be a criminal matter for the police to investigate and, indeed, I understand that Miss Chinwo is already pursuing that with the police.

21. My role here is to look at the evidence and reach a view as to whether or not the firm provided Miss Chinwo with an inadequate professional service by failing to advise her that there was a fraud on her title.

22. In that respect, I note there is no evidence on the file that Mr Whyte [the solicitor] was asked by Miss Chinwo to examine the title deeds. There is also no evidence that Mr Whyte ever obtained and viewed the title deeds. Firm A did send the Standard Security to Mr Whyte on 15 December 2021, but I have seen no evidence this disclosed the apparent transfer of the Standard Security from the lender to Mr Denis Myers. I do not think that, having received instructions in relation to a loan contract dispute from Miss Chinwo, it was necessary for Mr Whyte to have immediately examined the title to the property. What was relevant for Mr Whyte to consider was whether the lender’s decision to withhold further lending was contrary to the terms of the loan contract. The evidence shows Mr Whyte did that and provided a view on what Miss Chinwo’s chances would be if she pursued the lender in court. Miss Chinwo then chose to immediately withdraw her instructions.

23. Even if the title deed had been viewed by Mr Whyte at some stage, I do not consider that it would have been immediately obvious that some form of fraudulent activity had taken place. The deed simply shows that the lender appears to have transferred the Standard Security to a third party in 2019. That may or may not be something which Miss Chinwo can now rely upon in a separate dispute with the

lender. However, it was not of any direct relevance to the dispute she wished to raise with the lender when she instructed the firm.

24. In summary, I have seen no evidence that the firm has breached the Service Standards by failing to notice and/or advise Miss Chinwo about fraud on her title deed. From what I have seen Mr Whyte acted diligently on Miss Chinwo's instructions and provided advice of the prospects of her case in line with his professional judgement.

25. I therefore recommend Issue 1 is not upheld."

[4] The applicant disagreed with the report, and the case was sent to a Determination Committee (comprising one lawyer and two lay persons). All the papers and information available to the SLCC were sent to the Committee. That included email correspondence from the applicant alleging that the solicitor had told lies, specifically that he had lied by advising the SLCC that he had not known that the applicant had another solicitor after she left MW.

[5] By letter to the applicant dated 22 September 2023, the case investigator explained that the Determination Committee "might disagree with [his] recommendations and come to a different conclusion on whether a complaint is upheld or not."

The Determination Committee

[6] The Determination Committee considered all the papers and the information in the case and reached a decision. By letter dated 7 November 2023 the SLCC advised the applicant of that decision, in the following terms:

"Issue 1: [MW] failed to act in my best interests by not identifying or informing me at our meeting held on or around 17 November 2021 that the title deed for my property he had obtained was fraudulent as it had a fake business and fake business address on the deed.

DECISION: NOT UPHELD

COMMENTS FROM DETERMINATION COMMITTEE

The reasoning given in the Recommendations and subsequent correspondence was agreed.

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The Committee agreed with the proposed settlement and the reasoning in the Recommendation.”

In their covering letter, the SLCC advised that the complaint with the SLCC was at an end, and the file was closed.

Appeal to the Court of Session

[7] The applicant was dissatisfied with the outcome of her complaint to the SLCC. She seeks leave to appeal to the Court of Session in respect of Issues 1 to 5, all as set out in her Form 40.2 “Application for leave to appeal under section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007”.

[8] Section 21 of that Act provides:

“(1) Any person [including the complainer] may, with the leave of the court, appeal against any decision of the Commission under the preceding sections of this Part as respects a complaint on any ground set out in subsection (4).

...

- (4) The grounds referred to in subsection (1) are –
- (a) that the Commission’s decision was based on an error of law;
 - (b) that there has been a procedural impropriety in the conduct of any hearing by the Commission on the complaint;
 - (c) that the Commission has acted irrationally in the exercise of its discretion;
 - (d) that the Commission’s decision was not supported by the facts found to be established by the Commission.”

Leave to appeal hearing on Tuesday 19 March 2024

Submissions by the applicant

[9] The applicant referred to her note of argument, which was in the following terms:

“Mr Marcus Whyte from Firm Whyte and Fraser committed perjury in the issue 1 in the eligibility report. If the respondent had told the truth and said he did know I had a lawyer, and he did know how to contact me, that would have meant I was right, that would have also meant issue 12345 would have all been upheld, it would have also meant that he did use deception against me, so the respondents keeps up his denial, even when there is clear evidence to suggest he has lied. The respondents continued denial and Slcc, Craig White and Determination Committee dismissing all 5 serious complaints leads me to wonder where does Slcc true interest lie? as the Slcc are meant to be a organisation that protects the public and follow the rule of law. Slcc, Craig White, and the Determination Committee behaviour and irrational act of error by not investigating my serious claims made against the respondent shows me what lack of respect they have for the rule law.

Slcc are meant to be a [sic] organisation that has the rule of law embedded in them, Slcc Craig White and Determination Committee have acted in a pack mentality, they have not cared about the truth and the crime that has been committed against me they only care about defending their decision at any cost, even if its not in the public interest of trust and the rule of law.

2. Dear my lord Pentland, Slcc Craig White and the Determination Committee have shown clear sign's [sic] of being biased and have used discrimination against myself, my case has been treated completely unfairly my appeal should be upheld.”

[10] In oral submissions, the applicant reiterated that MW had lied during the SLCC's investigation. The lie was a serious one, which had affected the investigation. The lie was “that MW did not know I had a solicitor” once she ceased using his services. On the contrary, the applicant had contacted MW's office straight away, and told them that her solicitor was Ling Deng of Thorntons. The applicant had also copied MW into relevant correspondence. Whether the lie was specifically referred to in Issue 1 did not really matter.

[11] The applicant further submitted that she did not believe that the case investigator had carried out an investigation. She had sent in all the evidence, but she did not think that the case investigator went through it. The case investigator had said that the Determination

Committee would agree with him. The applicant had told the case investigator about the lie: he had said that the information would be passed on to the Committee.

[12] MW's lie mattered, because one of her complaints was that he had failed to send invoices (for services rendered) and letters of demand to her, resulting in her eventually receiving court papers demanding payment. But the applicant had instructed MW to send everything to Ling Deng. MW had not done so, and had lied when saying that he did not know she had a solicitor. As a result he had won Issue 3, which he should not have. MW also continued to use the applicant's daughter's email account (which had been supplied on a temporary basis) instead of the applicant's own email account, as iCloud had "let her in" again. The demand for payment had been for £430 for his services: she disputed that amount as she had already paid something (ultimately the Auditor could rule on the matter) but the point was that MW continued to send invoices and demands to the applicant's teenage daughter's email account instead of to her own account, and then lied to the SLCC by telling them that he (MW) had not known she had a solicitor.

Submissions for the SLCC

[13] Mr Welsh invited the court to refuse leave to appeal. He referred to and adopted the respondents' note of argument. The test was whether the proposed appeal had "real prospects of success". Success would only be possible if one or more of the grounds in section 21(4) was made out.

[14] It was important to remember that there were two separate decisions: the eligibility decision in May 2023, and the determination in November 2023. The SLCC had distilled the essential issues (five in number) and had reached agreement with the applicant that those were the five matters in issue.

[15] Thereafter, Issue 1 was accepted as eligible and sent for investigation. Issues 2 to 5 were found to be ineligible as they were totally without merit (ie even in the facts complained of were found proved, those facts would not amount to unacceptable service or professional misconduct on the part of the solicitor).

[16] In relation to the eligibility decision, the applicant had to demonstrate that the SLCC applied an incorrect test, or applied the correct test incorrectly. Neither had been demonstrated. No ground in terms of section 21 had been made out in respect of Issues 2 to 5, and leave to appeal should be refused in that context.

[17] In relation to Issue 1, the Determination Committee had received all the relevant papers and information. In particular, they had received email correspondence in which the applicant complained about MW having lied. For example, the Committee had received the applicant's email dated 24 September 2023 addressed to the case investigator, including the following comments:

"Dear Craig I am extremely disappointed in your decision. I believe your investigation has been flawed, one sided ... I have more grounds of him lying and defamation against me ... 1. In your report and the SLCC response from Marcus he stated that he was not aware I had a new solicitor/legal representation when I left him on the 17 December 2021 I can prove this is again a huge lie and perjury ... [then further details are set out] so for him to tell such a serious lie that he was not aware I had a new legal rep is perjury ... the way I see it if he can lie about matters above he is likely lying about everything ..."

[18] The SLCC had carried out all the steps required by statute. Eligibility had been determined, then an investigation carried out, and finally the Determination Committee had come to a decision on the evidence before them. It could not be said that they were not entitled to reach the decision they did. No error of law had been demonstrated. The applicant had not shown that she had real prospects of success.

Final reply by the applicant

[19] The applicant submitted that it was not clear that all the information had indeed been sent to the Determination Committee. But if all the information had been sent, then the SLCC had erred in law by treating perjury as acceptable. Leave to appeal should be granted.

Discussion

[20] I have been unable to identify any error of law on the part of the SLCC when dealing with the specific matters outlined in Issues 1 to 5 of the applicant's complaint. Credibility and reliability, and questions concerning the weight of the evidence, are matters for the SLCC. In the context of Issue 1, the SLCC was entitled, on the basis of the papers (including email correspondence) and all the information before them, to reach the conclusion they did. In relation to Issues 2 to 5, the Commission was again entitled to reach the views they did on the information before them.

[21] For completeness, I should add that I did not identify any procedural impropriety in the SLCC's conduct of any hearing; any irrational exercise by the SLCC in the exercise of discretion; or any decision unsupported by facts found to be established by the SLCC.

[22] Accordingly no ground in terms of section 21(4) has been made out. That being the case, it follows that I have not been persuaded that the applicant's proposed appeal has real prospects of success: *Baird Matthews v SLCC* [2015] CSIH 68; *X LLP v SLCC* [2017] CSIH 73.

[23] For the reasons given above, I refuse leave to appeal.