



SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2022] CSIH 22  
XA33/21

Lord Justice Clerk  
Lord Malcolm  
Lord Turnbull

OPINION OF THE COURT

delivered by LORD TURNBULL

in the Appeal

by

BELTRAMI & COMPANY LIMITED

Appellant

against

SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondent

**Appellant: O'Neil QC; Campbell Smith LLP**  
**Respondent: Crawford QC, D Welsh; Anderson Strathern**

27 April 2022

[1] This is an appeal by a firm of solicitors, brought with leave granted under section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”). The appeal challenges a decision of the Scottish Legal Complaints Commission (“the Commission”) upholding part of a complaint of inadequate professional services. The complaint upheld related to the manner in which the appellant had dealt with a complaint intimated to it by a former client Mr Summers.

## **Background**

[2] In November 2018 Mr Summers was convicted in the High Court of rape and received a sentence of six years imprisonment. He sacked the team of solicitors and counsel who had represented him at his trial and instructed the appellant. It confirmed the acceptance of his instructions by its terms of engagement letter dated 14 December 2018. The appellant's remit was to act in connection with an appeal against conviction.

[3] Mr Summers provided the appellant with a lengthy list of complaints about the manner in which his previous legal team had prepared for and conducted his case. He itemised around fifty points which he considered would each found an appeal. These included their failure to obtain evidence of phone records and DNA analysis to demonstrate the false nature of the testimony against him, the inadequate extent and nature of the cross-examination conducted on his behalf and failing to call relevant witnesses. He accused his previous lawyers of acting with dishonesty and corruption.

[4] Having investigated the matter to the extent that it considered appropriate, the appellant provided Mr Summers with an opinion from a solicitor advocate who was a member of the firm. That opinion advised that there were no grounds upon which an appeal could be based. Mr Summers was dissatisfied with this advice and an experienced solicitor advocate from outwith the firm was then instructed to provide a second opinion. His advice was to the same effect. Mr Summers was also dissatisfied with that opinion. Consequently, at a hearing before the High Court on 16 May 2019, he addressed the court on his own behalf seeking an opportunity to instruct a further set of solicitors and a further extension of time within which to lodge grounds of appeal. His application was refused. After another exchange of correspondence in which Mr Summers expressed dissatisfaction, the appellant intimated by letter dated 3 June 2019 that it would no longer act for him.

## The complaints

[5] By letter dated 25 June 2019, Mr Summers wrote to the appellant intimating that he wished to present a formal complaint concerning the services he had received. He itemised twenty-four numbered complaints, which included that members of the firm had lied repeatedly to him, had acted duplicitously and had ignored evidence of corruption on the part of his previous solicitors. In the final paragraph of his letter he summarised his complaint by stating:

“Your service is fundamentally corrupt, in that you lie, you ignore direction and correspondence and you cover up third party corruption.”

[6] The letter was replied to on 8 July 2019 by Mr Whyte, the appellant’s Client Relations Manager. He explained that he would require to carry out further investigations before responding substantively to the complaint made and that this would take in the region of six weeks. In addressing the accusations of deceit and corruption he stated:

“In your letter of 25 June 2019 you make a number of pointed and unsubstantiated accusations against Mr Broadley, Mr Macara and accordingly, the firm. These accusations include accusations of deliberate deceit and worst still, corruption. These accusations are false and we must warn you defamatory. You must realise that there is a distinction to be drawn between alleged service complaints and the type of character attack which these constitute. It may make it impossible to have a constructive dialogue with you if you persist in your assertion that one or more members of this firm has/have behaved in a corrupt and deceitful manner. Accordingly, we now call upon you to formally withdraw these discrete accusations before we can consider how to proceed with the remainder of your complaint.

Further, we must warn you that if you persist in making such unsubstantiated defamatory remarks then this firm would require to consider seriously whether to raise any formal legal action against you.

Of course, if you do withdraw these inflammatory remarks, made perhaps in anger and through a sense of grievance on your part about your plight, then we will endeavour to process your complaint in the normal fashion. Included in that would be a commitment to try to identify whether we felt that we had somehow failed to provide an adequate standard of service.

Further, we would caution you against further intemperate, hyperbolic and abusive language. The lawyers and staff at this firm are entitled to be treated with a reasonable level of respect. This does not prevent you from complaining but does require that we (*sic*) do so using moderate language. That way, we are likely to be able to communicate with you in a manner which can lead to a satisfactory resolution. We think it preferable at this stage if you do not make any contact by telephone but restrict yourself to written communications.

We look forward to receiving your response.”

[7] Although Mr Summers continued to correspond with the appellant about certain matters he did not reply directly to this letter. On 10 October 2019 he made a complaint to the Commission about the appellant. The agreed summary of that complaint comprised twenty eight individual instances of services complaints and one conduct complaint.

### **The assessment of the complaints**

[8] At the preliminary sifting stage mandated by section 2(4) of the 2007 Act, 22 of the identified services complaints were rejected by the Commission as being totally without merit. Various explanations for these determinations were given, such as Mr Summers’ misunderstanding of the process of an appeal against conviction, his misunderstanding of the concept of client instructions, that his expectations were unrealistic, that conduct which he considered to be inappropriate was entirely professional and that the facts he asserted were incorrect or based on his speculation. The conduct complaint was subsequently dismissed by the Law Society of Scotland.

[9] The remaining six services complaints were accepted for investigation. As agreed between the Commission and Mr Summers these were:

“Issue 2. Mr Broadley and/or the firm of Beltrami & Co Limited failed to act with integrity in that Mr Broadley informed me, during a meeting on 26 February 2019, that no work had been carried out on my appeal prior to that date as they had not received my file from my former solicitors until the first week of January, this was not true as it was in their possession by 14 December 2018.

Issue 5. Mr Broadley and/or the firm of Beltrami & Co Limited failed to act diligently or in my best interests in that he told me at our first meeting on 24 December 2018 that he would return in the first week of January 2019, however he did not meet with me again until 26 February 2019.

Issue 6. Mr Broadley and/or the firm of Beltrami & Co Limited failed to act competently or in my best interests in that he failed to arrange for me to meet with an advocate until after the appeal and extended appeal deadlines had passed.

Issue 8. Mr Broadley and/or the firm of Beltrami & Co Limited failed to act diligently or in my best interests in that Mr Broadley did not meet with me in the week beginning 4 February 2019 despite having agreed to do so during a telephone call with me in the week beginning 28 January 2019.

Issue 12. Mr Gravelle and/or the firm of Beltrami & Co Limited failed to act diligently in that Mr Gravelle never met with me or spoke to me despite him being my supervising solicitor and having been advised in a letter from the firm dated 11 February 2019 that 'Mr Broadley and Mr Gravelle will meet with you to discuss these matters'.

Issue 19. Mr Macara and/or the firm of Beltrami & Co Limited failed to act competently or in my best interests in that they do not publish a complaints procedure, informed me they would take up to 6 weeks to answer my complaint due to Mr Macara being on leave and told me to change the wording of my complaint before they would consider it."

[10] On 18 November 2020 the Commission issued its investigation report into the remaining six services complaints. That document explained what was investigated and how the investigation was undertaken. It then explained its assessment of each issue investigated. In respect of each issue individually, or where appropriate where issues were addressed together, the report set out a summary of the position of the parties and the evidence available. In the case of each issue the investigation report then contained a section headed: "**Findings and Recommendations**".

[11] In respect of each issue investigated the findings, in summary, were:

Issue 2 – the complaint did not represent an accurate description of events.

Issue 5 – contrary to the claim made the firm were taking appropriate steps to advance Mr Summers' appeal.

Issue 8 – the complaint made did not constitute an unreasonable delay.

Issues 6 & 12 – aspects of the complaint where not correct. The conduct complained of constituted normal practice. The conduct complained of constituted a necessary and reasonable approach for the firm to take.

Issue 19 - the firm did have a formal complaints process and this aspect of the complaint was not accurate. The period of time which Mr Whyte said he would require to respond did not constitute a breach of the service standards. It was not unreasonable for the firm to provide a response defending their position in relation to the allegations made.

[12] In relation to each issue the conclusion set out in the investigation report was that there was no evidence of a breach of the principles of diligence or communication and therefore no evidence of inadequate professional service. The recommendation in respect of each was that the complaint should not be upheld.

[13] Section 9 of the 2007 Act sets out the Commission's duty to investigate and determine services complaints. Subsection (2) provides that where the complaint is made by a person such as Mr Summers the Commission must propose a settlement as respects the complaint which it considers is fair and reasonable in the circumstances. The settlement proposed in the investigation report was that the firm should take no further action.

[14] The concluding section of the investigation report explained that if both parties accepted the recommendation then that would become the final outcome of the complaint but that if one of the parties did not agree with it then the case would automatically proceed to a formal determination before the Determination Committee.

[15] By letter dated 25 November 2020 the Commission notified the appellant that Mr Summers did not accept the proposed settlement and that the matter would be considered by a Determination Committee. The second paragraph of that letter stated:

“Please note that once the Determination Committee makes its final decision the only appeal is to the Court of Session. If there is any new information which you have not

yet provided please do so within the next 21 days, otherwise it may not be taken into account.”

[16] The Commission’s final determination was made on 22 January 2021 and communicated to the appellant by letter dated 1 March 2021. Issues 2, 5, 6, 8 and 12 were not upheld. Issue 19 was partly upheld. The Commission’s view was that the part of the letter from Mr Summers which the appellant took exception to was the final paragraph. The Commission’s determination was that the allegations there set out should not have prevented the appellant from providing a full and substantive response to the various other matters within the letter. To this extent the appellant had provided an inadequate professional service.

[17] The Commission observed that even though none of the other issues of complaint had been upheld, Mr Summers was left with the feeling that what he considered were genuine causes of complaint had not been responded to. This would have been a cause of distress to him and the appellant was ordered to pay compensation to him for inconvenience and distress in the sum of £750. The full complaints levy of £5,000 was also ordered to be paid by the appellant.

### **The appeal**

[18] The appellant sought to advance eight grounds of appeal. The first was that in arriving at its final determination the Commission erred in law by failing to follow the statutory procedure provided for by section 9(1) of the 2007 Act.

[19] The second to fifth grounds, each in similar ways, sought to challenge the final determination arrived at by the Commission, arguing that there was no basis, or no explanation for departing from the primary facts established by it at the stage of the investigation report, or for departing from the evaluation of those facts and the inferences to

be drawn from them. The sixth ground argued that before departing from the findings and recommendation made at the stage of the investigation report the Commission ought to have permitted an oral hearing in terms of its own rules of procedure. The seventh and eighth grounds sought to challenge the financial penalties imposed.

### **Submissions**

[20] The court was favoured with detailed written submissions from both parties which were supplemented at the oral hearing. Those relating to the first six grounds can briefly be summarised as follows.

### *Appellant*

[21] Section 32 the 2007 Act requires the Commission to make rules as to its practice and procedure. The relevant rules are the Rules of the Scottish Legal Complaints Commission 2016 (“the 2016 Rules”). Section 9 of the 2007 Act sets out the Commission’s duty to investigate and determine services complaints. In dealing with a complaint by a person who claims to be affected by the service provided, such as Mr Summers, the structure of section 9, as read along with rules 15 and 21, requires the Commission to complete its investigation and then to propose to the practitioner and the complainer a settlement which it considers fair and reasonable in the circumstances (section 9(2)). If that is not accepted the Commission requires to determine the complaint (section 9(1)), again on the basis of what it considers fair and reasonable in the circumstances, which function is undertaken by a Determination Committee.

[22] Section 9(1) and rule 14 provide that the Commission must provide details of its completed investigation to the parties in order to give them an opportunity to make representations on its findings and recommendations. If intimated within the requisite

timescale any such representations will be considered by the Commission before determining the complaint. In the appellant's case this procedure was not complied with. The Commission's letter of 25 November 2020 intimating that the complaint was to be determined by the Determination Committee offered the appellant an opportunity to forward "any new information which you have not yet provided".

[23] The Commission is tasked with the statutory responsibility of investigating services complaints, making a recommendation as to how the complaint may be settled and, if necessary, determining the complaint. Each function is exercised by the Commission as a body corporate, not by individuals designated by it. The findings set out in the investigation report were the findings made by the Commission. The decision of the Determination Committee was the determination made by the Commission. In arriving at that determination it was bound to rely on the findings and evaluation which it had previously made. No new facts were placed before the Determination Committee such as would have permitted the Commission to arrive at a different conclusion on the complaint from that which it had already set out in the investigation report. The Determination Committee failed properly to take into account the findings in the investigation report about the circumstances in which the letter of 8 July 2018 was written and the appellant's purpose in doing so.

[24] If a different decision was arrived at by the Commission in performing its duty under section 9(1) from that arrived at by the Commission in performing its duty under section 9(2), then that would reflect a different view on the same facts and applying the same test. Such a change of view would require a proper and justifiable explanation which was absent in the present case. The opportunity to make submissions on the evaluation of what was fair and reasonable provided a bridge between the steps of making a settlement

proposal and making a final determination. This was the procedure which provided the Commission with the opportunity to arrive at a different decision. That procedure was not complied with. The Commission was quite wrong in setting out in its answers and note of argument that the investigation report did not contain its findings and that the Determination Committee exercised an independent decision making function. It remained the Commission who made the final determination.

[25] Rule 22 of the 2016 Rules provides that where the Commission is required to proceed to determine a complaint it may fix an oral hearing if it decides that it is necessary in the interests of fairness to do so. In the present case, where the Commission was minded to change its assessment of what was fair and reasonable in the circumstances without having invited the appellant to make submissions, the interest of fairness required that an oral hearing ought to have been fixed.

*Respondent*

[26] The procedure followed was that evidence was gathered through the process of investigation and then set out in the investigation report. The Commission evaluated that evidence and came to a view. To the extent that the answers and note of argument stressed that the case investigator made recommendations only and did not make findings of fact, the language used could be said to have been infelicitous. However the investigation report concluded with sections which explained what procedure would be followed if the recommendation within the report was not accepted by either party. It was made plain that the Determination Committee can change any of the recommendations made in the investigation report and can come to any decision they consider fair and reasonable and can support with reasoning.

[27] The procedure permitted the appellant to make representations at each stage. The process commenced with the complaint being received. On being informed of this the appellant forwarded a detailed response on 6 February 2020 in a letter extending to 14 pages plus appendices. The formal summary of the complaint was issued by the Commission on 26 February 2020. The appellant provided a supplementary response at this stage in a letter extending to a further 12 pages. On 20 June 2020 the eligibility decision was issued and the appellant was told that information would be required from it in order to permit the investigation to take place. All of the information requested was provided by the appellant over 16 emails.

[28] It was made plain in the investigation report that even if one of the parties accepts the proposed settlement it requires to be kept in mind that the other may not. In this context the report explains that any further information to be considered must be submitted at this point. The same point was made in the letter of 25 November 2020 to the appellant intimating Mr Summers' rejection of the Commission's recommendation. The whole procedure afforded the parties a fair opportunity to make representations. The appellant's complaint required to be viewed in this context and there was no requirement within the statutory framework that the parties had to make further representations before a final determination.

[29] The Commission's final decision was set out in the Minute of the Determination Committee meeting dated 22 January 2021 and in its letter to the appellant of 1 March 2021. Full and cogent reasons for arriving at the decision were provided. The letter of 1 March explained that the members of the Determination Committee reviewed the recommendations made in the investigation report and had access to all correspondence and evidence in relation to the case. It was plainly aware of the investigator's assessment of the

circumstances in which the appellant's letter of 8 July was written and his view of the appellant's purpose in doing so. There was no basis for suggesting that the Determination Committee did not take this into account.

[30] The Commission did not take account of something new or anything which was added to the evidence considered in the investigation report. The Commission evaluated that material at the determination stage and came to a different view. It explained why it had done so in its letter to the appellant. The Commission was entitled to come to the view which it did and to determine that the complaint should be upheld in part.

[31] There is no requirement within the statutory procedure for an oral hearing. The Commission's policy on oral hearings is set out in its Oral Hearings Policy & Procedure document dated May 2018. That policy made it plain that a determination would normally be made without an oral hearing being required. Paragraph 2.5 of the policy document set out a non-exhaustive list of considerations to be taken into account by the Determination Committee in deciding whether to hold an oral hearing. These were:

- (i) the views of the parties;
- (ii) whether there are any issues or dispute of fact which require to be resolved before the complaint can be determined and which cannot be resolved by any other means;
- (iii) whether issues of credibility arise which cannot be determined from the material available to the Committee;
- (iv) whether it would assist the Determination Committee to hear witness evidence in order to allow it to determine the complaint;
- (v) whether in the circumstances it would be proportionate to hold an oral hearing; and
- (vi) whether there are any exceptional circumstances which would justify the need for an oral hearing.

[32] Paragraph 2.6 provided that in deciding whether to hold an oral hearing the Committee will always apply the principle of fairness.

[33] In the present case none of the matters specified in paragraph 2.5 applied. There was nothing to show that the Determination Committee was wrong to proceed without an oral hearing.

### **Decision and reasons**

[34] A services complaint is a complaint which suggests that professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate (section 2(1)(b) of the 2007 Act). Inadequate professional services means professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor (section 46(1)). When a complaint is received by the Commission suggesting that professional services provided by a solicitor were inadequate it requires to perform a sifting function in which it determines whether the complaint is frivolous, vexatious or totally without merit. If it determines that the complaint is any or all of these things it must reject the complaint. If the complaint is not rejected at this stage consideration may be given to attempting to achieve a negotiated settlement between the solicitor and the complainer. Where this step is not taken the Commission's duty to investigate and determine the complaint as provided for by section 9 of the 2007 Act is engaged. Section 9(1) provides that:

“... the Commission must, .... investigate the complaint and after giving the complainer and the practitioner an opportunity to make representations, subject to this section and subsections (2) to (4), determine it by reference to what the Commission considers is fair and reasonable in the circumstances.”

[35] Section 9(2) provides that:

“Where the complainer is a person (such as Mr Summers) the Commission must, ... propose to the practitioner and the complainer a settlement as respects the complaint which it considers is fair and reasonable in the circumstances.”

[36] Consistent with these statutory provisions, the investigation report in the present case did not purport to set out a determination of the complaint. It began by setting out the recommendation that the complaint should not be upheld and proposed a settlement that the appellant should take no further action. The concluding sections of the report, sections D and E, explain what options are available and what steps are to be taken. The parties are asked to inform the Commission of their position within 7 days. The five possible steps explained are:

1. The complaint may be accepted. If both parties accept the settlement it becomes the final outcome of the complaint. Each is asked to remember that the other may not accept the settlement and they are informed that if they have any further information they wish considered before a final decision is made it must be submitted at this point.
2. One party rejects the settlement in which case the complaint proceeds to a formal determination by the Determination Committee. In this situation that party is requested to explain why it rejects the proposal and is advised to provide any further information it may wish to have considered before a final decision is made by the Commission.
3. A counter offer may be made by a party who is content with some aspects of the recommendation but wishes a counter offer to be considered by the other party as part of a consensual settlement.
4. The complainer fails to respond in which case the case is closed.
5. The lawyer fails to respond in which case the complaint proceeds to a formal determination by the Determination Committee.

[37] The information provided makes it clear that the only circumstance in which the complaint is “determined” is if it proceeds to the Determination Committee. This is consistent with the terms of rule 15 of the 2016 Rules.

[38] Following receipt of the investigation report the appellant contacted the investigating officer by email on 20 November 2020 explaining that the firm accepted his recommendation to take no further action. No further information was provided by it. As explained in paragraph [15] above, the Commission informed the appellant of Mr Summers's decision in its letter of 25 November.

[39] Rule 14 of the 2016 Rules provides:

“(1) Pursuant to section 9(1) of the Act, where the Commission investigates it will provide details of its completed investigation in writing to the parties to the complaint for the purpose of giving those parties the opportunity to make representations on its findings and recommendations.

(2) To be considered by the Commission before determining the complaint, such representations must be made within 3 weeks after the Commission has provided details of its completed investigation to the parties.”

[40] The Commission does not proceed to determine a complaint if the proposed settlement is accepted. Therefore the only circumstance in which representations on the findings and recommendations of the investigation can be made for the purpose of being considered by the Commission before determining the complaint, is if a settlement proposal is rejected (or if the lawyer complained about does not respond). Section 9(1) and rule 14 are complementary. Their purpose must be to give either party an opportunity to make representations to the Determination Committee as to why the findings or recommendations set out in the investigation report ought to be supported, or departed from, when the views set out therein are challenged. The opportunity to provide representations, in this sense, is something quite different from the opportunity to provide further information generally, or to provide any new information not yet provided.

[41] The situation which the appellant was faced with was that the case investigator had set out that there was no evidence of inadequate professional service in relation to any of the

issues of complaint and explained why that view had been reached in respect of each. Each complaint was then to be reconsidered by the Determination Committee, the members of which had no previous involvement with any aspect of the complaints. On the basis of the same facts they were to be afforded the opportunity of arriving at a different view as to how the quality of the appellant's professional services was to be characterised. In these circumstances there is an obvious value in an opportunity to make representations in support of the findings and recommendations already set out.

[42] It is also important to bear in mind that the Commission's overarching purpose in determining any services complaint is to identify if the service standards set by the relevant professional organisation have been met or not. This is the explanation which it provides as to its role in section B of the investigation report. This brings home the importance to the appellant of an opportunity to make representations, once the findings had been set out, as to how its service complied with the service standards and as to the way in which a reasonably competent solicitor would respond to the situation which the appellant found itself in. This seems particularly relevant in the present case, since Mr Summers had made many different accusations, some of incompetent conduct, some of unprofessional conduct and some of dishonest conduct, each and every one of which was unfounded or rejected. The only part of his complaint which was upheld related to the way in which the appellant reacted in its letter of 8 July 2019 to what were, correctly, described as false and defamatory accusations. In this regard it is worth noting that, contrary to the understanding which the Determination Committee seems to have proceeded upon, it was not just the terms of the final paragraph of Mr Summers' letter to which the appellant took exception. Exception was taken to the accusations made against Mr Broadley and Mr Macara which included deliberate deceit and corruption. Allegations of this sort comprised aspects of the

complaints itemised in points numbered 3, 6, 8, 9 and 17 of Mr Summers' letter. This seems to have been appreciated by the case investigator from what is set out at paragraph 121 of the investigation report. His assessment, at paragraph 131, had been it was not unreasonable for the firm to provide a response defending their position in relation to those allegations.

[43] The relevant procedure is set out in section 9(1) of the 2007 Act and in rule 14 of the 2016 Rules. The court concludes that this procedure was not complied with. The option to provide "further information" or "any new information which you have not yet provided" was not the equivalent of an opportunity to make representations on the Commission's findings and recommendations as set out in its investigation report. This was a significant procedural impropriety. The first ground of appeal is upheld to the extent that the part of the Commission's decision of 22 January 2021 upholding the complaint is quashed.

[44] In light of this decision it is not strictly necessary to determine any of the remaining grounds which challenged the finding of inadequate professional services. However, the court's view is that there was no merit in any of grounds two to six. The findings in fact which the Commission made are those set out in the investigation report. This is consistent with the submission made for the Commission in the case of *Sneddon v SLCC* 2016 SC 36, as recorded at paragraph 31. However, it is also clear that the determination of the complaint was not made by the Commission at the stage of the investigation report. In determining the complaint the Commission would be entitled to draw whatever inferences and conclusions from these facts it considered fair and reasonable and for which it could give satisfactory reasons. The minute of the Commission's decision, and its letter of 1 March 2021 to the appellant, set out sufficient by way of reasoning and explanation to convey why the recommendation earlier made about Issue 19 was not adopted in full. There was no

rationality challenge to the determination made. There was no statutory requirement to hold an oral hearing and the decision made to proceed without such a hearing was consistent with the Commission's own policy.

[45] Grounds of appeal seven and eight concern the imposition of compensation and the full complaints levy. In light of the decision in respect of ground one these grounds are not engaged.

[46] In light of the court's decision in respect of the challenge to part of Issue 19 the case is remitted to the Commission to proceed as accords before a differently constituted Determination Committee.