



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 28
XA18/25

Lord Matthews
Lord Tyre
Lord Armstrong

OPINION OF THE COURT

delivered by LORD MATTHEWS

in the Appeal

by

MARGARET HORSLEY

Appellant

against

SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondent

Appellant: Party
Respondent: Blair; Burness Paull LLP

31 October 2025

Introduction

[1] In this appeal under section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007 the court is asked to overturn a decision of the Scottish Legal Complaints Commission that a complaint that a solicitor had falsified a document was ineligible for investigation because it was totally without merit.

Background

[2] The appellant enrolled as a solicitor in 1986 but as of 2025, she is no longer on the Roll.

[3] On 16 January 2016 she was appointed as welfare and financial attorney to her father, JC, and her mother, MAC. However, it appears that JC formed the view that she was misusing her Power of Attorney to benefit herself. On 20 April 2016, he consulted his solicitor, Mr Barry Dewar (“BD”) and instructed the appellant’s removal as his attorney. On 21 April 2016, BD wrote to the appellant requesting her explanation of why her actings and intromissions as JC’s attorney were in his best interests. Subsequently, BD drew up, and JC executed, fresh Powers of Attorney for JC in favour of his two other children, JAC and JCC, and a revocation notice in respect of the Power of Attorney in favour of the appellant. She remained the welfare and financial attorney for MAC.

[4] JCC and JAC complained to the respondents, the Scottish Legal Complaints Commission, about the appellant’s conduct as their father’s attorney. Following investigation, the Law Society of Scotland prosecuted the appellant for professional misconduct before the Scottish Solicitors Discipline Tribunal. The Law Society called BD as a witness. He spoke to his consultation with JC on 20 April 2016 and in the course of his evidence he was taken to a file note of the 20 April 2016 consultation and the letter of 21 April. He confirmed authorship of both.

[5] The SSDT ultimately acquitted the appellant of professional misconduct (26 June 2023 *Law Society of Scotland v Margaret Ann Horsley* SSDT1957) and remitted the case back to the Law Society of Scotland to consider whether she may have been guilty of unsatisfactory professional conduct.

[6] The appellant formed the view that BD falsified his file note of the 20 April 2016 consultation. She explained to us that she does not now maintain that it does not form a true record of his recollection, her complaint being essentially that it was composed well after the event and is not a contemporaneous record. In any event, on 25 April 2024 she wrote to BD asking him to provide evidence that the file note had not been edited since it was created. BD responded on 1 May 2024, stating: "I can assure you that the file note that you refer to has never been altered in any manner and it is 100% an accurate record of the meeting." The appellant was not satisfied. She responded the same day stating that she wanted "verification" that the note had not been altered subsequent to 2016. Any Microsoft Word document could be date verified and this was easy to do. She intended to complain about how the Law Society had conducted the prosecution and this would form part of her complaint. BD did not respond.

[7] On 11 June 2024, the appellant complained to the SLCC about BD's conduct. On her complaint form, under the heading "Complaint Points", she wrote:

"Falsifying documentation and submitting as evidence in proceedings. - The note I think was falsified bears little resemblance to the letter Mr Dewar issued to me on the back of the meeting it purports to represent. I believe that it either didn't exist or was 'improved' for the benefit of the proceedings."

Under the heading "Please tell us about how the actions of the practitioner/firm affected you", she wrote:

"I think he submitted evidence that had been amended, I think either he felt that his original note was not sufficiently detailed or there was no note made in 2016 and he drafted one as if there was. In either event he submitted falsified evidence."

The appellant asked the SLCC to "verify" the file note of 20 April 2016. A copy of her complaint form was sent to BD for comment, which was provided on 4 August 2024.

[8] On 15 October 2024 the SLCC's case investigator emailed the appellant enclosing a summary of her complaint. The SLCC's investigator further wrote:

"Verification Of Documents

In regard to your request to seek independent verification of the documents produced by Mr Dewar, the SLCC will not carry this out as part of any investigation. This is not part of the role of the SLCC, we make evidence-based decisions based upon what is provided to us by the parties."

On 23 October 2024 the appellant confirmed to the SLCC that she accepted the summary of her complaint and commented: "[BD] can very easily verify the last amendment date of the document he submitted as evidence by forwarding it to SLCC. You will be able to review its history of amendments." As agreed between the appellant and the SLCC, the complaint read:

"Complaint 1.

[BD]...failed to send me all paperwork he has in regard to my mother's interactions with him when I requested this in May 2024 as her executor.

Complaint 2.

[BD]...falsified a file note from a meeting with my father in 2016, which he submitted as evidence at a disciplinary hearing against me in May 2023.

Complaint 3.

[BD]...failed to act with competence when he failed to bring all relevant files to a disciplinary hearing against me in May 2023.

Complaint 4.

[BD]...failed to respond to my request to send me all paperwork he has in regard to my mother's interactions with him when I requested this on 1 April 2021 as her executor."

The SLCC's eligibility decision

[9] Having agreed the summary of complaint with the appellant, the SLCC proceeded to determine whether her complaint was eligible for investigation in terms of section 2(4) of the

2007 Act. In doing so, the SLCC considered BD's comments of 4 August 2024. Regarding the file note, BD stated:

- i) His firm did not use an electronic case management system. File notes would not have been saved to an electronic record as a matter of practice.
- ii) *Pace* the appellant, BD's letter of 21 April 2016 supported the authenticity of the note. All the key points raised in the file note were raised in the letter.
- iii) The level of detail in the note was hardly surprising. At the meeting, JC had made allegations that the appellant had abused her Power of Attorney to benefit herself contrary to JC's best interests. Given the seriousness of that allegation for both JC and the appellant, making a detailed record was the obvious course of action for a solicitor.
- iv) BD did not understand the need for a "personal attack". He asked, rhetorically, what possible interest he could have had in falsifying the file note? It categorically had not happened.
- v) BD confirmed that he did not view the purpose of his attendance at the SSDT as being to give evidence "against" the appellant. He gave evidence because he was obliged to do so, having been called as a witness. He was there to testify to JC's capacity and the meeting of April 2016.

[10] By eligibility decision dated 16 December 2024 the case investigator categorised all four complaints as conduct complaints. He determined Complaint 1 was eligible and would be remitted to the Law Society for investigation. The remaining complaints were ineligible for investigation. Complaint 4 was time-barred per Rule 8.1 of the SLCC Rules 2023. Complaints 2 and 3 were totally without merit.

[11] With respect to Complaint 2, the case investigator compared the file note with BD's 21 April 2016 letter to the appellant. The case investigator noted that the letter listed six incidents, all of which were identical to those referred to in the file note. The case investigator noted that Complaint 2 was based on the appellant's view that the contents of the letter bore no resemblance to the contents of the note. Having examined both documents, the case investigator was of the opposite view: the letter and the note were "essentially the same". There was no evidence to support the appellant's suspicion of falsification.

[12] The appellant now challenges the decision in respect of Complaint 2 under section 21 of the 2007 Act.

Applicable law

[13] The SLCC is the gateway body for complaints against Scottish legal professionals, established by section 1 of the 2007 Act. Section 2 sets out the preliminary steps the SLCC must take upon receiving a complaint. Section 2(1A) requires the SLCC to determine whether the complaint is a conduct complaint or a services complaint. Having done that, the SLCC must then take the preliminary steps set out in section 2(4). These are:

- “(a) to determine whether or not the complaint is frivolous, vexatious or totally without merit;
- (b) where the Commission determines that the complaint is any or all of these things, to—
 - (i) reject the complaint;
 - (ii) give notice in writing to the complainer and the practitioner that it has rejected the complaint as frivolous, vexatious or totally without merit (or two or all of these things).”

Conduct complaints are remitted to the Law Society or Faculty of Advocates (as the case may be) for investigation.

[14] The SLCC's role at eligibility stage is to sift complaints, not investigate them. Only where it would be a waste of time to refer a complaint to the relevant professional body should it be rejected as totally without merit. The policy assumption underpinning the 2007 Act is that conduct complaints should be determined by the professional bodies rather than the SLCC. The threshold for a complaint to be determined eligible for investigation is therefore very low (*AS v Scottish Legal Complaints Commission* [2020] CSIH 19, 2020 SC 433 at paragraphs 30 – 32).

[15] What, then, does it mean for a complaint to be “totally without merit”? In *Law Society of Scotland v Scottish Legal Complaints Commission* [2010] CSIH 79, 2011 SC 94 at paragraph 49 Lord Malcolm elaborated on this point:

“A flavour of the correct approach to the phrase 'totally without merit' can be gained from the link with 'frivolous' and 'vexatious' complaints. In my view, the test of 'totally without merit' is different from a test of 'without merit'. The latter would require consideration of the substance of the matter, allied to any necessary investigation. The statutory formula does not require this. It allows the sifting of complaints which, on their face, are obviously unworthy of any consideration or investigation by the professional body. It covers hopeless complaints where it is clear that further inquiries could make no difference. A conclusion that a complaint is unlikely to succeed would not meet the test for dismissal by the commission at the preliminary stage ...”

It does not follow that because a complaint alleges serious misconduct, it cannot be totally without merit. In *Law Society of Scotland* Lord Kingarth (at paragraph 35) emphasized that the SLCC must obtain “at least basic information as to the basis upon which the complaint is made”. He provided a worked example of the approach to be taken by the SLCC:

“... if the respondents receive a complaint that solicitor A is a thief, the respondents would, it seems, at least have to ask upon what basis that allegation is being made before they could assess whether there was any merit in it. If, for example, on questioning, the complainer was to answer that it was because solicitor A had red hair, the lack of merit of the complaint would be obvious.”

In determining whether a complaint is “totally without merit”, therefore, the SLCC require not only to consider the nature of the allegation made, but also the basis on which the allegation is made and any supporting evidence provided or identified by the complainer.

[16] Section 21 provides a right of appeal, with leave of the court, against decisions of the SLCC, including eligibility decisions (section 21(1)). Such appeals are restricted to the following grounds (section 21(4)):

- “(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.”

Section 22(1) provides that, in disposing of an appeal under section 21, the court may make any order it thinks fit, including substituting its own decision on eligibility for that of the SLCC.

[17] Where the SLCC’s decision is challenged on rationality grounds, only if the decision is irrational may the court interfere (*Saville-Smith v Scottish Legal Complaints Commission* [2012] CSIH 99 at paragraph 17). In other words, the court asks if the SLCC’s decision was one which a public body, properly directed in law, might reasonably make, not whether the court would necessarily have reached the same decision. Finally, in determining appeals on eligibility under section 21 of the 2007 Act, the court must recognise that the SLCC is a specialist body created by the Scottish Parliament to sift complaints against solicitors and afford it a degree of institutional respect in taking decisions within its area of competence (*Levy & McRae Solicitors LLP v Scottish Legal Complaints Commission* [2025] CSIH 23, 2025 SLT 1025 at paragraph 44).

Grounds of appeal

[18] The appellant raises two grounds of appeal. First, the eligibility decision was based on an error of law because the SLCC denied her a fair hearing by i) failing to apply the best evidence rule to the file note, ii) failing to take into account all the circumstances of the complaint, iii) fettering its discretion in investigating the complaint, and iv) not affording her the opportunity to respond to BD's response to her complaint form. Second, the decision was irrational.

[19] The SLCC concedes that the appeal must be allowed, because the decision to reject Complaints 2 and 3 as totally without merit was taken by a case investigator rather than by one of its commissioners or committees. In *Wilson v Scottish Legal Complaints Commission* [2024] CSIH 40, 2025 SLT 1, this court determined that approach to be contrary to paragraph 13(2)(a) of Schedule 1 to the 2007 Act. The eligibility decision was thus vitiated by procedural impropriety. However, the SLCC submit that it correctly decided the substantive issue. The SLCC invite the court to quash the unlawful decision but to substitute its own decision in the same terms under section 22(1).

Submissions

The appellant

[20] At the outset of the oral hearing the appellant lodged, without objection, certain email traffic in which she sought to clarify the nature of her complaint and asking a number of questions, which we need not rehearse. We should note, however, that in an email of 19 March 2025 the appellant said the following:

“Does SLCC understand my complaint? It is not about the contents of (BD's) note, nor their accuracy, my complaint is that it was drawn up in 2023 to look as if it was

drawn up in 2016 and it was framed in such a way as to add credibility to (BD's) oral evidence."

[21] The appellant moved us to allow the appeal and accepted that we should substitute our decision for that of the SLCC, inviting us to determine that Complaint 2 was eligible and to remit it to the Law Society for Investigation. The SLCC had denied her a fair hearing by failing to apply the "best" evidence rule to Complaint 2. It should have obliged BD to provide a soft copy of the file note, the metadata of which could be checked to confirm or disprove her allegation. Instead, it relied on a textual comparison of the note with the subsequent letter and BD's denial. This was a subjective exercise which the SLCC wrongly relied upon instead of obtaining the objective electronic evidence. The SLCC had further ignored the wider circumstances of the complaint. BD had failed to respond to an email from her dated 1 May 2024. Upon receiving the appellant's email of April 2024, he had consulted with business colleagues and the Law Society on whether he was obliged to respond. These were "efforts at avoidance" the SLCC ought to have taken into account. A solicitor asked to authenticate a document such as the note should have been readily willing and able to do so.

[22] The SLCC fettered its discretion by adopting the position in its letter of 15 October that it would not seek independent verification of the note. It could have asked BD for a soft copy, why he had ignored the appellant's email of 1 May 2024, why he had approached colleagues rather than just providing the note, whether they could speak to his typist to confirm his account, and why he had not provided the executry file subject to Complaint 1. Instead, it had simply asked him what his response to the complaint was. The SLCC had also denied her a fair hearing by not allowing her to comment on BD's response. A "party must have an opportunity to reply to the other party's evidence". The appellant did not

doubt the note set out BD's recollections or that those recollections were accurate. However, had she been allowed to reply to his rhetorical question as to why he would falsify the note, she would have said he might do so in order to corroborate his oral evidence. She would have stated that the note was suspiciously detailed "like a witness precognition" rather than an *aide-memoire* and her father was referred to inconsistently by his forename, his initials, and his full name therein.

[23] The SLCC's approach was irrational. Any honest solicitor would be willing to authenticate a document which he had drawn up. It could have determined the complaint conclusively with reference to an electronic copy as opposed to a subjective and superficial exercise of comparison. It was hardly surprising that the note and the letter looked "credible" because that was the purpose of falsification. On the SLCC's approach, *any* complaint of falsification was destined to fail because falsifiers would hardly offer up evidence of their fraud.

[24] The respondents' reliance on AS was flawed. AS concerned a challenge to an eligibility decision by a solicitor. Adopting the language of AS, the appellant submitted that further investigation by the Law Society could make a difference to the resolution of her complaint. That case ought not to be interpreted as imposing a higher standard for a complaint of dishonesty. The SLCC should have explained to her before it took its eligibility decision, that her explanation would form part of its consideration of her complaint. If she had known that, she would have expanded on her suspicions. A reasonable ordinary member of the public would expect BD to authenticate the note instantly. His refusal to do so was "concealment" and was suspicious.

[25] Finally, having had the opportunity to view BD's response at eligibility stage, she made further criticisms of him, such as that his working practices were so disorganised she

could not believe he would have created a detailed note of the meeting. In any event, if the note was so important he ought to have retained both hard and soft copies. The SLCC should have regarded his response as unconvincing.

[26] In oral submissions the appellant submitted that she did not understand the significance of the summary of her complaint and felt pressurised into proceeding on the basis of it, although it was not entirely accurate. Had she seen BD's response she could have amplified it but the SLCC had had the response for 2 months before they made their decision and that was procedurally improper. We pause to note that in the course of developing this argument the appellant came close to proposing a new ground of appeal. We had some difficulty in following the line of argument but as it transpired we did not need to go into any further alleged procedural improprieties given the joint position that we should decide the matter for ourselves.

The SLCC

[27] The SLCC invited the court to have regard to the appellant's complaint form and the wording thereof. She alleged career-ending misconduct on BD's part. Her twin bases for doing so, as set out in her complaint form, were her unvouched "belief" that the note was falsified and a comparison between it and the letter of 21 April 2016.

[28] An unvouched thought or belief was in the same category as Lord Kingarth's red-headed thief in *Law Society*. The SLCC was entitled to determine such complaints as totally without merit. The case investigator's conclusion, having compared the file note and letter, was entirely rational. It was not a conclusion which no reasonable public body, properly directed, could have drawn. As a matter of law, BD was under no obligation to respond to the appellant such that his failure to do so could give rise to an inference of guilt.

The onus lay on the appellant to provide some proper basis for an investigation into her allegations of serious dishonesty.

[29] The best evidence challenge fundamentally misunderstood its role. The SLCC's function at eligibility stage was to determine whether there was a proper basis to the complaint. The appellant's approach inverted the complaints process; she made a complaint of falsification then demanded that the SLCC recover evidence to provide a proper basis. This was a fishing exercise. In any event, BD's position was that no soft copy of the note was retained. Even had the SLCC adopted the unlawful procedure the appellant suggested nothing would have been recovered. There was no fettering of discretion, the SLCC had simply carried out the exercise required of it per *Law Society of Scotland*. There was no unfairness to the appellant; her position was before the case investigator. For all these reasons, there had been no irrationality. There was no basis on which the SLCC could have exercised its powers under the 2007 Act.

Decision

[30] We have no difficulty in holding that we should allow the appeal on the basis of the conceded procedural irregularity and thereafter that we should decide for ourselves whether or not the complaint is totally without merit.

[31] However, we should say that we can see no substance in any suggestion that there were any other procedural irregularities. The letter summarising the complaint is not pressurising or threatening. We can read nothing into the fact that the SLCC had BD's response for 2 months before making a decision, nor was there any requirement for them to seek the appellant's views or comments on the response. The SLCC's role not being one of investigation, it was not for them to seek an electronic copy of the note, even if one existed.

The appeal, so far as it is based on the “best evidence” rule is misconceived. That rule is one which is designed to ensure that secondary or worse evidence such as hearsay or copies of documents are not used where primary evidence is available. It has nothing to do with carrying out thorough investigations and obtaining more evidence or better primary evidence than is already available. The argument also presupposes that the SLCC are investigators, which, as we have said, they are not.

[32] Even if there were any further irregularities, the matter is now at large before us and we have had the benefit of hearing the appellant’s full arguments, including her responses to BD’s position.

[33] The complaint is based, as has been indicated, on the appellant’s belief that the file note was not written at the time. The basis for this belief is a comparison with the letter which was undoubtedly written the day after the consultation and BD’s alleged failures to respond to emails, his failure to produce an electronic copy and his seeking advice as to what he should do.

[34] Plainly, a subjective belief will not do. There must be some objective basis for it.

[35] The starting point is a comparison between the file note and the letter. As we read these documents, it seems to us that there is in fact little difference between them.

[36] The letter sets out six separate concerns on the part of JC as follows:

1. The sale of his shares without his knowledge;
2. The purchase of a Mercedes;
3. The disappearance of the older Mercedes kept at Learig;
4. The disappearance of JC’s Rolex, golf medals, premium bonds, and personal documents from Learig;
5. The missing registration paperwork for a Honda Accord; and

6. The expenses of MAC's stay at Tigh na Muirn, Monifeith

[37] The first four are directly mentioned in the note. With respect to the sixth, there is a reference in the note to MAC spending money at too swift a rate. There is no reference to the Honda Accord paperwork but missing personal documents are mentioned.

[38] Does this comparison provide a basis for a complaint that the file note was compiled as a much later afterthought? In our opinion the answer must be in the negative. If anything, one would have expected a later composition to have included all of the material in the letter. It is much more likely that the letter was composed while all of the concerns were fresh in the author's mind even though not specifically mentioned in the note.

[39] Can any support be found in the conduct of BD? Again the answer must be no. There was no obligation on him to produce any electronic copy, even if one existed. Nothing can be read into his lack of response to the complainer's emails or his seeking advice. In short there is no objective vouching of the appellant's suspicions and no basis on which the SLCC could remit the complaint to the Law Society,

[40] In *Benson v SLCC* [2019] CSIH 33 at paragraph 8, the following was said at paragraph 8:

"[8]. The commission states that in respect of issue 4 an investigation is required in order to see whether Mr Cairns is correct in stating that Ms Benson was covering up for her colleagues. If this general approach is correct, it is hard to identify how or why an allegation of wrongdoing could ever be dismissed as ineligible. While it is true that it is not for the commission to investigate and determine a complaint, it does play a 'sifting' or 'gate keeping' role to filter out cases where, for example, it is entirely clear that the available evidence cannot provide sufficient support for the complaint."

[41] It seems to us that we are in precisely the territory envisaged in the last sentence.

The appellant has provided no evidence which could form a basis for investigation. In these

circumstances we are driven to the conclusion that complaint number 2 is totally without merit.

[42] Accordingly, we allow the appeal on the procedural ground that the decision complained of was not made by a committee of the SLCC or by one of its members and we set it aside. Having, of consent, considered the matter for ourselves, in terms of section 22 of the 2007 Act, we substitute our own decision that complaint number 2 is totally without merit and the complaint is therefore rejected.

[43] We shall reserve all questions of expenses pending any further motions.