

Case Name: Andres Gartner against a decision of the Scottish Legal Complaints Commission dated 17 February 2023

Case Ref No: XA37/23

Date, Time and Duration of Hearing: Thursday 21 March 2024 at 10.30 am (1/2 day)

Division and Senators (*if known*): Second Division: Lord Justice Clerk, Lord Malcolm and Lord Tyre

Livestreamed Hearing?: Yes No

Agents and Counsel (*if known*):

Agents / Counsel for the Appellant:

Party

Agents / Counsel for Respondent:

Counsel: Fiona McLeod, Solicitor Advocate

Agents: Brodies LLP

Link to Judgment Reclaimed / Appealed (*if available*):

N/A

Case Description:

The appellant raised a complaint with the Scottish Legal Complaints Commission against his former solicitor at FlexLaw Limited. FlexLaw represented the appellant in 2021 in relation to his dispute with a neighbour about work being carried out in the property below him. He instructed the solicitor to prepare and send a cease-and-desist letter to the neighbour. The summary of complaint was agreed between the appellant and the Commission in January 2023. It comprised three issues. First, the appellant had been overcharged. Second, a draft letter forwarded to him to check before sending contained incorrect address details. Third, a letter sent to the other party contained inaccurate information and omitted information that the appellant instructed be included, leading to recall of the letter.

The Commission issued its “eligibility decision” on 17 February 2023. It dismissed the appellant’s complaints as totally without merit. The appellant had provided insufficient evidence to support his first issue of complaint. In terms of the second issue, amendments were implemented before the letter was sent out. The appellant suffered no damage from the third issue. The letter was recalled within an hour and a revised version issued. The solicitor accepted personal responsibility for the error and the appellant received a reduction in fees.

The essence of the appeal is that the summary of complaint prepared by the Commission was an inadequate summation of the concerns raised by the appellant with the result that the eligibility decision did not address all of his complaints. The Commission submits that the summary was agreed with the appellant, who did not at any stage advise that it was incorrect or incomplete. The Commission was entitled to reach the decision that it did. In any event, the Commission has offered to consider the eligibility of matters not included within the summary of complaint.