



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 39
XA18/26
XA20/26

Lord Malcolm
Lord Clark
Lady Carmichael

OPINION OF THE COURT

delivered by LORD MALCOLM

in the appeals

by

THE FACULTY OF ADVOCATES and XY

First and second appellants

against a decision of

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondent

First appellant: McKenzie KC; Balfour and Manson LLP
Second appellant: Paterson KC; Kennedys Scotland
Respondent: McLean (sol adv); Brodies LLP

13 August 2026

Introduction

[1] Both the Faculty of Advocates and XY, a practising advocate, have presented applications seeking permission to pursue appeals against a decision of the Scottish Legal Complaints Commission. As matters have developed, these applications have been rolled up with a decision on the merits of the challenges. The background is a complaint made

about the advocate's alleged misconduct when acting for the pursuer in a sheriff court action.

[2] The defender in the case had sought a commission and diligence to recover documentation from the complainer who was said to hold certain information. In the course of the proceedings, he lodged a complaint with the SLCC asserting, in summary, that (1) XY knowingly had access to documents which had been stolen from his office; (2) XY inappropriately sought recovery of them through court proceedings; and (3) lodged fraudulent invoices with the court and advanced legal arguments based upon them. The SLCC categorised the complaint as relating to matters of professional conduct; identified "general themes" within the complaint; and remitted it to the Faculty of Advocates for investigation and determination.

The Faculty of Advocates challenge to the decision

[3] The Faculty's grounds of appeal refer to the Commission's application to this complaint of a relatively new procedure, called the Sprint protocol. It was adopted after this court's decision in *Wilson v SLCC* 2025 SLT 1. It is designed to simplify and speed up eligibility decisions. Complainers had expressed concern that eligibility decisions had become more akin to an investigation than a sift of unmeritorious cases. The Faculty contends that the result was procedural unfairness and errors of law, including a failure properly to specify the complaints being remitted for investigation. The protocol caused an abdication of the Commission's responsibility to determine whether the complaint was "totally without merit" in terms of section 2(4)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007.

[4] The application of the protocol resulted in a decision being made without an opportunity for representations to the Commission from the advocate. It enjoined the case investigator to make a decision on eligibility without seeking information from the practitioner unless there was a need to identify the persons involved. It is contended that in the circumstances it should have been obvious that such an opportunity was required. An instantly verifiable and complete answer to the complaint would have been provided. As it was, no evidence had been provided by the complainer in support of the serious allegations of dishonesty. The Commission breached the basic principles of fairness underpinning the rules of natural justice. To accept the complaints in the absence of supporting evidence was irrational.

XY's challenge

[5] XY adopted the main features of the Faculty's grounds of appeal, including the failure to identify and give proper notice of the terms of the complaints to be answered. In the absence of an evidential foundation, the "outlandish and absurd" allegations should have been dismissed at the eligibility stage. The failure to afford XY an opportunity to make representations which would have made it clear that the allegations were unfounded was unfair and procedurally improper. For example, in the sheriff court action it was the defender who sought the documents from the complainer. XY acted for the pursuer, a matter verifiable from the court interlocutors.

The Commission's answers to the respective grounds of appeal

[6] As for the Sprint protocol, the Commission observed that it has a wide discretion as to how it carries out its duties under the Act and was entitled to innovate on previous

practice. All elements of the complaint were accepted for investigation. The Commission acknowledges (1) that it had no evidence from the complainer which would justify the complaint, and (2) that the allegations of dishonesty differed somewhat from the complaint made previously to the advocate, thus an opportunity to respond should have been afforded. These two factors justify reduction of the decision by the court in terms of section 21(4)(b) and (c) of the Act. Matters should be remitted to the Commission for a fresh decision.

Discussion

[7] There is no dispute between XY, the Faculty, and the Commission as to the unlawfulness of the decision, although that does not automatically lead to it being quashed. The court still requires to be persuaded that such is appropriate having regard to the available grounds for challenge set out in section 21(4) of the Act. If it does so, section 22(1) allows the court to make such order as it sees fit, including substituting its own decision for that of the Commission. Alternatively, it can quash and then remit the whole matter to the Commission for a fresh appraisal and determination. On this question, the Faculty was neutral. XY asked for a ruling that the complaint is dismissed as being totally without merit as per section 2(4)(a) of the Act.

[8] The complainer is an interested party upon whom the applications were served through the auspices of the Commission. He was informed that the decision was under legal challenge but, in common with most complainers in this situation, he has not entered the process. However, the Commission kept him informed as to any important developments, including its view that it could not defend the legality of its decision. The court was told that since the court proceedings commenced, the complainer had not

responded to any of its communications and had not provided any further representations or material in support of the complaint. On 24 June 2026 the Commission wrote to the complainer informing him of the forthcoming court hearing and of the parties' respective positions. The Commission offered to alert the court to any comments he forwarded to it, warning that the court may reach a decision in the absence of any contribution from him.

[9] At the hearing the court was told that in the absence of any representations from the complainer in response to that letter, as well as conceding the validity of the appeal, the Commission was no longer asking the court to remit the matter to it for a fresh decision. Conscious of the complainer's interest in the whole matter, after the conclusion of the hearing, through a communication from the clerk of court he was given a further opportunity to make representations. His brief response was to the effect that he considered the advocate's position to be factually incorrect and that he understood that the complaint would be remitted to the Commission and fully adjudicated.

Decision

[10] The complaint that XY had the file yet pursued a specification of documents is undermined by a major misunderstanding. It is plain from the sheriff's interlocutors, which were supplied to this court by XY, that the commission and diligence was sought by the defender. However, XY acted for the pursuer whose main concern was to make progress in the proceedings. There is also a mistaken assumption that counsel, rather than the instructing solicitor, lodges documents in the court process. Much of the complaint appears to be aimed at a solicitor, presumably the agent for the defender. He or she is said to have handled stolen papers.

[11] The complaint as to arguments based on fraudulent invoices is vague and hard to understand. It is not said that the advocate knew of any fraud, though that may be implied. At most it is an unparticularised and unsupported bare assertion of serious dishonesty which is completely lacking specification and vouching. It is denied by the advocate, as is the rest of the complaint.

[12] As matters stand, there can be only one reasonable and rational outcome, namely the whole complaint is without a proper foundation and should be dismissed. If the Commission's decision was set aside and the matter remitted to it to start again, this would give the complainer a further opportunity to provide some support for his complaints. However, the history indicates that there can be no real expectation of anything material being provided. We are satisfied that to remit for the eligibility exercise to be repeated by the Commission would be disproportionate and unfairly prejudicial to the advocate concerned. In addition to quashing the decision complained of, in exercise of our power to make such order as we think fit, we shall dismiss the complaint.

[13] In terms of two joint minutes, it was agreed that each applicant should obtain an award of their expenses against the Commission. At the hearing, XY asked for this to be on an agent and client, client paying basis. We are not persuaded that such would be appropriate. The awards will be on the usual party and party basis.

Postscript

[14] It is unusual for the Faculty to intervene in respect of Commission decisions. The court assumed that there was to be a general attack on the legality of the new policy approach set out in the Sprint protocol. However, this was disavowed by counsel for the Faculty. He explained that the concern related to its application in the particular

circumstances of this case. After some initial hesitation, he also confirmed that it would have been open to the Faculty's Complaints Committee to consider the material forwarded by the Commission and determine that the complaint should be dismissed without a need for any further procedure.

[15] The Commission was set up as a single gateway for conduct complaints against practitioners because of a concern that too many were too readily dismissed by the professional bodies. The Act placed an important supervisory responsibility on the Commission in respect of how the professional bodies comply with their responsibilities regarding complaints against their members. In addition, it imposed a sifting burden on the Commission, including filtering out complaints which it judged to be "totally without merit". This carries an obvious risk of the Commission being drawn into an inappropriate investigation and consideration of the merits of a complaint, something which remains the responsibility of the professional bodies. Achieving the correct balance will often be no easy task. The court can understand a desire to simplify and speed up eligibility decisions in conduct cases. Nonetheless the statutory sifting duty must be observed. The lesson of the present case is that the rules of natural justice and fairness to not only the complainer but also the practitioner must be observed.