

Case Name: Rory O'Brien v The Scottish Legal Complaints Commission

Case Ref No: XA9/24

Date, Time and Duration of Hearing: 15 October 2024 at 1030 (half-day hearing).

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

Agents: n/a-Party

Counsel: n/a

Agents / Counsel for the Respondent:

Agents: Burness Paull

Counsel: D. Welsh

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

Not available

Case Description:

The appellant was involved in a car accident in March 2019. He reported the matter to his insurance company and was referred to a firm of solicitors. The firm ultimately became instructed, the appellant having electronically signed their terms and conditions, which provided that he would become personally liable for their fees where the agreement was terminated. By January 2022, the claim had not settled and the firm advised the appellant about raising court proceedings. The appellant did not provide instructions, which the firm considered to be

termination of their services. The appellant did not pay the sums considered due. The firm accordingly raised a court action against the appellant in Wrexham County Court to recover their legal fees, which was unsuccessful, the court concluding that there was no clarity nor certainty as to the funding arrangement.

The appellant raised a complaint with the Scottish Legal Complaints Commission against the firm and their practitioner. The only issue of relevance to the present appeal, issue 3, alleged that the practitioner had failed to act with integrity in that he pursued a court action against the appellant to recover the firm's legal fees for which the appellant was not responsible. The appellant's position was that he never had a contract with the firm and that it had never been suggested that anyone other than his insurers would be liable for costs. The firm did not provide any comment, an appeal against the County Court's decision being outstanding at that time.

On 31 May 2023, the SLCC issued its eligibility decision finding issue 3 to be totally without merit. It reasoned that the practitioner had acted in the exercise of his legal rights in raising the action against the appellant. There was no evidence that he had acted in bad faith such as to amount to a breach of the Law Society of Scotland's Conduct Rules. The appellant argues that: (i) the SLCC's decision was wrong; (ii) it erroneously considered evidence, transcripts and the decision from the Wrexham County Court action to be irrelevant; (iii) it did not have regard to the fact that the County Court had not awarded costs to the appellant as, having

self-represented, he had not incurred any; (iv) it did not seek comment from the firm; (v) it refused to reconsider its decision; and (vi) it failed in its duty to thoroughly investigate the complaint.