EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 13
XA77/25

Lord Matthews
Lady Carmichael
Lord Braid

OPINION OF THE COURT

delivered by LADY CARMICHAEL

in the cause

by

PATRICK HENRY MCAULEY

Applicant

for

leave to appeal a decision of the Scottish Legal Complaints Commission

Applicant: Party
First Respondent (SLCC): McGregor KC; Harper Macleod LLP
Second Respondent (Law Society of Scotland): D Blair; Balfour + Manson LLP

17 March 2026

Introduction

[1] This Opinion should be read in conjunction with that delivered in [2026] CSIH 12 which relates to a separate application (Court reference XA48/25) by Mr McAuley for permission to appeal a decision of the Scottish Legal Complaints Commission ("the Commission"). A number of the arguments that Mr McAuley pursued in this application are identical to those which he pursued in application XA48/25. This application, like the

earlier application, is for permission to appeal against an eligibility decision made by the Commission.

[2] Relevant statutory provisions, and a summary of the principles relating to eligibility decisions, and to the role of the court in appeals against them, are set out at paras [1] to [3] of our Opinion in [2026] CSIH 12. We do not repeat them here.

[3] The Law Society of Scotland ("the Law Society") complained to the Commission about Mr McAuley's conduct. The Commission decided that the complaint was not premature, was not time-barred, and was not frivolous, vexatious or totally without merit.

[4] A feature of the complaint, and one of the matters about which Mr McAuley complains, is that the Chief Executive of the Commission raised with the Law Society the question of whether some of Mr McAuley's correspondence with the Commission had been conducted in improper terms. That was one of the matters recorded in the Minutes of the Law Society's Complaints and Oversight Sub Committee meeting of 5 December 2024, when it considered whether to make a complaint in respect of the matters that came to form the first two paragraphs of its complaint to the Commission.

[5] The Law Society's complaint came to be set out in three paragraphs, each dealing with a different matter. The Commission described the material in those paragraphs as issues one, two and three. Issue one relates to correspondence, between 6 August 2024 and May 2025 with (a) the Law Society, its staff and agents, (b) the court and court staff, and (c) the Commission. The terms of the correspondence are said to be apt to draw the profession into disrepute. We describe issue two more fully below. Issue three specifies four aspects of Mr McAuley's conduct in Employment Tribunal proceedings on or around 8 May 2025, again said to be apt to draw the profession into disrepute.

[6] The second issue contains the following allegation:

> "In or around August 2024, Mr McAuley submitted to the Law Society's Practising Certificate Sub Committee (the Sub Committee) for consideration at its meeting on 8 August 2024 a supporting document to his application for a practising certificate, setting out why he wished to obtain a practising certificate, which included, at the section headed 'Conclusion', a threat to raise proceedings under the Equality Act 2010 in the event that the application was not granted on terms favourable to him, said threat being designed to improperly influence the Sub Committee in its decision, or otherwise persuade it improperly to grant his application in such terms, in breach of Rules B1.2, B1.9, B1.14 and B1.16 of the Practice Rules."

[7] The passage in the "supporting document" that gives rise to issue two in the complaint is this:

> "The applicant hopes all the above shall be enough for acceptance. With all due respect, to get down to business & the legal nitty-gritty, if rejected, the applicant would consider any such refusal to be a breach of EQA 2010, Part 7, sections 100-107, on entry rights to associations as an independent contractor. The Committee is acting as a licensor to consider applications from applicants to act as an 'Officer of the Court', invoking a duty under section 6 of HRA 1998 to act in accordance with the European Convention of Human Rights. As per the guidance of the ECtHR, the Committee should be aware it is the applicant's position that if this application if [*sic*] rejected & refused, then the Committee would be considered to be acting in a violation of Article 1, Protocol 2, The Right to Education - this encompasses not just the right to get educated, but also a right of acknowledgment on marketplaces of educational qualifications, and also, Article 14 The Prohibition of Discrimination - as the applicant has all the qualifications any rejection would have to be based upon a discriminatory criterion or criteria which would be unlawful. The applicant also duly notes that LLM In Construction Law Graduates have a right to be acknowledged as a Solicitor, and the applicant has an LLM in civil law too, thereby giving the applicant a further right not [*sic*] to be treated fundamentally no differently from them when he has the same objective ACAS level of education."

Decision

[8] Mr McAuley intends to argue on appeal that the passage quoted above contained an indication that he would challenge a decision unfavourable to him by reference to the Equality Act 2010 and then by reference to the Human Rights Act 1998. His submission was that drawing attention to those provisions, and indeed bringing any eventual challenge made by reference to them, were things that he was entitled to do. A "threat" to invoke the

provisions was not an unlawful threat. It was not capable of amounting to misconduct, or unsatisfactory professional conduct. That line of argument was identified by Mr McAuley under reference to his 13th plea-in-law, which was to the effect that the whole complaint should have been categorised as frivolous, vexatious and totally without merit.

[9] So far as issue two in the complaint is concerned, the question for us is whether there is a real prospect of Mr McAuley's arguing successfully on appeal that the Commission erred in law or acted irrationally in failing to conclude that correspondence in the terms quoted could never amount to a departure from the standards of conduct, such that it would be a waste of time for the Law Society to consider it. See *Levy & McRae Solicitors LLP* v *SLCC* [2025] CSIH 23, 2025 SLT 1025 at paragraphs 43 - 45 and the authorities cited there. We are satisfied that there is such a prospect and therefore grant permission to appeal.

[10] That was the only matter in respect of which we were satisfied that the grounds of appeal disclosed a point that had a real prospect of success. Mr McAuley sought permission on a number of other grounds, and we set out our views about those below.

Plea-in-law 1

[11] The submission was that the Commission were the true originators of the complaint, and so could not adjudicate upon it. Mr McAuley cited *Cannon, Petitioner*, [2020] CSOH 23, 2020 SC 281. The Commission is not the complainer in this matter. The complainer is the Law Society. As Lord Brailsford pointed out in *Cannon*, the Commission has no power to complain to itself, by initiating a complaint of its own motion. If it notices conduct on the part of a lawyer that might provide grounds for a conduct complaint, it cannot initiate that complaint itself. It is confined to drawing the matter to the attention of a person who can make a conduct complaint - for example, the Law Society. If the Commission were not

permitted to do that, and to consider a complaint brought by that person, then conduct potentially constituting professional misconduct or unsatisfactory professional conduct which came to its notice might escape any regulatory consequences. The submission is without merit.

Plea-in-law 2

[12] Mr McAuley argues that the Commission had, in bad faith, falsified the date on which it sent the preliminary eligibility decision to Mr McAuley, deliberately giving the impression that he had 6 days to consider 300 pages of documents sent to him, when in fact he only had 3 days in which to do so. A file note recorded that it was sent on 17 July 2025, when the label on the package recorded that it was sent on 21 July 2025. The Commission produced a Royal Mail delivery receipt indicating that the package was delivered on 22 July 2025.

[13] Whenever the package was sent, there is no dispute that it was delivered on 22 July 2025. Under reference also to pleas-in-law 7 and 8 Mr McAuley's complaint was that he had insufficient time to respond. We therefore deal with this plea below, along with pleas 7 and 8.

Plea-in-law 3

[14] Mr McAuley maintains that the complaint had "settled for £0.00". This is a reiteration of the argument he presented in application XA48/25 to the effect that conduct which resulted in no financial loss could not constitute professional misconduct or unsatisfactory professional conduct. That is misconceived for the reasons we give at paras [8] and [9] of [2026] CSIH 12.

Plea-in-law 4

[15] The complaint was not brought by a person. It was brought by a Mr Martin Campbell on behalf of the Law Society. There was no evidence that he had the authority of the Law Society to bring it.

[16] We refer to paras [23] and [24] of [2026] CSIH 12. Mr Campbell is a person. The Law Society is also a person. Both Mr Campbell and the Law Society are persons and as such fall within the scope of the expression "any person" in section 2(2)(a) of the Act. The argument is without merit.

Pleas-in-law 5 and 6

[17] Mr McAuley submitted that the Commission should have found that the complaint against him was premature. The Law Society had not put it to him first for a response before making the complaint to the Commission. That is, at least in part, incorrect. The Law Society wrote to Mr McAuley on 19 November 2024 indicating that the Complaints and Oversight Sub Committee was to meet to consider whether or not to raise a conduct complaint with the Commission. The letter referred to communications that Mr McAuley had conducted with the Commission and the Law Society in relation to a variety of regulatory matters, including his restoration to the Roll of Solicitors, his application for a practising certificate, the conduct complaint made against him by the Faculty of Advocates, and the submission to the court of his appeal against the SLCC's eligibility decision on that complaint. The letter does not mention Mr McAuley's alleged conduct in the Employment Tribunal proceedings, which post-dates the Sub Committee's consideration of matters in December 2024. The letter invited Mr McAuley to make submissions to the Sub Committee

and attached the correspondence from Mr McAuley that was to be considered by it. The Sub Committee made a decision in December 2024 in relation to the matters focused in issues one and two, and submitted a complaint relating to all three issues in June 2025.

[18] Had Mr McAuley had notice of the complaint, he submitted that he would have responded that "correspondence referred to was still live in cases in the Employment Tribunal, Employment Appeal Tribunal, and the United Kingdom Supreme Court".

[19] There is no absolute rule that a practitioner must be given an opportunity to respond to a complaint before the complainer submits it to the Commission. That is reflected in the Commission's *Policy and Procedure Manual*, at paragraph 3.3.22. One of the issues to be taken into account is whether a complaint has come from another regulatory body, and another is whether there is any realistic prospect of resolution. Both of these factors are plainly relevant in the present case. There is no real prospect of arguing successfully that the Commission was not entitled to accept the complaint, rather than rejecting it as premature, nor that a response in the terms outlined by Mr McAuley would have resolved any of the matters in the complaint.

Pleas-in-law 2, 7 and 8

[20] These pleas were concerned with the service of the eligibility decision and the supporting documents. The decision letter itself had not been in the package in which the supporting documents were delivered, but had been, as we understood Mr McAuley's submission, packaged beneath the address label, where he eventually discovered it. It had not been properly served. Even if it had been, there had not been a fair opportunity to respond to it.

[21] Mr McAuley's position is that he did find the preliminary eligibility decision letter but was delayed in doing so because of its having been enclosed below the address label, rather than in the package. According to paragraphs 35 to 37 of the appeal, Mr McAuley discovered that between 13 and 17 August 2025.

[22] He said in oral submissions, that he had "five or fewer" days in which to respond to the bundle of documents. In his appeal document, Mr McAuley also submitted that, having regard to the volume of supporting documentation, three days was "far too short" a time to enable him to consider them.

[23] There is no requirement in the Act for the Commission to send a preliminary eligibility decision to a practitioner. The Commission should, however, generally provide an opportunity for a practitioner to put forward "an immediate and instantly verifiable complete answer" to the complaint, if he can: *Kidd* v *SLCC* [2011] CSIH 75. There is no statutory provision, rule or published policy specifying whether the preliminary eligibility decision should be packaged with supporting papers or enclosed in any other way. On the hypothesis that it was packaged in the way that Mr McAuley described in his submissions, there is no basis for saying that that represented a procedural irregularity.

[24] We note, that, with the possible exception of the point which we have identified as meriting a grant of permission to appeal, none of Mr McAuley's submissions is of the nature of "an answer which provides an immediate and instantly verifiable complete answer" to the complaint against him, or any part of it.

[25] By reference to these pleas, Mr McAuley advanced also an argument that the Commission had failed to send him notice of a specified regulatory scheme. That argument is misconceived for the reasons given in para [11] of [2026] CSIH 12.

Plea-in-law 9

[26] Under reference to this plea Mr McAuley submitted that there was no quality check on the eligibility report. This is similar to the submission that Mr McAuley made about the eligibility decision in application XA48/25. There is no requirement in the Act that either an eligibility decision, or an eligibility report, contain an explicit reference to quality assurance. The eligibility report is prepared in the course of the sifting process. The argument does not have a real prospect of success.

Plea-in-law 10

[27] Plea-in-law 10 was directed at the circumstance that the decision to remit the complaint to the Law Society was taken by an employee of the Commission, rather than a committee of the Commission, or one of the Commission's members. The point is the same as that discussed at paras [15] – [17] of [2026] CSIH 12. For the reasons given there, it is without merit.

Plea-in-law 11

[28] Mr McAuley argued that the complaint remitted to the Law Society was not a complaint, because it contained a number of different and discrete issues relating to his conduct. This submission is without merit for the reasons that we have given at paras [25] and [26] of [2026] CSIH 12.

Plea-in-law 12

[29] By reference to this plea-in-law, Mr McAuley submitted that there was no "competent evidence bundle" in an Appendix to the eligibility report. That line of argument

is the same as that discussed at paras [30] and [31] of the Opinion in application XA48/25. In the present application, the complaint relates in part to his own correspondence (issues one and two), and to his conduct towards an employment judge in the course of Employment Tribunal proceedings (issue three). Whatever the position may have been regarding the eligibility report, the Commission provided Mr McAuley with an extensive volume of documents, including his correspondence with the Law Society, correspondence with the courts, and correspondence with the Commission, when it provided him with the preliminary eligibility decision. The bundle included the written decision of Employment Judge Whitcombe on expenses in proceedings brought by Mr McAuley against the Law Society and the Commission. That judgment narrates some of the circumstances giving rise to the allegations in issue three in the complaint.

[30] There is no requirement that there be an appendix to an eligibility report: [2026] CSIH 12, para [31]. The Commission in any event provided Mr McAuley with the documentary evidence on which it was relying along with the eligibility decision. It is quite clear that the eligibility report was prepared in reliance on the material in those documents. The argument is without merit.

Plea-in-law 13

[31] Mr McAuley submitted that the whole complaint was frivolous, vexatious and totally without merit. With the exception of issue two, with which we deal above, we are not satisfied that there is a real prospect of arguing successfully that the Commission's decision to remit the complaint was tainted by any of the types of error identified in section 21(4) of the Act, bearing in mind the very low threshold for eligibility.

[32] Issue one proceeds on the basis that Mr McAuley's correspondence includes unfounded allegations of serious wrongdoing, including racism, sectarian bigotry and malice. By way of example, the correspondence includes a description of a judge as a "racist beast", and a description of the Law Society's agent and of the Dean of the Faculty of Advocates as a "pair of racist and bigoted shysters". The specification in issue three includes allegations that Mr McAuley attempted to mimic the employment judge's voice or accent in a sarcastic and mocking manner, and that he used the noun "cheat" to refer to the employment judge. There is no real prospect of Mr McAuley's demonstrating that the conduct averred in issues one and three could never amount to a departure from the standards of conduct.

[33] For the reasons given in paras [8] and [9], above, we grant leave to appeal.