



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 42
XA86/25

Lord Malcolm
Lord Clark
Lord Ericht

OPINION OF THE COURT

delivered by LORD MALCOLM

in the appeal

by

CANNONS LAW PRACTICE LLP

Appellant

against

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondent

Appellant: Lord Stewart of Dirleton, KC; Drummond Miller LLP
Respondent: D Welsh; Burness Paull LLP

1 September 2026

Introduction

[1] Cannons Law Practice asks the court to quash a decision of the Scottish Legal Complaints Commission which upheld four complaints made against a practitioner and the firm itself. The background can be summarised as follows. In December 2023 the complainer sought advice on a separation agreement. In late February 2024 she asked the firm to draft such and to include child contact arrangements. She made disclosures about

her husband which caused the firm to ask police to attend. The complainer had a period in hospital. After her discharge she again attended the firm's office and agreed that counsel would be instructed. Subsequently she met with counsel and a paralegal. Thereafter counsel advised that she should instruct a firm specialising in family law which would preserve the integrity of the criminal investigation relating to her husband. The firm's staff had provided witness statements to the police after the disclosures made in February. The firm stopped acting for the complainer on 8 May 2024.

[2] The four upheld complaints were as follows. First, that the firm agreed to act despite not specialising in family law. Secondly, there was an undue delay in identifying a conflict of interest. Thirdly, no terms of business setting out fees and charges was provided until after the firm ceased to act. Fourthly, the complainer was not informed as to the additional costs of instructing counsel.

[3] A case investigator issued a report to the parties recommending that these complaints be upheld and that there be payment of compensation of £300 for inconvenience and distress. The practitioner communicated concerns with the report, but out of a desire to move on accepted the recommendations and agreed to pay the compensation. However, the complainer considered that the suggested compensation was inadequate. As a result, the matter was referred to a determination committee of the Commission. It endorsed the case investigator's recommendations and reasoning as to the upholding of the four complaints but increased the compensation to £750.

The appeal

[4] The terms of the appeal as lodged are not easy to follow, but at the hearing the concerns were focussed by senior counsel in a more helpful manner. It was submitted that

the decision to uphold the first complaint was irrational and an error of law. The absence of Law Society of Scotland accreditation in family law did not mean that the practitioner was not competent to advise on the issues raised. She was fully entitled to appear and represent a client in any sheriff court. Accreditation is promotional, rather than a badge of quality. The Commission's decision conflated specialisation and competence. The complainer was given the names of two specialist firms in case she wished to raise a divorce action. This was because of the religious beliefs of a member of staff.

[5] With regard to the second complaint concerning alleged delay in identifying the conflict of interest, there was a failure to consider the matter in the round. It was stressed that this was an emotional and vulnerable client with health issues. She was in need of a solicitor, and in effect both a social worker and a shoulder to cry on. Questions arose regarding the firm's involvement in the criminal investigation. Counsel confirmed the conflict of interest. Work was done which could not be charged.

[6] As to the third complaint about late provision of terms of business, again the full circumstances were not taken into account. The complainer's husband might have been monitoring her emails. The instructions to the firm tended to fluctuate. The investigator did not specify when the terms of business should have been intimated. The delay caused no harm. No hard and fast rule of conduct was broken. The complainer might not have comprehended the complexities of a terms of business letter. There were concerns as to her capacity. There had been no practical opportunity to issue such a letter.

[7] On the final matter as to advice regarding counsel's costs, the firm informed the case investigator that it had advised as to the fees for instructing counsel. It was asserted that the file indicated that associated costs were notified in advance.

[8] When deciding to increase the compensation, the Determination Committee had regard to a letter from the complainer's general practitioner. The firm had no opportunity to see it and comment on it, nor on any question as to the adequacy or otherwise of the investigator's recommendation as to the appropriate sanction. Concerns were expressed as to imposition of the maximum complaints levy, but that is not a matter falling within an appeal of this kind brought under section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007.

The Commission's findings

[9] At this stage it is appropriate to summarise the investigator's findings as to the facts. (Subsequently they were adopted by the Determination Committee.) At the initial meeting in December 2023 a paralegal offered the complainer the names of two other firms should she wish to raise an action for divorce. (Plainly she did not take up this suggestion.) On 26 February 2024 the firm emailed advising that they could assist with drafting a minute of agreement regarding child contact and financial matters. The complainer formally instructed the firm the following day and had the meeting which resulted in the attendance of police officers. On 6 March staff at the firm provided statements to the police regarding disclosures made by the complainer. She was visited in hospital by a member of the firm on 26 March.

[10] At a meeting with the complainer in the firm's office on 10 April, it was agreed that there would be a consultation with counsel experienced in both criminal and civil law, this with a view to drafting an initial writ seeking an order under section 11 of the Children (Scotland) Act 1995 concerning child contact and residency, and a subsequent appearance at a hearing. That day the firm invoiced the complainer in the sum of £2,500 plus VAT for

professional services rendered and outlays for counsel up to the first court hearing. The complainer was advised that payment would allow counsel to be instructed. On receipt of those funds counsel was instructed.

[11] After a meeting on 8 May counsel advised in writing that the complainer should be invited to instruct a firm specialising in family law, other than Cannons Law. This would allay her concerns and preserve the integrity of the criminal investigation by separating her witnesses in that matter from her representatives. That day the firm withdrew from acting because of the conflict of interest. A final invoice for restricted fees of £1,000 was sent, this being covered by monies already received. On 17 May the complainer requested a fuller breakdown of costs and a copy of the firm's terms of business. The firm's terms and conditions and details as to counsel's costs were forwarded on 20 May.

[12] In an email to the Commission dated 7 October 2024 the firm stated that although not accredited as a specialist in family law, it did carry out a number of cases annually seeking all remedies in family law. It asserted that the term "family law" is ill-defined and covers a number of issues. In any event specialist counsel was instructed.

[13] The complainer felt that at the outset she should have been referred to a family law solicitor. The firm should have flagged sooner that they did not specialise in her type of case. She considered that her time and the fees paid were wasted.

The Commission's decision on the first complaint

[14] The investigator noted that solicitors should follow the principle of competence. The reference at the first meeting to alternative firms indicated that the firm appreciated that in the event of a divorce action they would not be qualified to act. There was no engagement letter setting out the scope of work to be carried out or explaining the limitations of what the

firm was prepared to do. Once it was apparent that matters had progressed beyond the scope of their proficiency, the need to instruct counsel to draft a writ which it was unable to draft and appear in the sheriff court with the associated additional costs ought to have been explained. All the relevant facts should have been provided in writing. Being deprived of this, the complainer did not have an opportunity to decide whether to instruct a firm specialising in family law. The failure to provide this information amounted to an inadequate professional service and thus the first complaint was upheld. This reasoning was endorsed without additional comment by the Determination Committee.

Analysis

[15] At the outset it can be noted that, strictly, the determination on the first issue does not match the complaint. It was that the firm should not have acted for the complainer in the first place because it was not a specialist in family law. An assumption appears to have been made that counsel was instructed to assist in the obtaining of a section 11 order because the firm came to appreciate that matters had progressed beyond its proficiency, and this should have been explained to the complainer. We suspect that it has not been appreciated that firms up and down the country make use of counsel, not as a result of being out of their depth, but because it is a well-established method of enabling busy firms to sustain a service to a large number of clients. Access to justice for consumers throughout Scotland is enhanced by the ability of local High Street firms of solicitors to make use of the expertise of counsel for the benefit of their clients. Further, there was an unusual and specific issue in this case as to a potential conflict of interest. (Whether it should have been identified earlier is the issue in a separate complaint.) It seems clear that this was a major

factor in the involvement of counsel. It was also the reason for the advice that the firm should cease acting and for it doing so.

[16] We consider that there is force in the firm's concerns regarding any proposition that it should not have acted for the complainer, especially in that there was a conflation of competence and specialisation. It is unfortunate that it would appear that the reason for not taking on divorce actions was not explained to the client or the Commission. In any event, the indication from the paralegal at the first meeting can hardly be taken as evidence that the more limited work actually instructed was beyond the firm's competence. If only firms claiming to be specialists in family law, however that might be established, could do this, considerable problems would be created.

[17] The Commission contends that all proper procedures were followed and the decision was one that it was entitled to reach. Solicitors should only accept instructions in an area of law in which they are competent and have the appropriate level of skill, see Rule of Conduct B1.10.

[18] We consider that the missing link is any evidence from which it can be concluded that the practitioner did not possess the skill and competence to accept the limited instructions given by the complainer. The result is that the determination was unsupported by the facts and was erroneous in law, both of which are valid grounds of challenge in terms of section 21(4) of the 2007 Act.

The remaining complaints

[19] So far as the upholding of the remaining three complaints are concerned, we have identified no valid ground of challenge which would justify our interference. They were each a decision on the facts which the Commission was entitled to reach. We shall quash

the determination on the first complaint, labelled issue number 1 by the Commission, and in exercise of our power under section 22(1) of the 2007 Act substitute an order that it is not upheld. We shall also quash the decision on compensation which will now require reassessment. In these circumstances we shall remit the matter to the Commission solely for a fresh decision as to whether there should be a financial sanction, and if so, at what level.