

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

I N T E R L O C U T O R

in Appeal under Section 42ZA(9) of the Solicitors
(Scotland) Act 1980 as amended

by

ALAN CONROY, Conroy McInnes Limited, 268
Kilmarnock Road, Glasgow

Appellant

against

THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh

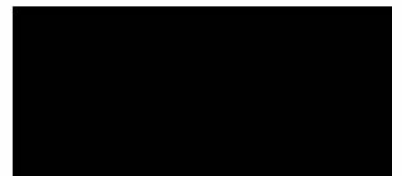
First Respondents

and

RAJESH HIREMATH, 10 Eskfield Grove, Dalkeith

Second Respondent

By Video Conference, 27 April 2022. The Tribunal, having heard submissions from parties, Declines at this stage in proceedings to uphold the appeal the basis of one error of fact contained within the First Respondent's determination; Continues the Appeal to a hearing to be held remotely on 22 June 2022 at 10am; and Reserves all questions of publicity and expenses meantime.



Colin Bell
Chair

NOTE

The background to this case is that an identity fraudster pretending to be the Second Respondent instructed the Appellant to sell the Second Respondent's house. The Second Respondent made a complaint about the Appellant's conduct alleging a failure to carry out proper identity checks on the client and to ensure that he was the owner of the property in question. The Professional Conduct Sub Committee (PCSC) of the First Respondents made a finding of unsatisfactory professional conduct against the Appellant. This was contrary to the recommendation of the Reporter.

Unsatisfactory professional conduct is conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor (Section 46 of the Legal Profession and Legal Aid (Scotland) Act 2007). Unsatisfactory professional conduct lies on a spectrum between inadequate professional services and professional misconduct. The standard of proof to be applied to the evidence was the civil standard of balance of probabilities.

The Appellant lodged an Appeal dated 24 June 2021 with the Tribunal under Section 42ZA(9) of the Solicitors (Scotland) Act 1980. The Appeal was served on the First Respondents and the Second Respondent. Initially, the Second Respondent did not enter proceedings. The Appellant and the First Respondents lodged a Joint Minute on 13 August 2021 inviting the Tribunal to quash the determination of the First Respondents under Section 53ZB(1) of the Solicitors (Scotland) Act 1980. It was noted that the PCSC had recorded that the purchasing company's registration number identified it as a building society. The Appellant and the First Respondent agreed that this was an error of fact which was contradictory of the evidence and was grounds for the Tribunal to quash the determination (Hood, Petitioner 2017 SCLR 799). The Fiscal advised that the Second Respondent had requested that he be allowed to make a statement at any hearing assigned. The Tribunal extended the period for the lodging of Answers to allow the Second Respondent an opportunity to enter the proceedings. The Second Respondent lodged Answers. The matter was set down for a virtual procedural hearing on 4 October 2021.

At the virtual procedural hearing on 4 October 2021, the Tribunal invited the Second Respondent to prepare Answers in the usual form received by the Tribunal and fixed a further procedural hearing for 17 November 2021. On that date, on the Appellant's motion, the Tribunal fixed a virtual preliminary hearing for 21 January 2022. The question of law to be addressed at the preliminary hearing was whether one error of fact is sufficient for the Tribunal to quash the PCSC decision, or whether the

Tribunal's decision depends on the materiality of that error. The preliminary hearing due to take place on 21 January 2022 was adjourned to 27 April 2022 due to the ill health of participants.

At the virtual preliminary hearing on 27 April 2022, the Appellant was present and represented by Ian Ferguson, Solicitor, Glasgow. The First Respondents were represented by their Fiscal, James Campbell, Solicitor, Edinburgh. The Second Respondent was present and represented by Kordell Fournier. Mr Fournier is a Canadian barrister and solicitor but is not on the roll of solicitors in Scotland. Parties made submissions on the question posed at the procedural hearing on 17 November 2021.

SUBMISSIONS FOR THE APPELLANT

Mr Ferguson made submissions based upon his written note of argument. The PCSC decision states that,

“One of the non-solicitor members drew attention to the fact that the purchasing company, on the basis of its registration number was classed as a building society by Companies House.”

He said this was contradictory of the evidence. The PCSC relied on this purported fact by identifying it as one of a number of “red flags” which should have put the solicitor on notice. The decision was therefore flawed. The PCSC did not consider the “fact” to be minor. The red flags were not rated.

The PCSC decision noted that the house was being sold at below market value. No such fact was found by the Reporter and no evidence was before the PCSC on this. This was also identified as a red flag. The decision was therefore flawed.

In his oral submission, Mr Ferguson said that if any Hood ground was met, that was grounds for overturning the decision. The grounds stood alone. All members of the PCSC accepted the purported fact was a red flag. It was shameful that no one checked the situation. There was clearly something wrong with their decision-making.

SUBMISSIONS FOR THE FIRST RESPONDENTS

Mr Campbell also made submissions based upon his written note of argument. His written note related to the alleged error of fact. No indication was given on the First Respondents' position in relation to the other heads of appeal.

The Appellant and First Respondents were agreed that there was and is no evidence that the purchasing company was classed as a building society by Companies House. This was contradictory of the evidence. The error was relied upon as one of a number of red flags which should have put the solicitor on notice. Multiple factors resulted in the determination that the conduct amounted to unsatisfactory professional conduct. It is impossible to know whether, without reliance on that particular fact, that the PCSC would have reached the same determination. There is nothing in the PCSC decision to say that the purported fact was insignificant. The Reporter, who did not take this falsehood into account, came to a different conclusion.

Mr Campbell drew the Tribunal's attention to the fact that the error of fact was raised for the first time at the PCSC meeting. Neither party received prior notice of it. They had no opportunity to address and respond to it.

Mr Campbell submitted that the second test in Hood, Petitioner applied in these circumstances and the appeal ought to succeed on that basis alone and the Tribunal should quash the PCSC decision.

SUBMISSIONS FOR THE SECOND RESPONDENT

Mr Fournier also made submissions based upon his written note of argument. In his submission, Hood, Petitioner does not require that any error is fatal but rather takes a holistic approach whereby the PCSC's whole approach is analysed. If that were not so, any error regardless of relevance would be sufficient to quash a determination of the PCSC.

In Mr Fournier's submission, there were a number of red flags. The error relates to only of those. The factual error that the purchaser was not a building society cannot be central to the decision given the presence of multiple other red flags with regard to client identification and the overall transaction. The PCSC determination is not a decision that no reasonable tribunal could reach.

In his oral submission, Mr Fournier said common sense had to be applied to the situation. The PCSC had to assess the weight of the evidence. One error cannot vitiate the whole decision. There were many failings here. The PCSC did not say that they all had to be present to support its finding. The issues regarding identification are key. It is clear that the Appellant did not take appropriate care.

DECISION

All parties agreed that the PCSC had made an error when it identified the purchasing company as a building society. The question for the Tribunal was whether that error in and of itself was sufficient to quash the PCSC determination, without wider consideration of all the circumstances of the complaint and the Appeal.

The Second Respondent's complaint was that,

“Mr Alan Conroy and/or the firm of Conroy McInnes failed to carry out proper identity checks on their client and to ensure that their client was the owner of the property in that the property was not owned by their client but was in fact owned by me.”

The PCSC's decision noted that there were “a number of red flags” which should have put the solicitor on notice that there were issues with the client's identification. Various factors were identified before that statement. It was noted that the house had not been advertised for sale, that an offer had been received by the solicitor prior to meeting the “client”, and that the house was being sold at below market value. The purchaser was a company registered in England. Erroneously, that company was identified by a member of the PCSC as a building society. The PCSC also noted issues with the driving licence provided by the seller for the purposes of identification. The photograph on it was undated and there was no expiry date printed on the photograph which did not extend below paragraph 8 on the licence as it should. The words “Driving Licence” were too close to the EU flag on the top left of the licence. These were all matters which in the opinion of the PCSC should have given rise in the mind of the solicitor of a risk that the licence was not genuine. The PCSC also highlighted that the note of the meeting was brief in the extreme. There was no information as to why the “client” was instructing the solicitor rather than the firm which had acted in the purchase. There was no information about keys. There was no information as to how the purchaser had found or knew the property to be for sale. There was nothing to suggest that the solicitor had enquired as to the whereabouts of the title deeds which were obtained from the Registers of Scotland. Some of these points had been raised in the December 2012 issue of the Journal of the Law Society of Scotland.

It cannot be the case that any error of fact made by the PCSC automatically means that its determination ought to be quashed. If the erroneous information had been the only factor in the PCSC's mind, then that might well constitute a shortcoming in the PCSC's decision-making. However, there were multiple factors to the PCSC determination and on the face of it, the decision also rested on these factors. In these circumstances, the Tribunal must assess whether, if the incorrect information is

eliminated, the decision could still stand, or ought to be quashed. The Tribunal was not prepared to quash the appeal at this stage in proceedings based on one error of fact about the designation of the purchasing company. An assessment would have to be made regarding the materiality of that error to the whole decision.

The Tribunal allowed the Appeal to be amended in terms of the Appellant's Minute of Amendment. Parties indicated they would lodge with the Tribunal in good time the papers which were before the PCSC. The Tribunal continued the case to a virtual hearing on 22 June 2022. All questions of publicity and expenses were reserved meantime.



Colin Bell
Chair