THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(SSDT RULES 2024)

INTERLOCUTOR

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers")

against

JOHN ANTHONY LINDSEY OLIVER, Geo & Jas Oliver WS Limited, 13 High Street, Hawick (hereinafter referred to as "the Respondent")

By Video Conference, 22 September 2025. The Tribunal, having considered the submissions on behalf of both parties; Upholds the Preliminary Plea of the Respondent that the Complaint is irrelevant for want of specification; Grants the Respondent's motion for dismissal of the Complaint in terms of Rule 37(6) of the Scottish Solicitors Discipline Tribunal Rules 2024; Finds the Complainers liable in the expenses of the Respondent, chargeable as the same may be taxed by the Auditor of the Court of Session on a party and party basis in terms of Schedule 1 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 as amended with a unit rate of £18.00; and Directs that the publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

[redacted]

Catherine Hart
Vice Chair

NOTE

A virtual Preliminary Hearing called on 22 September 2025. The Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was not present and was represented by William Macreath, Solicitor, Glasgow.

Mr Macreath had previously raised a Preliminary Plea that the Complaint was irrelevant for want of specification, together with a motion for dismissal of the Complaint on that basis. Following sundry procedure, a Preliminary Hearing was fixed. The Fiscal lodged written submissions in response to the Respondent's original submissions. Supplementary written submissions were subsequently lodged on behalf of the Respondent. Mr Macreath also lodged a List of Authorities. These documents were before the Tribunal.

Mr Macreath referred to his original and supplementary submissions, and asked the Tribunal to accept those which it did. He acknowledged the written submissions lodged by the Fiscal on 8 September 2025 in response thereto.

WRITTEN SUBMISSIONS FOR THE RESPONDENT

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1. **Motion**

The motion of the respondent is for dismissal of the complaint in respect that it is irrelevant for want of specification and with expenses in favour of the respondent.

2. **Overarching Legal Principles**

We discuss below two linked issues of fair notice and the necessary ingredients for a case based on implied retainer.

i. **Fair Notice**

The requirement for proper specification is rooted in fundamental principles of natural justice. In *Kanda v Government of the Federation of Malaya* 1962 A.C. 332 it was held that the principle of natural justice includes *inter alia* the right of the accused to know the case which is made against him; to know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

In relation to written pleadings in civil litigation it has been held that (see *McMenemy v James Dougal & Sons Ltd* 1960 SLT (Notes) 84 at p.85 per Lord Guest):

> "…a record should not be subjected to the careful and meticulous scrutiny devoted to a conveyancing deed. The matter must be looked at broadly with a view to ascertaining whether the defenders have been given fair notice of the case which the pursuer intends to prove."

In the case of *David Haddow Campbell* (2023), the SSDT considered the relevancy and specification of the complainer's averments about fraud. The Tribunal stated:

> "The Tribunal's task was not to determine the issue of professional misconduct but rather to examine the Complaint and decide whether a sufficiently relevant and specific case had been pled against the Respondent…..The Tribunal bore in mind some general principles when considering preliminary pleas. The pleadings should be read as if they are completely true and interpreted broadly in favour of the pleader. The Complaint could only be dismissed if reading the averments as if they were true, the Complaint was bound to fail even if the Complainers proved everything in the Complaint."

Finally on the matter of fair notice and relevancy we refer illustratively to the opinion of Lord Braid in *MBM Trustee Company Ltd v William Moultrie* [2024] CSOH 14. The case report relates to arguments about prescription in respect of the duty of an attorney to account and included discussion about the meaning of property or assets being "held" by an attorney.

> [25] It follows from all of the foregoing that whether property can be said to be held by an attorney or not is ultimately a question of fact in any given case; for example, *Ross* v *Davy* shows that a company director might be said to hold funds in some, but not all, circumstances. The powers of an attorney are wholly defined by the terms of the power of attorney in his favour, which could vary greatly, as might the extent to which they are in fact utilised. The powers may do no more than give the attorney the power to intromit with the adult's funds; or (as here) they may confer the power to invest the adult's estate, or to purchase property for the adult. The wider the powers, the easier it might be in any given case to establish that the attorney "held" the estate but that must depend both on the nature of the powers, and whether, and if so how, the attorney in fact exercised those powers.
>
> [26] **The problem the pursuer faces in this case is that it has chosen to predicate its case on averments that the defender held Mrs Moultrie's estate simply because he was an attorney, without averring any facts and circumstances from which it could be concluded that her property was held by him (in which event, he will remain under an obligation to produce an accounting), and that he was not a mere intromitter (in which event, he will not). For the reasons given, that is insufficient to plead a relevant case that the defender was a trustee within the meaning of the 1973 Act, and the action falls to be dismissed as irrelevant**.

ii. Implied Retainer

The leading case on when a retainer will be inferred is the decision of the Court of Appeal in *Dean v Allin & Watts* [2001] PNLR 921. Although this is an English case we can identify no reason why similar principles would not apply in Scotland.

That case was discussed in the more recent High Court of Justice Chancery Division (Justice Arnold) decision in *Caliendi & Ors v Mishcon De Reya* [2016] EWHC 150 (Ch). The following passages summarise the relevant principles:

> "679. It is well established, that even if there has been no express retainer, the existence of a retainer may be inferred from the acts of the parties. Thus in *Morgan v Blyth [1891] 1 Ch 337* Stirling J stated at 355:
>
> > "It is quite plain that no formal or express retainer was ever given by him to them; but that was not necessary, for although no such express retainer has been given, the relation may subsist, and its existence may be inferred from the acts of the parties. If any authority for that proposition be required, it will be sufficient to refer to the decision of the Court of Appeal in the case of Bean v Wade 2 Times LR 157 ."
>
> 680. The leading case on when a retainer will be inferred is the decision of the Court of Appeal in *Dean v Allin & Watts [2001] PNLR 921* , where Lightman J, with whom Robert Walker and Sedley LJJ agreed, stated at [22]:
>
> > "… As a matter of law, it is necessary to establish that A&W by implication agreed to act for Mr Dean: an **implied retainer could only arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly and properly to be imputed to the parties**. In Searles v Cann and Hallett [1993] PNLR 494 the question arose whether the solicitors for the borrowers impliedly agreed to act as solicitors for the lenders. Mr Philip Mott QC (sitting as a deputy judge of the Queen's Bench Division) held that there was nothing in the evidence which clearly pointed to that conclusion. He went on:
> >
> > > '**No such retainer should be implied for convenience**, but only where an objective consideration of all the circumstances make it so clear an implication that [the solicitor himself] ought to have appreciated it.'
> >
> > 'All the circumstances' include the fact, if such be the case (as it is here), that the **party in**

question is not liable for the solicitors' fees and did not directly instruct the solicitors. These are circumstances to be taken into account but are not conclusive. Other circumstances to be taken into account include **whether such a contractual relationship has existed in the past, for where it has, the court may be readier to assume that the parties intended to resume that relationship**, and **where there has been such a previous relationship the failure of the solicitor to advise the former client to obtain independent legal advice may be indicative that such advice is not necessary because the solicitor is so acting**: see e.g. Madley v. Cousins Combe & Mustoe [1997] EGC 63 . ..."

681. Counsel for Mishcon de Reya relied on the following statements of principle by Hamblen J (as he then was) in *Brown v InnovatorOne plc [2012] EWHC 1321 (Comm)* :

"1014. An implied contract is one that is inferred from the conduct of the parties. However, such a contract must still satisfy the other pre-requisites to contractual formation, including an intention to create legal relations.

1015. As stated by Mance LJ in *Baird Textiles Ltd v Marks & Spencer plc [2001] EWCA Civ 274* :

'61. An intention to create legal relations is normally presumed in the case of an express or apparent agreement satisfying the first requirement: see *Chitty on Contracts* (28th ed.) vol. 1 para. 2–146. It is otherwise, when the case is that an implied contract falls to be inferred from parties' conduct: *Chitty* , para. 2–147. **It is then for the party asserting such a contract to show the necessity for implying it.** As Morison J said in his paragraph 12(1), if the parties would or might have acted as they did without any such contract, there is no necessity to imply any contract. It is merely putting the same point another way to say that no intention to make any such contract will then be inferred.

62. **That the test of any such implication is necessity is, in my view, clear, both on the authority of The Aramis [1989] 1 Ll.R. 213 , *Blackpool and Fylde Aero Club Ltd. v. Blackpool B.C. [1990] 1 WLR 1195* , The Hannah Blumenthal [1983] AC 854 and The Gudermes [1993] 1 Ll.R. 311 cited by the Vice-Chancellor, and also a matter of consistency**. It could not be right to adopt a test of necessity when implying terms into a contract and a more relaxed test when implying a contract — which must itself have terms."

1016. **Necessity in this context generally requires demonstrating that the parties have acted in a way which is consistent only with an intention to make a contract. If they would or**

<u>might</u> have acted the same way in the absence of such a contract then necessity is unlikely to be established. In The Gudermes [1993] 1 Ll.R. 311 at 320 the Court of Appeal approved the following direction given by the Judge (Hirst J):

> 'In my judgment **no implied contract can be inferred unless it is necessary to give business reality to the transaction, and unless conduct can be identified referable to the contract contended for which is inconsistent with there being no such contract; and it is fatal to the implication of such a contract if the parties would or might have acted exactly as they did in the absence of such a contract..**'"

682. Counsel for the Claimants submitted that, if this involved applying a different test to that stated in *Dean v Allin & Watts*, then the latter should be preferred, due to the differing contexts in the two cases. In my judgment, there is no inconsistency between the two lines of authority, as can be seen from the approval by Lightman J in Dean v Allin & Watts of what Mr Mott QC had said in Searles v Cann and Hallett . As counsel for Claimants submitted, the test can summarised as follows: was there conduct by the parties which was consistent only with Mishcon de Reya being retained as solicitors for the Claimants?"

It is clear therefore that the question of whether or not there was an implied retainer is highly fact sensitive. That being the case, as a matter of relevancy and fair notice, it is submitted that the complainer requires to specify by way of detailed averments the matters or factors which he intends to prove, and which give rise to a necessary inference of implied retainer. Absent such averments, it is submitted that the complaint is irrelevant. Precisely what might be required by way of fair notice is not an exact science. A bare *ipse dixit* assertion that Mr Y "was an existing client of Geo & Jas Oliver WS Limited" would not suffice. We submit that the averments in the complaint, even if proved, fail to give rise to a necessary implication of a retainer. To this extent we are in similar territory to that in the MBM case mentioned above.

3. <u>The Complaint</u>

The central allegation which underpins the complaint against the solicitor is that he:

> "..acted in a conflict of interest in that he acted both for an executor Ms X in the administration of an estate and for Ms X and another beneficiary Mr Y in relation to their interest as beneficiaries.

The complainer identifies a number of specific matters which appear to be relied upon to support the central proposition. We address each of these in turn.

- *Despite no client file being opened at the firm for Mr Y, the Respondent directly corresponded with Mr Y from an early stage in his instruction in the executry by Ms X.*

A solicitor instructed by an executor will inevitably have cause to correspond and or discuss with beneficiaries either in relation to matters associated with the ingathering of the estate or in relation to claims such as legal rights claims. This would be a commonplace matter and entirely unremarkable. No attempt is made to specify in the complaint how or why the correspondence referred to here might, as a matter of necessity, inform a case of implied retainer. The correspondence in question is neither quoted nor produced. These pleadings are irrelevant.

- *These discussions were numerous and primarily centered (sic) around assets of JKM's estate. In particular the firm's file records Mr Y informing the Respondent when to seeking (sic) confirmation and instruction of some of the sale (sic) of the estate's heritable property.*

"These discussions" is not explained. The formulation suggests a prior reference to discussions which is in fact absent from the complaint. The "firm's file" is not produced.

If it is being suggested that Mr Y instructed the solicitor on a question of when to seek confirmation, then fair notice requires that the date of this instruction should be averred, and a copy of the instruction produced. This is information which the complainer must have to found a proper basis for the averment and there is no obvious reason why this specification has not been provided.

Similarly, if it is being asserted that Mr Y instructed the solicitor (as distinct from providing information) in relation to the sale of heritable property then fair notice requires that the date of this instruction should be averred and a copy of the instruction produced or at least the precise scope and terms of the instruction should be spelled out. This is information which the complainer must have to found a proper basis for the averment and there is no obvious reason why this specification has not been provided.

As presently formulated, these averments are irrelevant for want of specification and the Respondent is placed at a disadvantage in being unable to contradict them other than in general terms. As the authorities make clear, the complainer requires to set out facts which give rise to the necessary implication of a retainer. The complainer has failed to do so.

- *There are also further intromissions with the estate by Mr Y in relation to the sale of moveable property. It can therefore be inferred that the Respondent acted for Mr Y in a solicitor client basis*

Absent proper specification, it is impossible to understand what is being alleged. It is not explained why an implied retainer necessarily arises because a beneficiary may have intromitted with the estate by selling moveable property. It is not explained how the solicitor is said to have been involved in this. The averments are irrelevant.

- *At no point during correspondence between the Respondent and Mr Y did the Respondent recommend that Mr Y seek separate legal advice.*

This adds nothing to the relevancy of the complainer's averments. It is entirely neutral in any question of implied retainer. The solicitor was not acting as an executor. He was acting for the executor, Ms X who accepted that her siblings had legal rights claims. There was no obligation on the solicitor to have advised Mr Y to seek independent legal advice.

- *The Respondent encouraged Ms X to involve Mr Y in discussions relating to the estate of the late JKM which solely involved her.*

The averment is irrelevant. In what manner was encouragement given, what is meant by discussions and in what respect would such encouragement offend against any professional practice rules in circumstances where X and Y were siblings with rights in the estate? At face value it would be entirely unremarkable for siblings to discuss matters relevant to the estate of another sibling.

At page 4 of the complaint, it is averred that there were, during the administration of the estate, "multiple occurrences whereby a conflict of interest crystalised by virtue of the Respondent being unable to fully discharge his duties to both Ms X as executor and Mr Y as beneficiary." Four examples (the complaint erroneously numbers these as (i), (ii), (iii) and (vi)) are given in support of this allegation.

i. *Mr Y was accused of selling JKM's possessions online and, at the same time, the instructed agents for John Melville referred to Ms X spending "a lot of money in the casino". The Respondent would have difficultly reconciling his duties of confidentiality for both Mr Y or Ms X about the respective allegations whilst effectively communicating with Mr Y and Ms X regarding allegations relating to the other.*

This is irrelevant. Accused by whom? Once again, the formulation presumes that a retainer existed as between Mr Y and the solicitor. The complainer therefore places the cart before the horse. These averments could only be relevant if there were prior relevant averments providing a foundation for a case of implied retainer. The complaint does not set that case up for the reasons set out above. These averments are irrelevant.

ii. *The Respondent discovered that a Ford Escort, valued at £10,000 in confirmation documents in July 2019, appeared to have been sold by Mr Y directly for £8000 in October 2019. The asset appeared to have been realised for less than its value. The Respondent would have had some difficulty justifying how an asset could be sold for less than its value to Mr Y and Ms X given their competing interests.*

Once again, the formulation presumes that a retainer existed as between Mr Y and the solicitor. The complainer therefore places the cart before the horse. These averments could only be relevant if there were prior relevant averments providing a foundation for a case of implied retainer. The complaint does not set that case up for the reasons set out above. These averments are irrelevant.

iii. *When the instructed agents for John Melville alleged that the value of the car was significantly higher than £10,000 the Respondent sought to meet with Ms X and Mr Y and discussed matters with Mr Y directly during which discussions in which it was suggested that Ms X had "used the proceeds over Christmas". This again raises conflict issues between the interests of Mr Y as beneficiary, a duty to maintain confidentiality towards Mr Y and a concurrent duty to communicate effectively with Ms X as executor given that this information should be relayed to her to allow her to make informed decisions regarding the estate.*

The formulation presumes the existence of a retainer between Mr Y and the solicitor, but no such case has been set up for the reasons set out above. A solicitor acting in an estate, ingathering the estate will often necessarily and unremarkably have cause to speak with beneficiaries or others who hold assets belonging to the estate. The fact that a beneficiary makes an allegation against another beneficiary would not be unknown. The premise of the complaint is that the solicitor owed a duty of confidentiality to two clients with conflicting interests. That premise depends upon there being a retainer between Mr Y and the solicitor. The complaint does not set that case up for the reasons set out above. These averments are irrelevant.

iv. *It was alleged that Mr Y had been collecting rent which would fall due to JKM's estate. Again, it is unclear how the Respondent could wholly fulfil his duties to communicate effectively with Ms X as executor while acting in the best interests of Mr Y. Again, it is unclear how the Respondent could wholly fulfil his duties to communicate effectively with Ms X as executor while acting in the best interests of Mr Y*

A solicitor, when acting in the administration of an estate and in the act of ingathering the estate will necessarily and unremarkably have cause to speak with beneficiaries or others who hold assets belonging to the estate. The fact that a dispute might arise between beneficiaries about the whereabouts of assets and about intromissions would not be unknown. The premise of the complaint is that the solicitor owed a duty of confidentiality to two clients with conflicting interests. That premise depends upon there being a retainer between Mr Y and the solicitor. The complaint does not set that case up for the reasons set out above. These averments are irrelevant.

Professional Practice Rules

The case proceeds on the basis that the Law Society Practice Rules under B1.4 provide acting in best interests subject to preserving a solicitor's independence and complying with the law, rules and principles of

good professional conduct; B1.4.2 – do not permit personal interests or those of the profession to influence advice; B1.4.3 – act in the best interests of the client and be fearless in defending their interests regardless of consequences.

Further, the Society alleges a breach of rule B1.6 about the maintenance of client confidentiality belonging to a client. Further, there is reference to rule B1.7, which is the general rule on conflict, that solicitors should not act for two or more clients in matters where there is a conflict or for any client where there is a conflict between the interest of the client and the interest of the practice unit and even in terms of 1.7.2 where there is a potential conflict, you exercise caution.

Reference is then made to effective communication under rule 1.9.1, reflecting effective communication between clients and others.

The complaint fails to explain any asserted link between these various rules and the conduct of the solicitor. It is not explained, for example, how B1.4 is said to be relevant. In what manner is it asserted that the solicitor allowed his own personal interests to influence his advice?

Reference to these various rules could only be relevant where a retainer was found to be established as between the solicitor and Mr Y. For the reasons set out above no such case has been properly averred.

Summary and Conclusion

The complaint is not predicated upon any averment as to the existence of an express retainer between Mr Y and the solicitor. It is predicated on an averment that Mr Y was an existing client of the solicitor, but without averring any facts and circumstances from which a necessary inference would arise as to the existence of an implied retainer. It asserts the existence of a duty of confidentiality not only to the executrix but also to Mr Y yet does not tell us how such a duty arises, and the complainer does not produce any vouching to support the proposition.

Mr Y was a beneficiary but where the executor is winding up the estate of a sibling and the estate is intestate, as here, it would be commonplace for the executor and her appointed solicitor to speak to and correspond with beneficiaries including other family members.

Executors owe duties to beneficiaries, but the solicitor acts for the executor and through the executor owes duties on a certain basis of disclosure to beneficiaries, for example, in relation to the extent of the estate and relating to how legal rights will be calculated, particularly in a case of intestacy.

This is no different to the legal rights claimant and the guidance issued by the Society in 2015 following the exoneration of David Campbell in February 2013 before this Tribunal. The guidance recognises that the legal

right claimants are not clients of the solicitor acting in the winding up of the estate but since legal rights are in the form of debts of the estate, through the executor certain duties are owed and if an executor does not adhere or comply with those duties, then there are obligations upon the solicitor in relation to those legal right claimants and the guidance makes those situations clear.

So the nub of the question is, was Mr Y a client? The Society does not even attempt to lay evidence before the Tribunal that he was a client. The averments in the complaint regarding files are confusing. On the one hand it is stated that there was no file and on the other, there are averments about "the firm's file records". That might be a reference to the file for Ms X and if so it appears the Society accepts that there is no file for Mr Y. The Society accepts Mr Y was never "onboarded" and that there was no AML consideration or KYC consideration.

It was open to the responding solicitor on behalf of the executrix to interrogate beneficiaries if it was said they held funds belonging to the estate and that they had not accounted for same. That can give rise to formal actions of count reckoning and payment. I refer again to the Opinion of Lord Braid in the MBM case which was then subject to a reclaiming motion, but which settled before the reclaiming motion could be heard.

In that case, Counsel on behalf of the Trustees argued that the duty was owed to the executors, namely MBM Trustees, that is the duties of the solicitor, and that Mr Moultrie as a residuary beneficiary was not a client and therefore a third party to whom certain obligations were due by the solicitors but not in the capacity *qua* client. The case revolved around an action for count reckoning in Mr Moultrie's capacity as attorney, but the issue of residuary beneficiary rights did come alive during legal argument. In this case the secondary complainer, JM, has been separately advised throughout and JM has been pursuing a claim at Edinburgh Sheriff Court against his sister, the executrix of JKM and the case is ongoing.

In terms of Rule 37(6), if in the opinion of the Tribunal a decision on the preliminary question of fact or law mentioned in subsection 37(1) of the rules and that substantially disposes of the whole case, the Tribunal may treat the preliminary hearing as a hearing of the case and give such direction as it thinks appropriate to dispose of the case in accordance with the rules. We submit that no relevant case of implied retainer has been pled despite the complainer having had the opportunity of amending. The complainer is bound to fail. The respondent moves for dismissal of the complaint and with expenses."

WRITTEN SUBMISSIONS FOR THE COMPLAINERS

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1. **Motion**

The motion of the complainer is for dismissal of the Respondent's preliminary plea in relation to a lack of relevancy and specification.

2. Existence of Solicitor/Client Relationship

The statement of allegations made by the Complainers against the Respondent is that Mr John Oliver acted in a conflict of interest in that he acted for both the executor Ms X in the administration of an estate and for Ms X and another beneficiary Mr Y in relation to their interest as beneficiaries.

It is accepted by the complainers that in order to demonstrate that a conflict of interest existed, the complainers must first establish that the Respondent 'acted' for Mr Y.

Whilst there is no set definition of 'act' in the practice rules, it can be inferred that 'acting' would involve – but is not solely limited to – taking positive steps to defend and/or advance a party's interests; keeping them advised of relevant information; seeking their authority, input or instructions on matters and/or maintaining a duty of confidentiality towards that party.

Paterson and Ritchie is instructive in this regard:

"The relation of agent and client is in general constituted without any written contract, and without any special contract, either written or verbal. The mere acceptance of employment creates that relation – a relation carrying with it certain well-known consequences, without any necessity for expressing them. The agent, on the one hand, engages that he possesses the requisite skill, and will employ it with all due diligence in the client's service; and the client, on the other hand, becomes bound to supply funds for disbursements, and to pay the agent at the proper time reasonable remuneration for his services. These correlative obligations are all implied, unless any of them be expressly dispensed with."[1]

"There is no doubt that in certain circumstances the existence of a solicitor-client relationship can be inferred from the conduct of the parties, even if there is no express agreement to that effect. Decisions in earlier cases such as Bolton v Jameson & Mackay 1980 SLT 291 or Tait v Brown and McRae 1997 SLT (Sh Ct) 63 are therefore of little assistance except as illustrations of particular circumstances in which the inference could

[1] Law, Practice & Conduct For Solicitors, 2nd Edition, Ritchie & Paterson, 2014. Page 87.

or could not be drawn. The circumstances in any particular case will normally have to be ascertained by evidence."[2]

Despite there not being a client file in Mr Y's name, it is the complainer's contention that it is nevertheless possible for the Respondent to 'act' for Mr Y. The Respondent places an overreliance on the absence of money laundering checks for Mr Y, the absence of a letter of engagement and the onboarding process in general as evidence that a solicitor-client relationship was not establish. The complainers contend that the foregoing are not a pre-requisite for a solicitor client relationship and indeed the existence of a solicitor client relationship can be inferred by the conduct of the parties. Namely that the Respondent received instruction from Mr Y and that they failed to correct assumption that they acted for Mr Y in email correspondence.

The Respondent contends that communication between parties was necessary due to Mr Y's position as beneficiary. The complainers contend that given the content of the correspondence between the two parties communication went over and above what was necessary in the discharging of the Respondent's duties.

The complainers, in addition to the Reporter's recommendation, have lodged the Scottish Legal Complaints Commission file, this will be referred to in oral submissions. The correspondence lodged within the filing will demonstrate that a solicitor client relationship was established between the Respondent and Mr Y.

The Reporter concluded in their recommendation that because of the contents of the correspondence lodged, having carefully considered the whole circumstances of the case, the Respondent 'acted' for Mr Y.

The Complainers invite the Tribunal to concur with this conclusion and repel the Respondent's preliminary pleas."

SUPPLEMENTARY WRITTEN SUBMISSIONS FOR THE RESPONDENT

"This Note supplements the Note of Submissions tendered previously for the Respondent and is intended to reply to the submissions recently intimated by the Complainer.

The Complainer's submissions appear to amount to an attempt to respond to the relevancy and specification issues raised by the Respondent and that by way of (a) reference to the recommendation of the Complainer's

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[2] Law, Practice & Conduct For Solicitors. 2nd Edition, Ritchie & Paterson, 2014. Page 88.

Reporter to the relevant sub-committee prior to the prosecution of the complaint before the Tribunal and (b) to the content to the SLCC file of papers.

No minute of amendment is tendered along with the Complainer's submissions and therefore the Complainer's written pleadings have not changed in response to the Respondent's submissions.

The Complainer's submissions include the following:

> *"The correspondence lodged within the filing will demonstrate that a solicitor client relationship was established between the Respondent and Mr Y. The Reporter concluded in their recommendation that because of the contents of the correspondence lodged, having carefully considered the whole circumstances of the case, the Respondent 'acted' for Mr Y. The Complainers invite the Tribunal to concur with this conclusion and repel the Respondent's preliminary pleas."*

As stated in our submissions the Tribunal's task is "to examine the Complaint and decide whether a sufficiently relevant and specific case had been pled against the Respondent" (see *LSS v David Haddow Campbell* case).

Bare *ipse dixit* statements to the effect that a particular state of affairs existed will not suffice.

The attempt to pray in aid the conclusions of a Reporter to the Complainer's own subcommittee is obviously misconceived. The Tribunal's jurisdiction cannot be usurped in this manner. It is for the Tribunal to make its own assessment of whether a relevant and specific complaint is made out. The views of a Reporter are simply not relevant.

Nor can the relevancy of the Complaint be assessed by a peripheral and unspecific reference to the content of a file kept by an unrelated third-party organisation, which comprises of hundreds of pages, including significant duplication and much of which relates to the process by which the complaint has arrived at the Tribunal. That does not amount to providing fair notice.

The Complainer accepts (see page 1 of the Submissions) that *"in order to demonstrate that a conflict of interest existed, the complainers must first establish that the Respondent 'acted' for Mr Y."*

The Complainer submits that there is "no set definition of "act" and then purports to cite as authority two paragraphs from *Law Practice and Conduct For Solicitor (Paterson & Ritchie,* 4th Ed):

"The relation of agent and client is in general constituted without any written contract, and without any special contract, either written or verbal. The mere acceptance of employment creates that relation – a relation carrying with it certain well-known consequences, without any necessity for expressing them. The agent, on

the one hand, engages that he possesses the requisite skill, and will employ it with all due diligence in the client's service; and the client, on the other hand, becomes bound to supply funds for disbursements, and to pay the agent at the proper time reasonable remuneration for his services. These correlative obligations are all implied, unless nay of them be expressly dispensed with."[3]

"There is no doubt that in certain circumstances the existence of a solicitor-client relationship can be inferred from the conduct of the parties, even if there is no express agreement to that effect. Decisions in earlier cases such as Bolton v Jameson & Mackay 1980 SLT 291 or Tait v Brown and McRae 1997 SLT (Sh Ct) 63 are therefore of little assistance except as illustrations of particular circumstances in which the inference could or could not be drawn. The circumstances in any particular case will normally have to be ascertained by evidence."[4]

It is respectfully submitted that *"Paterson & Ritchie"* is not an authoritative text in relation to the law of contract or agency in Scotland. In fairness, it does not purport to be such.

The reference in the first paragraph of the excerpted quote to the relation of agent and client in general being concluded without any written consent is in fact a direct quote from the opinion of Lord Justice Clerk Inglis in the case of *Bell v Ogilvie* (1863) 2M 336.

Unsurprisingly, this statement of practice has been overtaken by the passage of time. The current professional practice rules require solicitors to engage clients in writing and to provide certain information particularly in relation to the work to be carried out and the manner in which fees will be calculated. The Rule B4.2 states:

> 4.2 When tendering for business or at the earliest practical opportunity upon receiving instructions to undertake any work on behalf of a client, you shall provide the following information to the client in writing:
> (a) an outline of the work to be carried out on behalf of the client;
> (b) save where the client is being provided with legal aid or advice and assistance, details of either-
> (i) an estimate of the total fee to be charged for the work, including VAT and outlays which may be incurred in the course of the work; or
> (ii) the basis upon which a fee will be charged for the work, including VAT and outlays which may be incurred in the course of the work;
> (d) the identity of the person or persons who will principally carry out the work on behalf of the client;
> (e) the identity of the person whom the client should contact if the client becomes concerned in any way with the manner in which the work is being carried out; and

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[3] Law, Practice & Conduct For Solicitors, 2nd Edition, Ritchie & Paterson, 2014. Page 87.
[4] Law, Practice & Conduct For Solicitors. 2nd Edition, Ritchie & Paterson, 2014. Page 88.

> (f) confirmation that if that person is unable to resolve any such concerns to the satisfaction of theclient, the client may make a complaint to the Scottish Legal Complaints Commission (setting out its current contact details) about the manner in which the work is being or has been carried out, or the conduct of the person or persons carrying out the work.

Rules governing client communication in substantially the same terms have been in force for decades.

In the second paragraph of the quoted excerpt, reference is made to two Scottish cases being *Tait v Brown & McCrae* 1997 SLT (Sh. Ct) 63 and *Bolton v Jameson & Mackay* 1987 ST 291.

Tait is a decision of the then Sheriff Principal Risk and *Bolton* was decided by Lord Wylie in the Outer House. Neither case is presented in *Paterson & Ritchie* as being authoritative, rather they are simply referred to, briefly, for illustrative purposes.

In *Tait* the Sheriff Principal observed that:

> "To pass the test of relevancy at debate.....it is not necessary that the inference which the pursuer will ask the court to draw should be the only inference which could be drawn from his averments; it is enough if the pursuer has averred circumstances which are capable of leading to the conclusion which he seeks to establish."

This has the appearance of a low threshold test however we make the following observations.

First, neither the *Tait* case nor *Bolton* is referred to anywhere in *McBryde: The Law of Contract in Scotland* which is generally recognised as being the leading authoritative text on the law of contract in Scotland.

In *Tait* there does not appear to have been any citation of authority on this point about what it was necessary to plead, by way of relevancy, to support a case of implied retainer. Only three authorities were cited being *Bolton, Robertson v Flemin* (1861) 4 Macq 167 and *Campbell v Macreath* 1975 SC 81. Much of the opinion is taken up with arguments around whether a solicitor might owe a duty of care to a third party. There is no discussion which we can discern around the principles, generally, of implied agency.

In *Gloag & Henderson: The Law of Scotland* (15th Ed) the authors discuss general principles around the contract of agency at paragraph 18.03.

"The authority of an agent or mandatory may arise from an express contract, [13] the existence of which is a question of fact. [14] The agency contract may be entered into orally[15] or inferred from the prior conduct of the parties. [16] The relationship of agency cannot be created after the death of the putative principal.[17] In a series of cases, it has been held that an agency relationship may be inferred on an ad hoc basis for the

purposes of a single transaction only,[18] but this line of authority would appear to conflict with **the general rule that there must be clear evidence to support the inference of an agency relationship.**[19] The failure of the parties to agree to a term identifying the event or trigger point at which the putative agent is entitled to the payment of a fee or commission for services rendered to the principal, will not preclude the establishment of a binding complete and enforceable agency agreement.[20]"

Two cases are cited at footnote 19.

In *Batt Cables PLC v Spencer Business Parks Ltd* 2010 SLT 860 an issue arose as to the authority of an agent to accept certain notices. At p.866, paragraph [36] Lord hodge, then sitting in the Outer House stated:

> "To demonstrate that the agent was so authorised often means that the person seeking to uphold the notice has to show that the agent was a general agent in the sense that the agent has authority to do anything in relation to the subject-matter of the agency. See Townsends Carriers Ltd v Pfizer Ltd ; Peel Developments (South) Ltd v Siemens Plc; and Lemmerbell Ltd v Britannia LAS Direct Ltd. I accept that in the absence of express authority creatin a general agency, **there must be clear evidence to support the inference of such agency.**"

The Tribunal will note the reference by Lord Hodge to three English cases.

The second case referred to in footnote 19 is *Marion Renate Rodewald v Mrs Elizabeth Taylor* [2010] CSOH 05, 2011 WL 1634. In this case, Lord Bannatyne stated:

> "33. In a case based on contract, as this case is said to be based, in order to give fair notice to a defender of the case made against that third party, it requires the pursuer to aver the essentials of the contract which in my view are as follows:
>
> - (a) who the parties are to the alleged contract;
> - (b) where the contract was entered into;
> - (c) when the contract was entered into;
> - (d) the terms of the contract; and
> - (e) the form of the contract."

The Tribunal will note that in this case the Complaint does not address items (b), (c), (d) or (e) of Lord Bannatyne's list.

It is submitted that the weight of Scottish authority is suggestive of a rather higher test than the one alluded to in *Tait*.

In truth there appears to be very little direct authority in Scotland about precisely what is required by way of relevancy in cases where implied retainer is asserted. That being the case the courts will often look to the common law position in England because it is a much larger jurisdiction with a much higher volume of cases. This is illustrated in the *Batt Cables* case referred to above but also in *Baillie Estates Ltd v Du Pont (UK) Ltd* [2009] CSOH 95 and in *Aisling Developments Ltd v Persimmon Homes Ltd* 2009 SLT 494, both of which

discuss common law principles around contract formation with Lord Hodge in *Baillie* and Lord Drummond Young in *Ailsing* leaning heavily into English jurisprudence.

We refer to what we have already stated in our previous Note of Submissions about the line of high authority in England including from the Court of Appeal in *Dean v Allin & Watts* and in the High Court of Justice Chancery Division in the *Caliendo* case. These cases were authority for the proposition that a retainer will not be implied for convenience and that the test for implication is one of necessity.

The *Caliendo* case refers with approval to the following passage in the judgement of Hirst J in *The Gudermes* [1993] 1.

> "In my judgement no implied contract can be inferred unless it is necessary to give business reality to the transaction, and unless conduct can be identified referable to the contract contended for which is inconsistent with there being no such contract; and **it is fatal to the implication of such a contract if the parties would or might have acted exactly as they did in the absence of such a contract."**

We have made extensive reference to passages from the *Dean v Allin* and *Caliendo* cases in our previous Note. Both are of high authority and should be regraded as strongly persuasive. The decisions are seen to be ones in which the court was presented with a comprehensive citation of authority. The decisions are principled.

Whilst in Scotland we are unaware of any reference to a specific *"doctrine of necessity",* the weight of Scottish authority does not seem to be in obvious conflict with what we see in England. The need for there to be facts averred from which a clear inference arises is not obviously inconsistent with the passage quoted above from *The Gudermes*.

There is no obvious reason which we can identify as to why the law would be different in Scotland. We submit that the Complainer requires to plead facts which, taken *pro Veritate*, are consistent only with a solicitor client relationship. For the specific and detailed reasons set out in these, and in our previous Note of Submissions, the Complainer has failed to plead a relevant case, and the Complaint should be dismissed."

ORAL SUBMISSIONS FOR THE RESPONDENT

In addition to written submissions, Mr Macreath made oral submissions at the Preliminary Hearing.

Quoting the "overriding objective" of the Tribunal narrated in Rule 4 of the Scottish Solicitors Discipline Tribunal Rules 2024 ("the 2024 Rules"), Mr Macreath referred to Rule 26 of the 2024 Rules which details the scope of Complaints made to the Tribunal by the Complainers and other defined parties and the nature of such Complaints. He also cited Rule 28 which details the manner in which Complaints made on behalf of "others" to the Tribunal shall be dealt with.

Mr Macreath noted that the style of Complaint provided at Form A of the 2024 Rules, together with Rule 29, sets out the manner in which Complaints are to be made to the Tribunal. He noted that the Complaint shall include any statements and documents which are relied upon by the Complainers and submitted that the onus is on the Complainers to produce and number this information. Mr Macreath added that the Complainers must necessarily rely on the Respondent's file (and other documents) in respect of this Complaint. However, this had not been produced by them.

In addition, Mr Macreath submitted that the Tribunal had directed the Complainers in terms of what was required of them at a previous Procedural Hearings. On 4 June 2025, the Tribunal fixed a further virtual Procedural Hearing and allowed the Fiscal a period of 14 days from that date to adjust the Complaint. However, the Complaint was not adjusted by the Fiscal. Instead, the "case file" of the Scottish Legal Complaints Commissions ("SLCC"), together with a copy of a Report prepared by the Law Society of Scotland Reporter dated 20 February 2024 was lodged with the Tribunal. Mr Macreath argued that this was not sufficient.

At the continued virtual Procedural Hearing on 16 July 2025, parties confirmed to the Tribunal that the Open Record as lodged was an accurate record of the pleadings. The Fiscal lodged written submission thereafter on or around 8 September 2025. Mr Macreath submitted that no further information was lodged by the Fiscal.

In relation to the Preliminary Plea raised on behalf of the Respondent, Mr Macreath pointed to Rules 37(1) and 37(6) of the 2024 Rules which state:

"37(1) The Tribunal may direct that any question of fact or law which appears to be in issue may be decided at a preliminary hearing……

37(6) If, in the opinion of the Tribunal, a decision on the preliminary question of fact or law mentioned in (1) substantially disposes of the whole case, the Tribunal may treat the preliminary hearing as a hearing of the case and may give such direction as it thinks fit to dispose of the case, always in accordance with these rules."

ORAL SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to repel the Respondent's Preliminary Pleas. His oral submissions referred to the following points made on behalf of the Respondent.

1. Fair Notice

The Fiscal submitted that the Respondent had been given fair notice of the case against him for three main reasons:

i. The Respondent was well aware of the detailed case against him before and after service of the Complaint.
ii. Detailed averments to the extent requested by the Respondent are not required in terms of Rule 29 of the 2024 Rules.
iii. The Tribunal cannot simply dismiss a case where the allegation made, if taken to be true, would present a viable case against the Respondent.

The Fiscal referred to the case of Kanda and the Respondent's "right to know" the case against him. He stated that the Complaint contained one averment of professional misconduct in relation to allegations that the Respondent had acted in a situation where there was a conflict of interest. The Fiscal submitted that the nub of the issue was whether the Respondent had acted for two parties whose interests were in conflict. He said that this allegation would have come as "no surprise" to the Respondent as it was the sole issue passed to the Complainers for investigation by the SLCC. It also formed the entire basis of the Reporter's recommendation (which the Respondent had the opportunity to view and comment upon) and the Professional Conduct Sub Committee's ("PCSC") disposal of the matter (which the Respondent was privy to). The Respondent would have been "well aware" of the premise of the Complaint, albeit this was disputed.

In response to the argument that, as per the case of Kanda, evidence and statements against the Respondent should be made available to allow him to correct or contradict same, the Fiscal argued that the basis for the Complainer's case was contained in the Reporter's Recommendation which the Respondent had seen. The Respondent made his position clear in relation to those recommendations during the investigation phrase.

In terms of the Tribunal process, the Fiscal submitted that the Respondent's Answers had been incorporated into the Record. Those Answers dispute that a solicitor/client relationship was ever formed between the Respondent and Mr Y. As a consequence of that, the Complainers will have to establish the existence of a solicitor/client relationship to the satisfaction of the Tribunal. If it fails to do so, the case against the Respondent will fall.

The Fiscal stated that it was important to point out that, to date, the Tribunal had not made any express Case Management Directions for specific productions to be lodged. He added that this usually happens after a substantive hearing is fixed, with the Tribunal directing that productions be lodged within a specific timeframe, in advance of the proof.

Turning to the case of McMenemy cited by the Respondent, the Fiscal said the "essence" of this was that the matter which the Complainer intends to prove *"must be looked at broadly with a view to ascertaining whether the defenders have been given fair notice of the case which the pursuer intends to prove."*

Putting aside the SLCC file, the Reporter's recommendation and the PCSC's decision for a moment, the Fiscal said that the critique of the Complaint was that matters of fact which the Complainers intend to prove were not specified in detailed averments. Absent such averments, the Respondent argued that the Complaint is irrelevant.

In relation to the style of Complaint in Form A and Rule 29 of the 2024 Rules, the Fiscal described that as a "template" containing a number of headings. He noted that, at section 2 of the style Form A, the Complainers are required to state allegations, facts and duties *"clearly and briefly stated in numbered paragraphs....."* He argued that, on the one hand, the Tribunal requires brevity in the structure of Complaints but, on the other hand, the Respondent insists on detail in averments. Referring to the Marion Renate Rodewald v Mrs Elizabeth Taylor case previously cited, the Fiscal submitted that the Tribunal must determine whether the Complainers must set out detailed averments of the establishment of a solicitor/client relationship in every case, or whether it is enough, if challenged, for the Complainers to demonstrate this at proof. The Complainer's position is that it would be the latter.

Referring to the SSDT decision of David Haddow Campbell regarding whether a case had been sufficiently pled and the passage quoted above, the Fiscal submitted that the Tribunal must view the averments that a solicitor/client relationship existed between the Respondent and Mr Y as true until a substantive hearing decides the issue.

The Fiscal argued that the case of MBM Trustee Company Ltd could be distinguished on the basis that it concerned the proper interpretation of the Prescription and Limitation (Scotland) Act 1973 and whether or not an attorney was acting as a trustee under a Power of Attorney and not the establishment of a solicitor/client relationship. The case was a Court of Session action and, therefore, entirely distinct from these disciplinary proceedings.

2. Implied Retainer

The Fiscal confirmed that the Complainers did not take issue with the requirement to establish that an implied retainer was in place as detailed in the relevant case law. He referred to the criticism levied about the Complaint. He conceded that some of the points had merit, but would dispute others as follows:

- He accepted that the Respondent did not open a client file for Mr Y.
- He stated that the Tribunal had not ordered the production of the firm's file to date/no Case Management Directions as described above.
- Regarding the request for vouching and dates of the alleged instruction of the Respondent, he referred to the requirement for brevity in the Complaint as described above.
- He accepted that it would have been helpful to include further details on the alleged intromissions in respect of moveable property in the Complaint.
- He accepted that the allegation of failure to direct Mr Y to obtain separate legal advice was not central to the Complaint or relevant to the main conflict of interest averment.
- He agreed that the allegation that the Respondent encouraged Ms X to involve Mr Y in discussions about the estate was not relevant.
- He agreed with points raised by Mr Macreath in relation to page four of the Complaint, conceding that those would only be relevant if the Tribunal found that the averments formed the basis for establishing the existence of a solicitor/client relationship.

3. Professional Practice Rules

The Fiscal conceded that these would only be applicable if a solicitor/client relationship was held to be established. The Reporter formed this conclusion at page 28 of their recommendation.

4. Respondent's Summary and Conclusions

The Fiscal said he had already addressed the query about lack of vouching.

The Fiscal accepted that the Respondent was perfectly entitled to correspond with beneficiaries and family members when dealing with an executory. The Complainers also accept that there was no client "onboarding" in respect of Mr Y. However, he submitted that the Respondent went further and took instructions from Mr Y in relation to aspects of JKM's estate.

With reference to the supplementary Reporter's Recommendations, the Fiscal agreed that the views of the Reporter were not entirely relevant. However, the basis for coming to those views was relevant and that is what the Complainers intend to rely upon. Doing so was not an attempt to usurp the jurisdiction of the Tribunal.

The Fiscal agreed that *Paterson & Ritchie* was not an authority *per se* and appreciated Mr Macreath's reference to the case of Bell v Ogilvie, noting that was a case of some vintage. He stated that the reference to *Paterson & Ritchie* was made to illustrate that the formation of a solicitor/client relationship does not require to be in writing. The absence of a Letter of Engagement does not mean that such a relationship has not been formed. The Fiscal took no issue with Mr Macreath's reference to *Gloag & Henderson* and agreed that there must be clear evidence for the inference of an agency relationship.

TRIBUNAL QUESTIONS

A Tribunal member observed that the provisions for brevity in the Complaint in the 2024 Rules do not dispense with the requirement for fair notice. In addition, the need to demonstrate the establishment of a solicitor/client relationship is not present in most cases, however, that is the centre of the dispute in this case. Therefore, the Fiscal was asked to direct the Tribunal to the part(s) of the pleadings which the Complainers intend to rely on in order to establish that relationship.

The Fiscal said that the Complainers intend to rely on inferences as contained in the Reporter's Recommendation. The Fiscal had identified eleven separate instances within the report although he conceded that those were subjective and could be contested. He acknowledged that those instances were not detailed in the Complaint itself which was couched in more general terms.

When asked, the Fiscal accepted that the Complaint should set out factual averments showing that a solicitor/client relationship was formed. He was asked if he could point the Tribunal to averments which could establish that relationship and could not do so. He accepted that there was a certain lack of specification in the pleadings and stated that the Complaint was framed in general terms.

FURTHER ORAL SUBMISSIONS FOR THE RESPONDENT

Mr Macreath said he was obliged to the Fiscal for the concessions made. He further submitted that the form of the Complaint anticipates that documents to be relied upon will be lodged. The Fiscal had early notice of the Respondent's position and, therefore, had an opportunity to source and lodge supportive documents thereafter. However, the Fiscal has now conceded that he can only rely on the information provided as already described. Mr Macreath reiterated that the Tribunal cannot rely on the terms of the Reporter's Recommendation and noted that the Fiscal had confirmed that he cannot add anything further to the Complainer's case. Therefore, the Respondent's position was that the case as pled was irrelevant, lacking in specification and should be disposed of in terms of Rule 37 of the 2024 Rules.

DECISION

The Tribunal gave careful consideration to all the information and detailed submissions presented to it. It was important that proceedings were conducted in terms of its "overriding objective" at Rule 4 which states:

"4(1) The overriding objective of these rules is to enable the Tribunal to deal with cases fairly, justly and efficiently, always in accordance with the law and the rules of natural justice.

4(2) The Tribunal shall give effect to this objective in exercising its powers under these rules."

The Preliminary Pleas of the Respondent raised matters of law for consideration. The Tribunal had to consider whether the Complaint lacked specification to such an extent that it was irrelevant. The legal position on specification of pleadings is described in *Macphail's Sheriff Court Practice (Fourth Edition)* at paragraph 9.28:-

"A party's averments.....must specify sufficient facts to allow the party to lead all the evidence desired to be lead at the inquiry, and to give the opponent fair notice of what the party hopes to establish in fact; and they must present, together with the pleas-in-law, a relevant claim or defence.....A plea to specification is very frequently combined with a plea to relevancy as a ground for dismissal....."

In relation to relevancy, the case of JD v Lothian Health Borad [2017] CSIH 27 explains the law:-

"The relevancy of averments is determined by assuming that a party proves everything he sets out to prove, no more, no less, and then asking the question: in these circumstances does the law give him the remedy he

seeks? If the answer to that question is in the negative then there is no purpose to leading evidence to prove the averments and the action must be dismissed as irrelevant."

Parties had expressly agreed on the legal requirements for fair notice and implied retainer. A comprehensive precis of the legal position had been presented and was of great assistance to the Tribunal. The dispute was in relation to whether or not the Complaint provided enough detail for it to progress any further through this disciplinary process or not.

The Tribunal noted that, on behalf of the Complainers, the Fiscal had made a number of significant concessions in relation to the Complaint. The Respondent's written submissions had taken the Tribunal through various averments in the Complaint and argued that they were lacking in specification. In response, the Fiscal had either conceded the point or stated that the statement was "neutral". In addition, when asked, the Fiscal was unable to direct members to specific parts of the pleadings which could *prima facie* establish a solicitor/client relationship on the basis of an implied retainer and that was significant.

In addition, it appeared to the Tribunal that the Complaint was based on a mere implication that the Respondent had acted in a way which was beyond acceptable interactions with a beneficiary when dealing with Mr Y. The knowledge of the Tribunal members as independent professional experts in assessing the conduct was, of course, vital. However, the difficulty facing the Tribunal was that the specifics of that alleged behaviour had not been averred. In addition, the Fiscal had conceded that the Complaint was couched in general terms. The Tribunal was clear that it could only consider the pleadings at this stage and, therefore, it was inappropriate for it to rely on the other documents lodged as no averments had been made in relation to information contained therein. The Reporter's Recommendation could not be considered as part of the pleadings. It may form part of evidence led by the Complainers but could not be taken into account by the Tribunal when considering relevancy and specification of the Complaint.

The Complaint is the foundational building block of the Complainer's case. It was clear that the onus was on the Complainers to demonstrate the way in which their averments supported the case against the Respondent. They had failed to do so on this occasion. The Tribunal focused on the "four corners" of the Record and submissions from both parties. The basis of the case against the Respondent was that he had acted where there was a conflict of interest as he had acted for Ms X as the executor of the late JKM's estate, which was not disputed, and that he had also acted for Ms X and Mr Y who were beneficiaries. There were no averments on which the Complainers could rely to establish a solicitor/client relationship with either Ms X or Mr Y as beneficiaries and, on that basis, the Complaint did not meet the required threshold. The Tribunal upheld the Respondent's Preliminary Plea and granted the accompanying motion to dismiss the Complaint.

Mr Macreath moved for the expenses. He referred to the case of Baxendale-Walker v Law Society [2007]EWCA Civ 233, and said that the Fiscal had been advised of the Respondent's position at an early stage in proceedings. The Fiscal did not object to the motion for expenses given the procedural history of the case. Parties agreed that an order for publicity would be appropriate and asked the Tribunal to grant same.

Given the agreement of parties, the Tribunal made an order for expenses against the Complainer and ordered publicity in terms of Paragraphs 14 and 14A, Schedule 4 of the Solicitors (Scotland) Act 1980.

[redacted]

Catherine Hart
Vice Chair