

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

DECISION

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

by

**NICOLA SIMONE CANNON, Cannons Law
Practice LLP, 170 Hyndland Road, Glasgow
Appellant**

against

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

Respondent

1. An Appeal dated 26 September 2024 was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42ZA (9) of the Solicitors (Scotland) Act 1980 by Nicola Simone Cannon, Cannons Law Practice LLP, 170 Hyndland Road, Glasgow (hereinafter referred to as "the Appellant") against the Determination and Directions made by the Council of the Law Society, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Respondent") dated 8 August 2024 and intimated to the Appellant on 9 September in respect of a complaint of unsatisfactory professional conduct made by the Respondent.
2. In accordance with the Rules of the Tribunal, the Appeal was formally intimated to the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules, having considered the Appeal and Answers, the Tribunal set the matter down for a virtual procedural hearing on 10 December 2024.
4. At the virtual Procedural Hearing on 10 December 2024 the Appellant was not present and was represented by Frank Cannon, Solicitor, Glasgow. The Respondents were

represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. On the unopposed motion of the Fiscal, the Tribunal allowed amended Answers to be lodged by the Respondent in substitution for the original Answers. Parties stated that no evidence would be led at the substantive Hearing and that they would proceed by way of submissions only. A virtual substantive Hearing was set down for 14 March 2025 to take place on Zoom. Case Management Directions were issued to the parties following the Hearing. Formal notice of the Hearing was served on the parties thereafter.

5. A Joint Minute and written Notes of Argument were lodged by parties in advance of the substantive Hearing.
6. At the virtual Hearing on 14 March 2025, the Appellant was present and represented by Frank Cannon, Solicitor, Glasgow. The Respondents were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. Parties relied on their respective written Notes of Argument previously lodged with the Tribunal and made oral submissions adopting those.
7. Having considered the submissions made by the Appellant and Respondent, together with the documents before it, the Tribunal dismissed the Appeal and upheld the Determination and Directions made by the Respondent in their decision dated 8 August 2024.
8. The Tribunal accordingly pronounced an Interlocutor in the following terms:-

By Video Conference, 14 March 2025. The Tribunal in respect of the Appeal under Section 42ZA (9) of the Solicitors (Scotland) Act 1980 by Nicola Simone Cannon, Cannons Law Practice LLP, 170 Hyndland Road, Glasgow (“the Appellant”) against the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (“the Respondent”) dated 8 August 2024 upholding a complaint of unsatisfactory professional conduct made by the Respondent against the Appellant, censuring the Appellant and directing that she pay a fine of £800.00; Refuses the Appeal and confirms the Determination, Censure and Direction of the Respondent dated aforesaid; Finds the Appellant liable in the expenses of the Respondent and of the Tribunal, including the expenses of the Clerk, chargeable as the same as 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; Directs that publicity will be given to this decision and that this publicity should include the name of the Appellant.

(signed)

Kenneth Paterson

Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Appellant by recorded delivery service on 11 JUNE 2025.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the virtual hearing on 14 March 2025, the Tribunal had before it the Appeal together with Appendix attached thereto (containing Letter from Respondent to Appellant dated 9 September 2024 together with a second copy of same 'coloured for effect', Excerpt from the Minute of the Professional Conduct Sub-Committee Meeting, Letter from Cannons Law Practice to the Respondent dated 6 June 2024, Answers (revised on 9 December 2024 and accepted by the Tribunal on 10 December 2024), signed Joint Minute, written Notes of Arguments for both Appellant and Respondent, a List of Productions/Documents lodged by respective parties and a List of Authorities lodged by the Respondent.

The Joint Minute recorded that parties agreed that the first production for the Respondent was a true and accurate copy of the digital papers considered by the Professional Conduct Sub Committee 2 on 8 August 2024.

The Appeal related to a Complaint raised by the Respondent that the Appellant may have been guilty of professional misconduct or unsatisfactory professional misconduct in her capacity as Money Laundering Reporting Officer for her practice unit in respect that:-

“Between 2 February 2022 and 30 April 2022 (being the date prescribed by the Council in terms of Rule B9.5 of the Law Society of Scotland Practice Rules 2011), and, in any event, before an extended deadline of 13 June 2022, Miss Nicola Cannon failed to deliver to the Council of the Law Society of Scotland a Certificate in respect of her practice unit’s compliance with The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in the reporting period ending on 31 December 2021, in breach of her duty to do so in terms of Rule B9.5.”

In relation to that Complaint, the PCSC made a determination that, in all the circumstances, the Appellant was in breach of her duty under Rule B9.5 and that this amounted to unsatisfactory professional conduct in terms of Section 42ZA(1) of the Solicitors (Scotland) Act 1980. Further the Sub-Committee censured the Appellant in terms of section 42ZA(3) of the said 1980 Act and directed that she pay a fine of £800.00 in terms of Section 42ZA(4)(b) of same.

WRITTEN NOTE OF ARGUMENT FOR THE APPELLANT

The Appellant lodged a written note of argument in advance of the Hearing and adopted its terms in oral submissions. The contents of the Note are repeated below:-

“The Appellant appeals against (i) the Respondent's determination, (ii) the accompanying censure and (iii) the direction to pay a fine.

1. The following arguments are advanced.

2. **The Respondent had no power to raise the Complaint ("the Complaint") upon which the determination was made.**

3.

3.1 The competency and procedure of a complaint of Unsatisfactory Conduct against a solicitor derives exclusively from statute. There is no express statutory authority that the Respondent can make a conduct complaint to the SLCC. The Appellant accepts that the Respondent has statutory power to raise such a complaint to the Scottish Solicitors Discipline Tribunal ("SSDT") under section 51 of the Solicitors (Scotland) Act 1980 ("the 1980 Act"). Other than that power, it is argued that the Respondent had no power to raise the Complaint.

3.2 Notwithstanding the existence of that power, the Respondent claims that it, additionally, has power to make the Complaint under section 2(2)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act"), in effect that it qualifies as "any person" mentioned there, who may make a conduct complaint to the Scottish Legal Complaints Commission. ("SLCC"). Whether or not the Respondent fulfils the very wide scope of "any person", must be tested against the other statutory provisions of the 2007 Act and the 1980 Act to determine the intention of Parliament.

3.3 The Appellant argues that there are numerous examples of statutory provisions in the 2007 Act and the 1980 Act, which are wholly inconsistent with the notion that the Respondent was empowered to raise the Complaint.

3.3.1 Take as a first example:

Section 6 of the 2007 Act which provides:

6 Complaint determined to be conduct complaint

- (1) This section applies where, or to the extent that, the Commission*
- (a) determines under section 2(1A)(a) that a complaint is a conduct complaint, and*
- (b) [not relevant].*
- (2) The Commission must*
- (a) remit the complaint to the relevant professional organisation to deal with (and give to the organisation any material which accompanies the conduct complaint);*
- (b) give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination under section 2(1A)(a)] and specifying-*
- (i) the reasons for the determination;*
- (ii) that the conduct complaint is being remitted under this section for investigation and determination by the relevant professional organisation;*
- (iii) the relevant professional organisation to which it is being remitted;*
- (iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.*

The relevant professional organisation referred to is the Respondent. If it was the intention of Parliament that the Respondent could raise a conduct complaint in the first place, why would there be a provision that the SLCC must "give to the organisation any material which accompanies the conduct complaint". If the organisation was the complainer, it would already have the material. Note also that the Commission is required to notify both the practitioner and the complainer that the conduct complaint is being remitted to the relevant professional organisation. The wording of the Act clearly regards the complainer and the relevant professional organisation as two distinct separate entities.

3.3.2 A second example of such inconsistency can be found at section 47 of the 2007 Act.

47 Conduct complaints: duty of relevant professional organisations to investigate etc.

(1) Where a conduct complaint is remitted to a relevant professional organisation under section 6(2)(a) or 15(5)(a), the organisation must, subject to section 15(1) and (6), investigate it.

(2) After investigating a conduct complaint, the relevant professional organisation must make a written report to the complainer and the practitioner of-

- a. the facts of the matter as found by the organisation;*
- b. what action the organisation proposes to take, or has taken, in the matter.*

(3) Each relevant professional organisation must ensure that its procedures for dealing with conduct complaints do not conflict with the duty imposed on it by section 24(4) or (5) in relation to any report sent to it under that section or any direction by the Commission under section 24(6).

Again if the complainer is also the relevant professional organisation, why would Parliament provide for the latter to make a written report to the former?

3.3.4 A third example is to be found in section 42ZA(4)(c) of the 1980 Act.

(c) where the Council consider that the complainer has been directly affected by the conduct, to direct the solicitor to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

Again we see a clear separation of the complainer from the Council.

3.3.5 A fourth example is found again in section 42ZA(8).

(8) The Council shall intimate

- (a) a determination under subsection (1) or (2);*
- (b) any censure under subsection (3)(a);*
- (c) any direction under subsection (4),*

to the complainer and the solicitor specified in it by sending to each of them a copy of the determination, censure or, as the case may be, the direction and by specifying the reasons for the determination.

3.3.6 A fifth example is also found in subsection (10) of section 42ZA.

(10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.

It is very clear that Parliament has in mind that the Council and the complainer are two separate, different, distinct persons. It is equally clear that if the council and the complainer is the same person, this provision is superfluous. In the event that the complainer is the council it would not be appealing.

3.3.7 A sixth example is to be found, in relation to a handling complaint at section 23(6) and (8) of the 2007 Act.

(6) Where the Commission decides that subsection (4)(a) does not prevent it investigating a handling complaint because any of the circumstances referred to in subsection (5) apply, it must give notice in writing to-

(a) the person who made the handling complaint (and, if made on behalf of another person, that other person);

(aa) the other party to the conduct complaint to which the handling complaint relates;

(b) the relevant professional organisation;

by sending to each of them a copy of the decision and specifying the reasons for the decision.

(8) Where the Commission is conducting an investigation under this section, it may at any time make a written interim report in relation to the investigation and must send a copy of any such report to

(a) the person who made the handling complaint (and, if made on behalf of another person, that other person);

(aa) the other party to the conduct complaint to which the handling complaint relates;

(b) the relevant professional organisation;

- 3.3.8 It may be argued by the Respondent that Parliament was merely enacting provisions to cover all eventualities, namely that there could be instances where the Council may raise a conduct complaint in its own name, and where an aggrieved party, other than the Council, may raise a conduct complaint. If that is what is being argued then it is at worst an indictment of the parliamentary draughtsmen, and countless scrutineers, in the creation of a careless and confusing formulation. At best the Respondent's argument cannot prevail.
- 3.3.9 It must be assumed that Parliament would not seek to legislate an outcome where the Council would, in effect, be a judge in its own cause - a clear breach of the principles of justice. The Appellant is aware that elaborate measures are in place, such as so-called "glass walls" to avoid any pressure on, or interference with, regulatory subcommittees. Even then, this all sits extremely uncomfortable with the precise wording of the many instances, some of which are set out above, where there seems a clear legislative intention that the complainer and the council are not the same person.
- 3.3.10 A similar point arose in the case of Cannon v SLCC [2020] CSOH 23. The SLCC had in effect raised a complaint to itself, claiming, as the present Respondent now does, that it was permitted to make the complaint as "any person". The Appellant has produced a full copy of that case, in which the relevant parts are highlighted. It is appropriate, as regards this Note, to set out and stress the relevant paragraphs of Lord Brailsford's decision.

[21] The SLCC is a body created by statute. As such its powers are derived from and circumscribed by the terms of the creating statute. In the present petition the decision challenged is a letter, in terms a complaint, in which the named complainer is the then Chief Executive of the SLCC but expressly raising the complaint on behalf of the SLCC. The empowering statute, the 2007 Act, determines the category of person who can make certain types of complaint. It is a matter of agreement between the petitioner and respondent that the complaint which is the subject matter to the decision challenged falls into the

category of a conduct complaint. That type of complaint can, in terms of section 2(2)(a) be raised by "any person". Notwithstanding the apparent width of that provision the construction of those words requires to have regard to the remainder of the statutory provision. This, plainly, encompasses the remaining provisions of section 2 of the 2007 Act. Those provisions include in section 2(1) the provision that section 2 applies where "the commission receives a complaint by or on behalf of any of the persons mentioned in subsection (2). In my opinion that language carries as a necessary implication that the complaint came from outwith the SLCC.

[22] There is a further consideration in relation to the issue of the interpretation of the phrase "any person" in section 2(2)(a) of the 2007 Act. I consider there is force in the submission advanced by senior counsel for the petitioner to the effect that it requires to be considered and contrasted with the prescribed list of person who can bring a services complaint under section 2(2)(b). Again as a straightforward matter of language I do not consider that any natural or reasonable interpretation would include the SLCC itself.

4. The procedure adopted by the Respondent is contrary to the principles of justice, and in addition contrary to art 6 of the Convention on Human Rights as enacted by the Human Rights Act. In the case of Cannon v SLCC these two points were addressed and the decision was made in the petitioner's favour in the following terms:

[26] In relation to the issue of natural justice I consider that the decision taken by SLCC that it had power to raise complaints for its own determination and adjudication was contrary to the rules of natural justice at common law. I consider the dicta of the Lord President (Clyde) in Barrs (supra) [Barrs v Wool Marketing Board 51957 SC72 at p82] to be directly applicable to the circumstances of the present case.

[29] The arguments advanced by both competing parties under Article 6 of the ECHR were relatively brief I will deal with them equally briefly. It appears to me that the decision taken in the letter of 24 April 201910 was indeed a determination or decision

by the SLCC in 10 6/1(1) of process effectively its own cause. In these circumstances I am satisfied that the provisions of the convention are engaged.

5. The Appellant was given no opportunity to attend the hearing. In fact, and worse, the Appellant was deliberately excluded from a hearing which was attended by the Reporter, an employee of the Respondent. The hearing was not open to the public and consequent scrutiny. Again this is contrary to the principles of justice.
6. While the determination sets out extensive paragraphs which favour the Respondent, the "defence" material produced is accorded scant consideration. Take, for example, the coloured-up version of the determination to be found at item 6 of the Appellant bundle. This demonstrates, graphically and forcibly, an inevitable bias which no doubt results from the Respondent purporting to act as a judge in its own cause. The wholly unforeseen nature of a serious skiing accident, and the consequent distraction, is given no serious or detailed consideration.
7. The determination includes no discernible regard to the resources of a small local firm, such as that of the Appellant. While regulatory requirements must be applied to all firms, large or small, even-handedly, different considerations apply on the odd occasion when things go wrong. Small local law practices make up the bulk of the regulated population, and they perform an essential service in the communities of Scotland. They do so using the minimum of overheads, including staff and staff-duplication. As such their services are economic for those seeking justice, which forms the bulk of legal services throughout the land. As in this case, when the Appellant's business is thrown into disarray by accident and illness, a decision maker requires to take all this into consideration.
8. The Appellant also appeals against the fine imposed. No real consideration appears to have taken place other than a straightforward rubber-stamping of the figure proposed by the reporter.
9. While the Appellant has tried, in this Note of Argument, to provide better focus for the forthcoming substantive hearing of the Appeal, she reiterates and stands by all the

paragraphs of her Note of Appeal, with the exception of paragraph 3.4, the terms of which are not now insisted upon.

10. Finally, a significant, if ironic, telling seems to be made by the Respondent in their guidance material at item 8 of the Appellant's bundle which is headed "How we investigate conduct complaints". In that part of the guidance dealing with Professional Misconduct (highlighted for ease of reference) it states "For more serious cases.. we have the power to prosecute the solicitor before the Scottish Solicitors *Discipline* Tribunal. This is an **independent** tribunal." [Emphasis added]
11. For all these considerations, the Tribunal is invited to quash the determination, *et separatim* the direction as regards the fine."

SUBMISSIONS FOR THE APPELLANT

Mr Cannon relied on the Note of Arguments submitted on behalf of the Appellant and detailed above. He also made the following oral submissions.

In relation to paragraph 5 of the Note of Argument (page 12 of this document), Mr Cannon clarified that he had subsequently discussed matters with the Fiscal and understood that the Reporter was not present at the meeting of the Sub-Committee. In other words, both the Appellant and the Reporter were excluded from that meeting. Mr Cannon added that justice must always be done in the public eye, 'open and in view'.

Mr Cannon then turned to paragraph 6 of the Note of Argument (also at page 12 of this document) and referred to particular parts of colour coded text (added by the Appellant) in the determination of the Sub-Committee. He submitted that the Council had not 'read into' the Appellant's decision to bring forward elective surgery to compensate her absence from work. Neither had they considered that the Appellant had made arrangements for a colleague to deal with matters arising in the office. The Appellant did, however, fully accept that she had omitted to make arrangements for the review and submission of the relevant certificate.

Expanding on paragraph 7 of the Notice of Argument (pages 12 and 13 of this document), Mr Cannon referred to medical notes produced by the Appellant which were in English and German. He submitted

that the Respondent did not take account of the period of time required for the Appellant to recover and undergo physiotherapy and the overall effect of the injury and gall bladder surgery on the Appellant's workload over that whole year.

In relation to paragraph 8 of the Note of Argument (page 13 of this document), Mr Cannon submitted that it was for the Reporter to amass the facts of a case and place those before the Sub-Committee and not to comment on sanction.

There were no questions from the Tribunal. Submissions for the Appellant were concluded.

WRITTEN NOTE OF ARGUMENT FOR THE RESPONDENTS

A written Note of Argument was lodged with the Tribunal prior to the Hearing. The Fiscal adopted the contents of said Note in oral submissions. The contents of the Note are repeated below:-

"1. The Appeal is presented under Section 42ZA(9) of the Solicitors (Scotland) Act 1980.

Section 53ZB contains the powers the Tribunal has in determination of the Appeal. It

- a. may quash or confirm the determination being appealed against (53ZB(1)(a))
- b. may quash, confirm or vary the direction being appealed against(53ZB(1)(c))
- c. and subsequent to these decisions impose the fine, compensation or training direction

2. The respondent moves the Tribunal to confirm the determination and direction.

3. I will address in turn the four points I have identified in the appeal.

- a. Council may not make a conduct complaint about a member of the profession.
- b. Alleged Procedural irregularities.
 - i. No oral hearing.
 - ii. Failure to consider letter dated 6 June 2024.
 - iii. Failure to list and to discuss in detail each argument presented to the decision maker.
 - iv. Failure to provide "Report and Opinion".
- c. Finding of unsatisfactory professional conduct was harsh and excessive.
- d. Fine was excessive.

Council may not make a conduct complaint about a member of the profession

4. The respondent submits the appellant is too late in making this argument. It was not raised and therefore not considered by the Professional Conduct Subcommittee (PCSC). The PCSC cannot be criticised for making a decision where no case has been put before it.
5. The appellant did not make this argument to the
 - a. To the respondent when it intimated the decision to make a complaint to the SLCC following the meeting of the AML Sub-Committee on the 7 July 2022.
 - b. To the Scottish Legal Complaints Commission (SLCC) when the commission was assessing eligibility.
 - c. The respondent following upon intimation of the conduct complaint on the 24 March 2024.
6. The test applied by the Tribunal in allowing appeals is whether the PCSC
 - a. reasoning discloses an error of law, which may be an error of general law or an error in the application of the law to the facts.
 - b. has made a finding for which there is no evidence, or which is contradictory of the evidence.
 - c. made a fundamental error in its approach to the case, as by asking the wrong question, or taking account of manifestly irrelevant considerations, or arriving at a decision that no reasonable Tribunal or subcommittee could properly reach.

Hood Petitioner 2017 SCLR 799

7. The appellant has appealed against a decision by the PCSC on a ground which was not before it. The appellant cannot be successful on any of the grounds in Hood.
8. *Separatim esto* - The Tribunal has made hundreds of decisions dating back to its inception where the complaint was by the Society to itself, or indeed less numerous to the SLCC, thereafter remitted to the Society, e.g. – convictions of solicitors, financial compliance failures and now Anti Money Laundering compliance failures. The seminal case of *Sharp v Law Society of Scotland* is an example.
9. In respect of financial compliance - only the respondent can inspect a solicitor's accounts. If there were failures and the Society could not make a complaint – there

would be no way to protect the public's money.

10. If the respondent could not complain following a conviction of a solicitor the respondent could not protect the interest of the of the profession.

11. The Society is a creation of Statute - Solicitors (Scotland) Act 1980 ("the 1980 Act"). The Society was given a statutory basis and permitted to continue in section 1(1). The section goes on

(2) The objects of the Society shall include the promotion of—

(a) the interests of the solicitors' profession in Scotland; and

(b) the interests of the public in relation to that profession.

(3) The Society may do anything that is incidental or conducive to the **exercise of these functions** or the attainment of those objects.

12. The making of complaints which promote/protect the interest of the solicitor's profession in Scotland and the interest of the public are incidental and/or conducive to the function of the Society.

13. Council of the Law Society v Docherty 1968 SC 104
Danskin v Law Society of Scotland 2002 SLT

14. The Legal Profession and Legal Aid (Scotland) Act 2007, the 2007 Act, is subsequent to the 1980 Act, it is to be presumed the drafter of the 2007 Act, having not amended the power of the Council in Section 1 of the 1980 Act, intended that those powers to remain, unrestricted and capable of being exercised.

15. Section 33 of the 2007 act provides-

Duty of relevant professional organisations to forward complaints to Commission

Where a relevant professional organisation receives a complaint from a person other than the Commission about—

(a) the conduct of, or any services provided by, a practitioner;

(b) its handling of a conduct complaint remitted to it under section [F16(2)(a)] or 15(5)(a), it must without delay send the complaint and any material which accompanies it to the Commission.

16. The Society if given notice of conduct which may amount unsatisfactory professional conduct or professional misconduct must send the information to the SLCC.
17. The Society was made aware of the appellant's failure. It is statutory bound by section 33 make a complaint- which it did.
18. The case relied upon by the appellant – Cannon v SLCC is not relevant to the powers of the respondent. It should be distinguished. The Court was asked to examine the statutory powers of the SLCC not the respondent. The SLCC is also a creature of statute – the 2007 Act. The Court considered the powers of the Commission per the 2007 Act it had no regard to the 1980 Act.
19. It is an absurdity that the regulator of the profession cannot make a complaint. That is what the appellant asks. What power, what point, what role does the regulator have if it cannot instigate regulatory proceedings against its member?
20. The Tribunal should not allow that absurdity.
21. Further respondent is the Professional Body AML Supervisor for Scottish Solicitors. Its supervisory authority status was been ratified by Her Majesty's Treasury through Schedule 1 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the 2017 Regulations.
22. The respondent has obligations in terms of paragraph 49 of the 2017 Regulations.
Duties of self-regulatory organisations
49.—(1) Self-regulatory organisations must make arrangements to ensure that—
...
(d) contravention of a relevant requirement by a relevant person they are responsible for supervising renders that person liable to effective, proportionate and dissuasive disciplinary measures under their rules;
23. Therefore, if the appellant's argument is successful the Tribunal would create a second absurdity – that the respondent cannot carry out its obligation under the 2017 Regulations.

24. The respondent would not have been ratified if the Treasury considered that it did not have the powers narrated at paragraph 49(1)(d).
25. This ground should be refused for all or either of the following reasons.
- a. Too late – the ground was not before the PCSC – the PCSC has not erred.
 - b. The statutory provisions in the 1980 Act (as unamended by the 2007 act) give the Society the power to make a complaint.
 - c. The case of Cannon v SLCC is not in point it considers the power the SLCC not the respondent.
 - d. To allow the appeal on this ground creates an an absurdity.

Alleged Procedural irregularities.

- a. **No oral hearing**
 - b. **Failure to consider the letter dated 6 June 2024**
 - c. **Failure to list and to discuss in detail each argument presented to the decision maker.**
 - d. **Failure to provide “Report and Opinion”.**
26. An oral hearing is not required. The Society set out its method of investigation and decision making in its initial correspondence to the appellant. No issue was taken by the appellant. She has consented to the process. The method employed by the Society is compliant with regulatory good practice. It is ECHR compliant.
Para 9.25 et seq Disciplinary and Regulatory Proceedings 10th edition Treverton Jones et
27. The respondent did consider the letter of the 6 June 2021 – it is noted as being considered in the Minute. Email of 6 June 2024 (page 13 of list of productions) and letter (pages 14- 17 of the List of Productions).
28. The decision of any public organisation need not address each and every point made by those seeking a decision. The decision must be reasoned, intelligible and adequate.
Wordie v Property Co Ltd v The Sec of State for Scotland 1984 SLT346
29. Alternatively, “In short, the reasons must show that the decision makers successfully came to grips with the **main contentions advanced** by the parties and must tell the

parties in broad terms why they lost or as the case may be, won. Provided the reasons satisfy these core criteria, they need not be lengthy.”

Emphasis added De Smith’s Judicial Review (8th Edition at paragraph 7.15 narrated in Petition of Karen Duncan CSOH 2024 114.

30. A decision must be read as a whole and not in highlighted distinct parts, the appellant advances a case that the detail of all points made by her should be addressed in the decision – that is an error in law – the ground of appeal should be repelled.
31. The PCSC did list all the documents it considered, and these have been provided to the Tribunal, the excerpt contains that document considered.
32. The “Report and opinion” highlighted by the appellant clearly refers to the Recommendation and the Reporter’s opinion contained therein. It has been provided.

Finding of Unsatisfactory profession conduct was harsh and excessive.

33. The appellant submits the PCSC has failed to give weight to (a) the unforeseen nature of the skiing accident and (b) impact of two hospitalisations.
34. The recommendation at para 4.6.1 through 4.6.6 narrates the appellant’s accident/ill-health. It noted absence between the 10 February 2022 to an unknown date then an extension, thereafter the appellant’s return to work dates accurately.
35. The recommendation records the further absence due to elective surgery between 24 March 2022 to 1 May 2022 – it is accepted by the appellant this was a planned and voluntary absence. The report narrated the procedures the appellant advised she had put in place for the administration of her firm in her absence. The appellant accepted she did not put in place provision for the submission of the ML certificate. She accepted this and offered an apology.
36. The submission AML certificate is an annual requirement, of the firm it was not an unusual, exceptional, or unforeseeable requirement.

37. The recommendation notes at para 4.8 the numerous emails sent by the respondent to the membership and the appellant as principal of her firm – 5 emails over a period of 8 months.
38. The Appellant was absent for a period of at most 3 months (12 February to 1 May 2022).
39. The Appellant was reminded on the 9 May 2022 of her omission – a date which it is accepted she had returned to work following her convalescence. The respondent did not act upon that reminder.
40. It cannot be said the decision did not take into consideration the period of convalescence, the PCSC has not fallen into error.
41. The respondent moves the tribunal to hold that there was no error of law, that the PCSC did not make an erroneous finding in fact and that it did not come to conclusion that no other properly informed committee could have come to.

The submission that a small practice should be given greater leeway than large practice is unsound.

Fine was excessive

42. Reference is made to the Guidance on the application of sanction for Unsatisfactory Professional Conduct.
43. The PCSC agreed with reporter's reasoning. The recommendation narrates - "*The Reporter is of the view that the seriousness of the solicitor's conduct is clear. It is important for the effective monitoring of the solicitor's compliance with the Money Laundering regulations that the solicitor provided the Law Society with the information as required by the Practice Rules and the solicitor failed to do so.*"
44. The appellant does not set out the grounds why the respondent's assessment is incorrect with efference to Hood. The Tribunal is moved not to make finding that the PCSC failed in respect of assessing the level of fine, having made reference to the Guidelines.

45. The Tribunal is moved to repel the Appeal and confirm the determination and direction.”

SUBMISSIONS FOR THE RESPONDENT

The Fiscal referred to the written Note of Argument submitted on behalf of the Respondent and adopted that in its entirety in terms of submissions. He also made the following oral submissions.

In relation to paragraph 5 of the Note of Argument (page 16 of this document), the Fiscal added that the Appellant could have raised an action for interdict to prevent the Respondent from making a Complaint at an earlier stage but she had not done so. He cited the case of Steele v Deputy Chief Constable of the Police Service of Scotland 2002 SCLR 136.

Also in relation to paragraph 5, the Fiscal referred to the Joint Minute before the Tribunal confirming that papers considered by the Sub-Committee were a matter of agreement.

The Fiscal noted that, in the case of Cannon v SLCC, the Respondent *received* a Complaint as opposed to the situation in this case where the Respondent *made* a Complaint. He added that the case can be distinguished on that additional basis.

This Appeal challenged the application of a censure. The Fiscal submitted that a censure was the minimum sanction to be applied where the Respondent makes a finding of unsatisfactory professional conduct in terms of s.42ZA(3)(a) of the Solicitors (Scotland) Act 1980.

The Appellant argued that the alleged breach did not amount to a ‘course of conduct’. The Fiscal submitted that the Tribunal do not have to consider whether or not the conduct was wilful, careless or just at the back of the mind of the Appellant. It was the continued lack of compliance which was wholly unsatisfactory.

The Fiscal explained that he had not seen the Appellant’s written Note of Argument when drafting same on behalf of the Respondent. The Appellant had relied largely on the provisions in the 2007 Act in said Note. However, the powers of the Respondent are contained in the 1980 Act and not the 2007 Act. The Fiscal referred to the opinion of Lady Cosgrove in the case of Danskin v Law Society of Scotland 2002 SLT C. In terms of the main aim of the 2007 Act, it was submitted that parliament intended the SLCC to be the gateway for all Complaints about solicitors in Scotland. The power of

the Respondent to deal with service complaints about solicitors was removed at that point. However, the Respondent can still deal with conduct complaints which are distinct from service matters.

A member of the Tribunal asked the Fiscal if the 2007 Act defines 'any person'. The Fiscal replied that it does not but schedule 1 of the Interpretation Act 1978 does. That definition includes any unincorporated bodies which would encompass the Respondent and the SLCC. He further observed that section 2(2)(b)(viii) of the 2007 Act states that "any relevant professional organisation" can make a services complaint and submitted that this would include the Respondent. However, they cannot receive a services complaint under the 2007 Act. In contrast, the SLCC can receive a services complaint and are not mentioned in section 2(2)(b). The Fiscal argued that Lord Brailsford's "thought process" in Canon v SLCC could be linked to this. Lord Brailsford said that the phrase 'any person' is too wide and that the SLCC were excluded from it because they received a complaint and could not send and receive. The Fiscal had considered other parties who could make a complaint and pointed out that the SLCC were not named in section 2(b). The Complainers are named in that provision as a relevant professional organisation in relation to making service complaints but they do not receive complaints in terms of the 2007 Act. The Fiscal submitted that Cannon v SLCC should be "put aside" and that the Tribunal should consider the terms of the 2007 Act alone. Using the same "thought process", the Fiscal said that the Complainers are named as a party which can make a service complaint under s2(b) and, because that comes after 2(a), that smaller group must be included in 2(a) to include a conduct complaint. The Fiscal asked the Tribunal to take account of their wider knowledge of the parliamentary intentions of the 2007 Act.

Finally, the Fiscal submitted that the case of Barrs v Wool Marketing Board *supra* was irrelevant as it referred to a quasi-judicial body where an appearance was required. That was not the position in this case and, therefore, Barrs was not authority to support the proposition that the sub-committee decision was an affront to natural justice.

There were no further questions from the Tribunal. Submissions were concluded.

FURTHER SUBMISSIONS FOR THE APPELLANT

Mr Cannon responded to the point about lateness of the plea of incompetency, stating that this was a misnomer. The only engagement the Appellant had with proceedings before the sub-committee meeting was at the stage of investigation by the Reporter. He referred to the letter sent on behalf of the Appellant in June 2024 in that regard. Thereafter, a decision was made by the sub-committee

‘behind closed doors’ and sent to parties. A Note of Appeal on behalf of the Appellant was thereafter lodged timeously and the matter was detailed in the written Note of Argument already presented. Mr Cannon said that there was never an opportunity to raise the point prior to the Appeal stage and argued that there should always be an opportunity for the party who is potentially adversely affected by proceedings to be present.

In relation to competency of procedure Mr Cannon submitted that it is always the responsibility of a judicial or quasi-judicial body to take account of a fundamental nullity or absurdity. He said it was “never too late to put things rights” and asked the Tribunal to do so by granting the Appeal in this case. He referred again to the cases of Cannon v SLCC and Barrs v Wool Marketing Board 1957 SC 72.

Mr Cannon clarified that he was not suggesting that the decision of the sub-committee was a deliberate attempt to pursue individuals. However, he argued that there is an inevitable potential for bias in the process described which is completely absent from all other disciplinary procedures. He asked the Tribunal to consider that, where a complaint is raised by the Council, it goes to the Tribunal and should not be determined internally. Where a member of the public or client alleges inappropriate conduct, that can go to the Council as it is not dealing with its own complaint.

Mr Cannon turned to the definition of ‘any person’ referred to in the SLCC rules and raised by a Tribunal member earlier in proceedings. He submitted that, in Cannon v SLCC, Lord Brailsford said that it is necessary to misread the 2007 Act to find that SLCC can determine its own complaint. He invited the Tribunal to determine that the Council cannot be an instigator of the complaint under s33(a) of the 2007 Act. He argued that it was significant that the Council is mentioned under s33(b)(b) in relation to services complaints and argued that this was because service complaints are never dealt with by the Council. He stated that the SLCC is not involved in raising service complaints as it determines those and argued that parliament was very careful in drafting that.

Finally, Mr Cannon submitted that justice must be done in the open and it must be seen to be done. He added that the wording of the legislation is clear and identifies three distinct persons in the complaints process for solicitors, namely the practitioner, complainer and decision maker. Mr Cannon clarified that he was not suggesting that the Council cannot enforce its own rules and agreed that they must do so in terms of the public and the profession. However, on behalf of the Appellant he argued that, in this case, a decision had been made *ultra vires*.

DECISION

The background of this case relates to an admitted failure to submit an Annual Accounts Certificate in terms of the Law Society of Scotland Practice Rules 2011 (“the 2011 Rules”). The Appellant had suffered health problems in the relevant year. The Sub-Committee followed the recommendation of the Reporter and made a finding of unsatisfactory professional conduct against the Appellant in terms of section 42ZA(1) of the Solicitors (Scotland) Act 1980 which provides:-

“Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner who is a solicitor is remitted to the Council under section 2(2)(a) or 15(5)(a) of the 2007 Act, the Council must having –

- (a) Investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;*
- (b) Given the solicitor any opportunity to make representations, determine the complaint.”*

Section 1 of the Legal Profession and Legal Aid (Scotland) Act 2007 established the SLCC. Section 2 deals with the receipt of complaints and enables the SLCC to carry out eligibility assessments of same, including for them to determine whether a complaint received constitutes a conduct or services complaint. Section 2(2)(a) specifies that, the SLCC can receive conduct complaints from “any person”. Section 15(5)(a) deals with situations where a service complaint transpires to be a conduct complaint and states that such a complaint must be remitted to the “*relevant professional organisation to deal with*”.

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

Section 42ZA(9) of the Solicitors (Scotland) Act 1980 provides that a solicitor may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to them, appeal to the Tribunal against the determination and/or direction of the Sub-Committee. The Appellant in this case appealed against the determination and direction of the Sub-Committee. The powers of the Tribunal when considering an Appeal under s42ZA(9) are

contained within s53ZB(1) which states that it may quash or confirm the direction and/or determination being appealed against. If the determination is quashed, the accompanying censure must also be quashed. There are other provisions in relation to fines, compensation and training.

The Tribunal considered the principles contained in the case of Hood v Council of the Law Society of Scotland 2017 SC 386 (“*the Hood principles*”) which states that the Tribunal should only interfere with a decision in relation to a finding of unsatisfactory professional conduct on appeal if:-

1. The reasoning of the Sub-Committee discloses an error of law. This may be an error of general law or an error in the application of the law to the facts;
2. The Sub-Committee made a finding without evidence to support or which is contradictory of the evidence.
3. The Sub-Committee made a fundamental error in its approach to the case by asking the wrong question, taking account of manifestly irrelevant consideration or reaching a decision that no reasonable Tribunal or Sub-Committee could properly reach.

The Hood principles are applied by the Tribunal in consideration of section 42ZA appeals. The Appeal process is not a re-hearing of the original complaint.

The Appeal stated the ‘*Grounds of Appeal*’ in 5 numbered paragraphs headed as follows:-

- “1. *The Council have misdirected themselves in law – The Council cannot complain to itself.*
2. *Other Procedural Matters*
3. *The Appellant also appeals on the basis that the finding of unsatisfactory conduct was harsh and excessive in the circumstances.*
4. *The Appellant also appeals against the fine imposed. There appears no deliberation and justification by the sub-committee as to what the appropriate fine should be; merely and unsurprisingly an acceptance of the figure proposed by the Reporter.*
5. *For all these reasons the Appellant moves the Tribunal to quash the decision of the sub-committee.”*

The Tribunal observed that the appeal related to the first Hood principle, namely whether or not the decision of the sub-committee disclosed an error of law. No arguments were presented in terms of the second or third principles. The main submission for the Appellant was that it was incompetent for the Respondent to make a decision on whether or not the Appellant was guilty of unsatisfactory

professional conduct because the Respondent had raised the original complaint. The facts leading to the original Complaint were not in dispute. The Appeal centred around a wider question about whether or not the Respondent was entitled to raise a Complaint and, thereafter whether the Sub-Committee could make a decision in relation to that matter in the particular circumstances. The legal arguments centred around the interpretation of legislative provisions identifying who may make a complaint under the regulatory and disciplinary framework for the Scottish legal profession, and who cannot do so. The Appellant also relied on wider legal concepts such as principles of natural justice and the European Convention on Human Rights (“ECHR”) and maintained that the decision made by the Respondent in this case was *ultra vires*. She insisted that there was an unintentional bias in the procedure which had led to the decision of the Sub-Committee in her case which created an ‘absurdity’.

The Tribunal observed that the Respondent was created by statute. Its objectives were set out in section 1 of the Solicitors (Scotland) Act 1980 which provides:-

“1(1) The Law Society of Scotland.....shall continue to exist and shall exercise the functions conferred upon it by this Act.....”

(2) The Objects of the Society shall include the promotion of-

- (a) The interests of the solicitors’ profession in Scotland; and*
- (b) The interests of the public in relation to that profession.*

(3) The Society may do anything that is incidental or conducive to the exercise of these functions or the attainment of those objects.”

The Tribunal noted that these objectives were very broad and considered that to be necessary given the extensive role of the Respondent in relation to the Scottish legal profession. It was a matter of judicial knowledge that the Respondent carries out many functions in administering and maintaining records, delivering training and supporting members of the profession as well as its disciplinary and regulatory functions. It was also within judicial knowledge that the Respondents’ organisational structure comprised numerous different departments and committees to allow them to carry out their statutory functions and roles. The Appellant had proceeded on the basis of trying to argue that the intention of parliament meant that the Respondent could not make a decision in this particular case. However, in written submissions, she did concede that there was a distinction between the Council of the Law Society and the Sub-Committee which made the decision. The Appellant relied heavily on a comparison with other legislative provisions in her arguments which was largely theoretical.

However, she did not produce any evidence which demonstrated any *de facto* unfairness in the Respondent's decision making process. On the contrary, the evidence presented to the Tribunal, including the Joint Minute, demonstrated that the Sub-Committee did consider all the information presented to it. In terms of giving reasons for its decision, the Tribunal accepted the Respondent's submission that a reasonable summary was given by the Sub-Committee. It was an established principal of Public Law that a decision of any public organisation need not address every point in detail but it must be reasoned, intelligible and adequate as per the case of Wordie v Property Co Ltd v The Sec of State for Scotland 1984 SLT 346. The Tribunal had regard to the Joint Minute which agreed on the papers before the Sub-Committee and noted that the decision of the Sub-Committee was clear and made sense, having regard to the information before it.

The Appellant did refer to case law, most prominently, Cannon v SLCC. However, the Tribunal was able to distinguish that as it involved different legislation, regulator and the SLCC in that case were operating in a different capacity from the Respondent in this case. Therefore, it was not appropriate to apply that case to the facts in this Appeal.

In relation to disciplinary proceedings against the Appellant under section 42ZA, the Respondent was acting in accordance with its objectives at section 2(2) of the 1980 Act. Although the Appellant argued in paragraph 2 of her appeal that 'other procedural matters' were unfair, there was no suggestion that the Respondent had not followed the correct procedure in terms of the disciplinary proceedings *per se*. The procedural matters raised by the Appellant included an argument that unintended bias resulted from the Reporter being present at the Sub-Committee meeting. However the Appellant later conceded that the Reporter had not been in attendance and withdrew that claim from her appeal.

The Appellant also stated that she had no opportunity to attend the hearing and that the Sub-Committee had not considered the 'unforeseen nature of the serious injury' she had suffered or the full circumstances of her situation. However, parties had agreed on the papers which were before the Sub-Committee and this was presented to the Tribunal in a Joint Minute. Those papers included a letter sent to the Respondents on behalf of the Appellant dated 6 June 2024 and medical information provided by her pertaining to elective surgery. Following receipt of that information, the Reporter made a supplementary recommendation to the Sub-Committee dated 28 June 2024 which expressly referred to that letter of 6 June 2024. The supplementary recommendation made some revisals to the Principal Reporter's recommendation of 25 May 2024 having "considered the solicitor's [the Appellant's] comments". Although the Appellant may not have agreed with the revisals and further comments, the Tribunal considered that the Respondents had taken account of her views. The


Tribunal concluded that the fact that the Appellant disagreed with the Reporter's recommendation and subsequent decision of the sub-committee is not relevant in terms of the grounds of appeal advanced by her and the applicable Hood principle. The purpose of this appeal was not to reconsider the decision made but to consider whether or not a ground of appeal had been established. On the basis of the information presented to it, the Tribunal concluded that there had been no error of law and, therefore, unanimously dismissed the Appeal.

The Tribunal had no discretion in relation to the application of censure. This is a mandatory sanction where there has been a finding of unsatisfactory professional conduct under section 42ZA(3) of the 1980 Act. In terms of the fine of £800, the Tribunal noted that this was at the lower end of the applicable scale. The admitted breach of the Accounts Rules by the Appellant was significant and, therefore, the Tribunal considered the level of fine applied by the Sub-Committee to be appropriate. The Tribunal unanimously confirmed the Directive of the Respondent.

EXPENSES AND PUBLICITY

On behalf of the Respondent, the Fiscal moved for the expenses following success and there was no objection from the Appellant. The Tribunal directed the Appellant to pay the expenses of the Respondent and of the Tribunal, including the expenses of the Clerk. In terms of the SSDT Rules 2024, these were awarded 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.

Parties stated that they were in the hands of the Tribunal regarding publicity. The Tribunal directed that publicity be given to this decision and would include the name of the Appellant.


Kenneth Paterson
Vice Chair