FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2020] CSIH 20
XA88/19

OPINION BY LORD DRUMMOND YOUNG

in an Application for leave to appeal

under

section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007 and rule 41.2(3) of the Rules of the Court of Session 1994

by

DAVID LILBURN

Applicant

against

a decision taken by the Scottish Legal Complaints Commission (reference 201801711)

Applicant: Party
Respondent (Scottish Legal Complaints Commission): MacGregor; Anderson Strathern LLP

1 May 2020

[1] On 19 March 2019 the applicant made a complaint, on two separate grounds, to the Scottish Legal Complaints Commission ("the respondent") about the services that he had received from a solicitor, Mr Michael Thompson of Thompson Family Law ("the solicitor"). The respondent rejected both grounds of complaint on the basis that they were totally without merit. The applicant now seeks leave to appeal to the Court of Session against that decision of the respondent.

[2] The factual background to the application is as follows. The applicant is currently detained in the State Hospital at Carstairs. In early 2017 he instructed the solicitor in respect of a claim that he wanted to make against an insurance company for breach of contract. The solicitor sent him a letter of engagement with terms of business on 13 March 2017; in summary, the work to be carried out was to consider whether there was any claim for breach of the contract of insurance on the basis of documentation received from the applicant. The applicant's contention was that under the insurance contract the company was obliged to pay him sickness benefits on a continuing basis.

[3] The solicitor applied to the Scottish Legal Aid Board for legal aid; this was granted, with a nil contribution, with a view to obtaining an opinion from counsel on the merits of the applicant's claim. The solicitor then instructed counsel, and obtained an opinion dated 18 September 2018. The opinion was unfavourable to the claim that the applicant wished to make. The applicant was not satisfied with this and wanted to have a consultation with counsel. A request was made to the Scottish Legal Aid Board for an increase in legal aid to permit a consultation with counsel at Carstairs. That request was refused on 21 November 2018, as the Board were not satisfied that it was reasonable.

[4] Thereafter certain correspondence passed between the applicant and the solicitor in relation to services that the applicant claims he wished to have carried out by the solicitor. The solicitor refused to take further action, and thereafter the applicant made a services complaint to the respondent. Two complaints were made, in the following terms:

1. Mr Thompson and/or Thompson Family Law have failed to communicate effectively with me in that in a three-month period commencing on 12 December 2018 they failed to respond to letters from me dated 12 December 2018, 27 December 2018,

9 January 2019, 21 January 2019, 12 February 2019 and 13 February 2019 on important matters concerning my case.

2. Mr Thompson and/or Thompson Family Law have failed to follow my instructions in or around December 2018 to approach the Scottish Legal Aid Board for reconsideration of its refusal to sanction the cost of a consultation between Thompson Family Law, the Advocate involved and myself in order to discuss further my claim.

[5] The respondent duly considered the two complaints, holding that they had been made within the prescribed time limits. The respondent then considered the complaints on their merits, starting with the second issue, as it dealt with the scope of the work that the solicitor was alleged to have been responsible for, rather than matters of communication. It held that both complaints were totally without merit.

[6] On the second complaint, in its decision letter the respondent summarized the evidence that had been produced by the applicant. The applicant had approached the solicitor in early 2017 in connection with the claim against the insurers. The solicitor had sent the applicant a letter of engagement, with standard terms of business, on 13 March 2017. The outline of the work in the letter of engagement was "to consider whether there was any claim for breach of insurance contract on the basis of documentation received from the client". The history of the legal aid application was then narrated, together with the obtaining of an opinion from counsel. This was unfavourable to the applicant's case. At that point the applicant wanted a consultation with counsel. Legal aid for a consultation was refused by SLAB on 21 November 2018, as they "were not satisfied that it was reasonable". Thus SLAB refused to sanction any further work by counsel.

[7] Thereafter, on 10 December 2018, the solicitor had written to the applicant in the following terms:

> "The Scottish Legal Aid Board have confirmed that they are not prepared to fund a consultation with counsel. If you wish to proceed with a consultation with counsel then we would need to fund the matter on a private fee paying basis.
>
> Unless we hear otherwise from you, we will now proceed to close this file and take no further action on your behalf. If you do wish to instruct the consultation with counsel then please contact us without delay.
>
> In the meantime the file shall be closed".

[8] In its decision letter the respondent stated that in its view at this point the work that the solicitor had taken on for the applicant had concluded. The solicitor had only ever agreed to work under the Legal Advice and Assistance Scheme. He had taken the work as far as he could, until SLAB refused to sanction any further work. Once SLAB had refused a fee for a consultation, the respondent considered that the solicitor was not obliged to challenge its decision, by asking for reconsideration. Furthermore, although the solicitor had indicated a willingness to undertake further work on a private fee-paying basis, any such instructions would have required a new agreement and new terms of business.

[9] On a 12 December 2018 the applicant wrote to the solicitor to say that he did not want to let the matter drop and to ask for a quotation for further work. He suggested that no consultation should take place until he had settled an outstanding fee due by him to the solicitor in respect of another matter. The respondent in its decision letter notes that it was clear from that letter that the applicant did not rule out the possibility of instructing the solicitor on a private fee-paying basis. It was important, however, that nothing was said in the letter about going back to SLAB to ask for reconsideration of its decision. The respondent notes in its decision letter that the applicant's letter of 12 December 2018 was inconsistent

with the solicitors having already agreed to go back to SLAB for reconsideration. In my opinion that conclusion is clearly correct on the basis of the correspondence that has been made available.

[10] The applicant wrote to the solicitor once again on 27 December 2018. In the letter he asked the solicitor to advise whether he had made an application to SLAB for reconsideration of their decision about funding a consultation with counsel. The letter continued by stating that, if what SLAB said about this was correct, the solicitor should apply to SLAB urgently and immediately for reconsideration of sanction for a consultation with counsel. The respondent notes in its decision letter that that was the first record provided by the applicant to it that contained any mention of seeking a reconsideration by SLAB of its refusal to sanction the cost of a consultation. Once again that is plainly correct on the basis of the correspondence that is available.

[11] The solicitor contends that he wrote two further letters to the applicant dated 28 January and 22 February 2019. The applicant questions whether letters were in fact sent on those dates. Nevertheless, it is necessary first to consider the present application on the basis that the letters were in fact sent. The more significant letter is the second, that of 22 February 2019, which stated as follows:

> "You must understand that we, as solicitors, are not obliged to accept your instructions if we do not consider them reasonable. We repeat that we are simply not prepared to utilise legal aid funding in circumstances where we already have an unsupportive report.…
>
> So if you wish to instruct us going forward in relation to the consultation with counsel and next steps, it must be on a private fee-paying basis and we shall have to issue a terms of business confirming this. Moreover, we will expect to be placed in funds".

[12] In its decision on the applicant's complaint the respondent stated that it was satisfied that the applicant had purported to instruct the solicitor on 27 December 2018 to seek reconsideration by SLAB of its decision regarding funding. The respondent was not satisfied, however, that the solicitor was under any obligation to act on such an instruction. At no time after the letter sent by the applicant on 27 December 2018 did the solicitor agree to act on such instruction. The respondent further stated that it was also satisfied that the solicitor would only have been under a further obligation as regards a consultation with counsel "if a new private paying fee arrangement had been brought into effect". This of course had never happened. For the foregoing reasons the respondent was of the view that there was no breach of the applicable Service Standards, and that the issue is not one that could be upheld. On that basis the respondent considered that the second complaint was totally without merit.

[13] The first complaint related to a failure by the solicitor to respond to letters sent by the applicant between December 2018 and February 2019. An important element in this complaint is the question of whether the two letters referred to in paragraph [11] above, those dated 28 January and 22 February 2019, were in fact sent by the solicitor to the applicant on or about the dates stated in the letters. In this case, the relevant service standard was noted by the respondent as being that communicating effectively with the client is very important. "Solicitors must make sure that they communicate clearly, effectively and in plain understandable language with their clients and others. This includes keeping clients informed regularly about progress with the matter".

[14] The respondent concluded that the first complaint was also totally without merit. It examined the two letters against the background of other correspondence passing between the applicant and the solicitor during the relevant period. The applicant had changed his

position; originally (12 December 2018" he wished a quotation for a private consultation, but subsequently he wanted reconsideration by SLAB of its decision on legal aid (27 December 2018). At this point, the respondent pointed out, the applicant was raising a matter that the solicitor had not agreed to deal with (see above). The applicant had written again on 9 January 2019 and asked whether a reconsideration application had been made to SLAB. The applicant had written a reminder on 21 January, and the solicitor replied by the letter of 28 January.

[15] In that letter the solicitor indicated that he had written to the advocate in question to ask for a fee quotation, and he provided his own approximate estimate of the fees for the consultation (£1,500 plus VAT). Thereafter he explained that he was uncomfortable using Legal Advice and Assistance any further as there had been an unsupported opinion from counsel, and he thought that SLAB would take the view that using legal aid funding was no longer reasonable. Further letters passed dealing with another matter. Then, on 13 February, the applicant wrote again to the solicitor to complain that the solicitor had not made a reconsideration application to SLAB for sanction for a meeting with counsel.

[16] The solicitor's reply was the letter of 22 February. In that letter, the solicitor stated that there had been a blurring of lines as to what had been instructed, and that he would not respond to any further correspondence without confirming terms of business and funding arrangements. The solicitor then restated why he considered further legal aid funding inappropriate, and indicated that any consultation with counsel would have to be paid for privately. On this letter, the respondent expressed the view that difficulties had arisen because the applicant had initially indicated that he might be agreeable to private fee paying funding but then, from 27 December 2018 onwards, appear to have abandoned that idea in

favour of a reconsideration of legal aid, which was something that the solicitor had never agreed to in the first place.

[17] On this matter, the respondent expressed the view that had the applicant only been concerned with instructing a consultation on a private fee paying basis, there would have been an obligation on the solicitor to follow matters up to see whether a new arrangement could be agreed. Nevertheless, from 27 December onwards, the applicant was requesting something that the solicitor had not agreed to, and was under no obligation to deal with. In those circumstances the respondent considered that there was neither an ongoing nor a prospective solicitor/client relationship in respect of the matter is so far as concerned Legal Advice and Assistance. While the solicitor did not initially communicate with the applicant as well as he might have done, as was evidenced by an apology in his letter of 28 January, the respondent was not satisfied that the shortcoming was sufficiently serious to amount to a breach of the relevant Service Standards. Furthermore, there was no subsequent shortcoming that could have amounted to such a breach.

[18] The respondent then considered the allegation by the applicant that he did not receive the solicitor's letters of 28 January and 22 February 2019, and the suggestion that the letters were not sent on the respective dates but were only created afterwards. The respondent accepted that the applicant might not have received the letters at the time, but that could be because they had gone astray in the post. Merely because he did not receive them at that time he did not follow that the letters were subsequently fabricated. In the respondent's view, therefore, it would be impossible for the applicant to prove on a balance of probabilities that the letters were not sent on their respective dates. Consequently the issue could not properly be considered on the basis that the two letters should be ignored. The first ground of complaint was accordingly totally without merit.

The present application

[19] As already noted, the applicant has now applied for leave to appeal to the Court of Session against the respondent's refusal to investigate the two complaints. The applicant contends that the respondent has erred in law in its decision, and a large number of grounds are put forward in its application for leave, although there is a significant overlap in certain of the grounds. I propose to consider the grounds individually, but before doing so I should make certain general observations, first about the function of the respondent in the initial stage of dealing with complaints about solicitors, and secondly about the approach that the Court has taken to applications for leave from decisions of the respondent.

The respondent's function

[20] Section 2 of the Legal Profession and Legal Aid (Scotland) Act 2007 sets out the preliminary steps that the respondent must take when a complaint is received about a solicitor. These may take the form of a conduct complaint or a services complaint (both of which terms are defined). Subsection (1A) provides that the respondent must take the preliminary steps set out in subsection (4). The latter subsection provides that the respondent must determine "whether or not the complaint is frivolous, vexatious or totally without merit", and provides that where such a determination is made it should reject the complaint. That is the statutory power that the respondent has exercised in the present case. That power has been the subject of considerable judicial comment. In *Law Society* v *Scottish Legal Complaints Commission*, 2011 SC 94, Lord Kingarth, delivering the principal opinion of an Extra Division, stated (at paragraph [34]):

> "The plane intention of the Act is to impose a duty on the respondents to sift out, at a preliminary stage, wholly unmeritorious claims. This is an important duty…".

A similar point is made in *Baird Matthews* v *Scottish Legal Complaints Commission*, [2015] CSIH 68, at paragraph [2]. The latter case indicates that there should be no detailed consideration of the facts at the stage of sifting, although it is acknowledged that some degree of investigation must inevitably take place. Nevertheless, I would reiterate that the factual investigations that are required at the sifting stage are of necessity very limited.

[21] The test that must be applied is stated in *Williams* v *Scottish Legal Complaints Commission*, [2010] CSIH 73, at paragraph [7]: there must be a realistic prospect of success. In my opinion that the test is to be preferred to the alternative approach put forward by Lady Smith in *McSparran McCormack* v *Scottish Legal Complaints Commission*, [2015] CSIH 4: see *Baird Matthews*, *supra*, at paragraph [3]. A realistic prospect of success is less than a probability of success, and has been described as a "low threshold": *Law Society*, *supra*, at paragraph [23]. It is nevertheless a test that must be met if a case is to be fully investigated.

The Court's approach

[22] In dealing with applications for leave to appeal, the Court must have regard to the fact that the respondent is a specialist body specifically set up to deal with complaints made against members of the legal profession. In *Murnin* v *Scottish Legal Complaints Commission*, 2013 SC 97, at paragraph [31], Lord Carloway stated that the respondent is "a specialist body to whom Parliament has given the power, under the 2007 Act, to sift complaints against solicitors". Furthermore as the specialist body seeing all the complaints, ranging from the most frivolous to the most grave, they were in the best position to assess individual complaints: *ibid*. While the last comment was made in relation to gauging when a complaint fitted into an exceptional category, the point is a general one: the respondent "must be

accorded a degree of institutional respect by the court in taking decisions in this area of competence".

[23] The grounds on which an appeal may be made against a decision of the respondent are set out in section 21(4) of the Legal Profession and Legal Aid (Scotland) Act 2007. This provides as follows:

> "The grounds referred to in subsection (1) are –
>
> (a) that the Commission's decision was based on an error of law;
>
> (b) that there has been a procedural impropriety in the conduct of any hearing by the Commission on the complaint;
>
> (c) that the Commission has acted irrationally in the exercise of its discretion;
>
> (d) that the Commission's decision was not supported by the facts found to be established by the Commission".

Nevertheless, section 21(1) provides that an appeal against a decision of the respondent requires the leave of the court. That is the reason for the present application. Furthermore, it is clear that before leave is granted the court must be satisfied that the appeal has a realistic prospect of success or that there is some other compelling reason why it should be heard: *Williams* v *SLCC*, *supra*, at paragraph [7].

[24] Paragraph (b) of the foregoing subsection refers to procedural impropriety "in the conduct of any hearing". It has been suggested that those words indicate that procedural impropriety is only significant where a hearing has taken place, involving submissions by the person making the complaint and the solicitor: see *Oliphant* v *Scottish Legal Complaints Commission*, [2014] CSIH 94, at paragraph [26]. I would be reluctant to give the word "hearing" too literal a meaning in this context, because the principle *audi alteram parte* is an important part of the general law, and it is obvious that any party interested in a dispute

must be given an adequate opportunity to present his or her case. Nevertheless, the word "hearing" does indicate that representations from interested parties must be under consideration before paragraph (b) is engaged.

[25] Paragraph (c) of subsection 21(4) refers to the respondent's acting "irrationally". This was described by Lord Glennie in *X LLP* v *Scottish Legal Complaints Commission*, [2017] CSIH 73, as "a high test", not dissimilar to the test that applies in the context of judicial review (paragraph [3]). In *B* v *Scottish Legal Complaints Commission*, [2016] CSIH 48, Lady Paton summarized the test as applying to "a determination which no reasonable body, properly instructed, on the information available to them, and applying the law correctly, could have reached" (paragraph of [9]). It is therefore clear that the test of irrationality is very substantial, and goes well beyond mere disagreement with the decision that has been reached.

The applicant's grounds

[26] I will now deal with the individual grounds that are forward by the applicant; certain of the grounds are consolidated because they belong together.

[27] Grounds 1 and 5. The applicant contends that the respondent erred in law, in that it failed to investigate his complaint properly and fully. I except that, when a complaint is made, some degree of investigation is required in order that the respondent may decide *inter alia* whether the complaint has any realistic prospect of success, the test laid down in *Williams*, *supra*, and adopted in most subsequent cases. The level of investigation that is required at this stage is, however, significantly limited. It is emphatically not a full investigation of the complaint. In the present case the respondent was aware of the terms of the applicant's complaint, and took those into account. It had been given a history of matters

by the applicant, and copies of all the material correspondence. (I realize that there is an issue as to the letters allegedly sent by the solicitor on 28 January and 22 February 2019, but this falls under later grounds on which the applicant seeks leave to appeal). Furthermore, the respondent, as the body responsible for all complaints made against solicitors, is particularly well placed to know about the general practice of solicitors, and possible variations in such practice. In these circumstances it is clear in my opinion that the respondent had all of the information that it required in order to decide whether or not the applicant's complaint was totally without merit. Further investigation was unnecessary in all the circumstances. For this reason I consider that grounds 1 and 5 would have no realistic prospect of success.

[28] Ground 2. The applicant claims that there has been a "procedural impropriety" in the respondent's decision in that it failed to investigate certain matters recently brought to its attention by the applicant. This raises similar matters to Grounds 1 and 5, notwithstanding the difference of description. In my opinion the respondent had quite sufficient information to decide whether the applicant's complaint had any realistic prospect of success. Furthermore, before a procedural impropriety can occur there must be something akin to a hearing, in which both parties present contentions. In the present case there was no actual hearing, but the applicant was able to make his case as fully as he wished and thus it cannot be said that there is any procedural impropriety. For the foregoing reasons I do not consider that ground 2 has any realistic prospect of success.

[29] Ground 3. The applicant alleges that the respondent acted irrationally in the exercise of its discretion by failing to investigate the complaint "reasonably and fully", and reached a decision that no reasonable decision maker would arrive at. The question of investigation adds nothing to the matters discussed above in relation to Grounds 1 and 5 and, separately,

2. I have therefore rejected the complaint in so far as it relates to investigation. As to the decision itself, I would emphasize the approach adopted in *Murnin*, *supra*, at paragraph [31], which accords the respondent institutional respect as the body charged by Parliament with the duty of considering all complaints against solicitors at an initial stage. I have already set out the respondent's reasoning at some length. The test for so-called "irrationality" is that the decision is one that no reasonable body exercising similar functions could have reached. In my opinion it is manifest that that test is not satisfied in the present case. The respondent's reasoning is full and detailed, and in my opinion the substance of the reasoning is cogent, and indeed compelling. This ground accordingly has no realistic prospect of success.

[30] Ground 4. The applicant claims that the respondent's decision was "not supported by facts found to be established by the Commission". This allegation is not specified further. In my opinion it is plainly unfounded. The respondent's decision narrates at some length correspondence between the solicitor and the applicant, and it is on the basis of that correspondence that its decision is reached.

[31] Ground 6. This is a very short ground, to the effect that the respondent "failed to establish certain facts". No specification is given. In these circumstances it is clear that this allegation has no merit.

[32] Grounds 7-16. Grounds 7-16 deal with the duties incumbent on the solicitor, and in particular the scope of those duties in the light of the correspondence that passed between him and the applicant. In ground 7 it is said that the respondent erred in deciding that the solicitor only agreed to work under the Legal Aid Advice and Assistance Scheme; this, it is said, was incompatible with the terms of the solicitor's letter of 10 December 2018. In ground 8 it is said that the respondent erred in deciding that the solicitor's offer to

undertake work on a private basis could only be effective once a new agreement and terms of business had been issued, as the applicant had stated in his letter of 12 December that he wished to take up the solicitor's offer to do work privately. It is clear in my opinion that these grounds are unfounded, and would not have any realistic prospect of success in an appeal. On the basis of the correspondence that is available that the respondent's conclusions on these matters were plainly correct. Those conclusions are based on the question of what agreement, in the sense of a binding contract, was in force between the solicitor and the applicant. At this time the solicitor had only offered to carry out further work on a private fee-paying basis, and that offer was obviously subject to concluding the terms of an appropriate contract. This is a matter of elementary legal analysis. Furthermore, it is clear from the correspondence that is available (once again assuming that the letters of 28 January and 22 February 2019 were sent) that the solicitor was willing to discuss the possibility of doing work privately.

[33] In ground 9 the applicant states that expert evidence would be led if necessary to establish that the solicitor acted "potentially negligently" in failing to ask for reconsideration of SLAB's decision to refuse sanction for the cost of a consultation with counsel. The complaint made to the respondent was a complaint made in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 relating to the conduct of solicitor. It was not a claim for professional negligence, and on that basis evidence of such negligence is only of indirect relevance. The only support that the applicant provides for his contention of professional negligence is a letter of 25 April 2019 from Cameron Macauley, Solicitors. This letter does not, however, support any claim for professional negligence. It states "at this stage, I cannot possibly say if you have grounds of action, far less comment on the prospects of success". It follows that ground 9 is entirely speculative, and at best it could only be of peripheral

relevance to the complaint. There is accordingly no realistic prospect of success in this ground.

[34] Grounds 10 and 11 relate to the solicitor's not applying for reconsideration of SLAB's decision. Although it is not entirely clear, it appears that the applicant's position is that the respondent erred in law in holding that the solicitor was not obliged to apply for reconsideration. The respondent explains its reasoning at some length in its decision. In particular, the solicitor stated that he did not wish to apply for reconsideration of the decision because he had received an unfavourable opinion from counsel. In my opinion that was clearly the correct attitude for the solicitor to take. Furthermore, the respondent decided that the solicitor had not agreed to take matters further with SLAB: see paragraph [12] above. Consequently I do not consider that there is any realistic prospect of success in relation to these two grounds.

[35] Ground 12 relates to the solicitor's not putting in place a private fee-paying agreement when he had offered one to the applicant and the applicant had accepted. In my opinion, as a matter of elementary contractual analysis, it is clear that no agreement had been reached. At the very least terms of business would have to be agreed, and this had plainly not happened. For this reason I cannot see any merit in this ground. Grounds 13 and 14 relate to the solicitor's refusal to approach SLAB further for reconsideration of its decision. For the reasons set out in relation to grounds 10 and 11, I consider that there is no merit in grounds 13 and 14. Ground 15 alleges an error by the respondent in the construction of the letters sent by the applicant on 12 and 27 December 2018. Once again I can find no error in the respondent's reasoning, essentially for the reasons regarding grounds 10 and 11. Ground 16 is to the effect that legally aided work had not been completed by the solicitor, as found by the respondent, as the letter sent by the applicant to the solicitor on 12 December

2018 requested that he should not close the file. On this matter, it is clear in my opinion that the request in that letter is no more than a request; it did not in any way bind the solicitor, as a matter of elementary contract law. In my opinion there is no realistic prospect of success in any of Grounds 12-16.

[36] Ground 17 relates to the applicant's first ground of complaint, namely that the respondent failed to communicate effectively with the applicant over a three-month period. The adequacy of the correspondence is addressed at length in the respondent's decision. It is accepted that initially the solicitor did not communicate with the applicant as well as he might have done, but the respondent took the view that the shortcoming was not sufficiently serious to amount to a breach of the relevant Service Standards (see paragraph [17] above). These are matters that fall peculiarly within the institutional and professional competence of the respondent. I am unable to detect any error in its reasoning in this respect, or any realistic prospect of successfully arguing that there is such an error.

[37] Grounds 18-20 deal specifically with the question of whether the letters allegedly sent by the solicitor dated 28 January and 22 February 2019 had actually been written and posted on the dates that they bear. I observe at the outset that this is an allegation of dishonesty – indeed fraud – against the solicitor. Clear evidence is required before such an allegation can be entertained. In the present case, the only evidence that is put forward in support of the allegation is the fact that, according to the applicant, he did not receive the letters. It is obvious, however, as the respondent held, that letters may go astray in the post. On occasion more than one such letter may go astray. This is particularly the case where they are sent to an institution such as the State Hospital, where formal procedures exist for the processing of mail sent to those detained there. As the respondent held, more would be

required than mere non-receipt of correspondence to hold that it was not prepared and sent on about the date that it bears.

[38] The applicant offers to lead evidence as to the dates when the two letters in question were composed. This would involve investigation of the solicitor's computer system. Correspondence with a firm, Pegasus Investigations Ltd, is produced in which the possibility of such an investigation is discussed. The letters from Pegasus, however, are plainly inconclusive. Any investigation of the computer systems would present numerous difficulties, including confidentiality, which is clearly a very important issue in relation to a solicitor's files. Consequently I consider that the possibility of such an investigation of the solicitor's computer systems is at best merely speculative.

[39] More importantly, this evidence was not placed before the respondent at the time when it considered its decision. Beyond the applicant's assertion that the letters of 28 January and 22 February 2019 had not been received, there was nothing to suggest that they had not been written and posted on or about the dates that they bear. The respondent was satisfied that what was involved was a mere assertion by the applicant, which did not justify further investigation of the complaint. In my opinion the respondent was fully justified in adopting that course. Such an investigation would present considerable practical difficulties, including confidentiality. In these circumstances it cannot be said that the respondent's decision is one that no reasonable body in its position could reach. I am accordingly of opinion that grounds 18-20 do not have any realistic prospect of success.

Conclusion

[40] For the foregoing reasons I will refuse the application for leave to appeal to the Court of Session on the basis that it has no realistic prospect of success on any of the grounds

presented. I should add that, after the case was taken to avizandum following a hearing in court using a video link to the State Hospital, the applicant lodged supplementary written submissions. In my opinion it is inappropriate in an application for leave to appeal to entertain additional submissions made after the hearing has been completed. I have accordingly not attempted to provide a detailed answer to the points made in those submissions.