

THE FACULTY OF ADVOCATES DISCIPLINARY RULES 2015

(Ref: 2019/04)

Decision of the Complaints Committee

in the matter of the Complaint by Steven Elliott

regarding

Andrew Smith KC

[1] This is a decision of the Complaints Committee (“the Committee”) established under the Faculty of Advocates Disciplinary Rules 2015 (“the 2015 Rules”) in respect of a complaint made by Steven Elliott (“the Complainer”) regarding Andrew Smith KC (“the Member”), and assigned Faculty Reference 2019/04. It is noted by the Committee that earlier interim decisions cited Faculty Reference 2019/14 but it is acknowledged that this was an error and that all of the decisions of both the Complaints Committee and Investigating Committee are related to the complaint assigned the Faculty Reference 2019/04. The 2015 Rules apply to this complaint having regard to the date on which the complaint was remitted to the Faculty by the SLCC; (i.e. 28 June 2019, being a date after 7 September 2015 but before 30 June 2019 when, on and after, complaints remitted by the SLCC fall to be determined under the Faculty of Advocates Disciplinary Rules 2019).

[2] The Committee remains comprised of Ailsa Wilson KC, Andrew Webster KC, William Aitken and Sue Stahly.

[3] The background to this complaint is set out in the Committee’s Interim Decision of 30 April 2021, to which reference is made. Shortly put, three issues of complaint were remitted to the Committee for consideration, as set out in numbered paragraphs 5, 10 and 14 of the extract from the SLCC’s “Summary of Issues of Complaint”, which are included below:

“I, Mr Steven Elliott wish to complain about Advocate Andrew Smith QC, who was instructed by a particular firm of solicitors to represent Mr A and Mr B, on numerous occasions, in a number of court actions involving me or my trustee in bankruptcy, between 2011 and 2018. Specifically:

...

5. *Advocate Andrew Smith QC, from 31 January 2015 to May 2018, continued to accept instructions from the solicitors to represent Mr A and Mr B in Case 200/15, despite his close personal involvement in their business affairs that made it inappropriate for him to do so.*

...

10. *Advocate Andrew Smith QC, on 18 May 2018, inappropriately accepted an instruction to appear in court for Mr A and Mr B despite having such a close personal involvement with Mr A and Mr B and their intended business dealings that it would have created a conflict of interest and affected his ability to remain impartial and independent.*

...

14. *Advocate Andrew Smith QC was improperly in direct contact with my Trustee in bankruptcy Ms Z in, or around, May 2018 as confirmed by her email to me dated 31 May 2018.*

[4] In its Interim Decision of 30 April 2021 the Committee remitted the complaint to an Investigating Committee further to rule paragraph 18.b. of the 2015 Rules. The Committee has received the report of the Investigating Committee (also referred to interchangeably as "IC") dated 24 February 2023. The Committee met on 12 April, 25 July, and 11 October 2023 and 25 March and 1 May 2024 to consider the report together with the related complaint, Faculty Ref. 2021/01. The Committee has also had regard to the submission made on behalf of the Member on 22 March 2023, and, on behalf of the Complainer on 31 March 2023, following upon intimation of the report of the IC.

[5] The Committee has considered all of the information placed before it and the report of the Investigating Committee and the reported decisions in *Worbey and Farrell v Elliott* [2014] CSOH 19 (CA109/13), and *Worbey and Farrell v Campbell and Others* 2016 CSOH 148 and (in appeal) [2017] CSIH 49 (CA200/15). The Committee has also had regard to the decision of the Inner House in the appeal by the Member against the decision of the Scottish Legal Complaints Committee to refer four out of the fourteen complaints by the Complainer against the Member to the Faculty of Advocates for investigation (Court citation [2020] CSIH 19), which resulted in the Court concluding that the decision of the SLCC should be quashed in respect of issue 7 but that issues 5, 10 and 14 should be investigated by the Faculty.

Preliminary matters

[6] In written submissions made to the Committee on behalf of the Member, concern was expressed that the Member had not been provided with "clear or specific notice of the allegations made against him or the contraventions of the Faculty's Guide to the Professional Conduct of Advocates of which he is accused." In correspondence dated 8 April 2023 he further stated that he was "mystified as to what the complaint

actually is against me”; that “I have not had the opportunity to respond to the ‘complaints’; and “I have never been told what rule or principle I am alleged to have breached.”

[7] Whilst the Committee was itself concerned that the volume of material presented by the Complainer raised difficulties in distilling material information relevant to the complaint, the Committee was satisfied that the referral made by the SLCC to the Faculty identified succinctly and clearly three issues of concern as to his conduct. The SLCC identified four complaint issues for referral. After proceedings in the Court of Session raised by the Member (referred to in paragraph [5] above), only three complaint issues were referred to the Complaints Committee. The issues were clearly stated by the SLCC. Further, in respect of each issue there was identified by the SLCC the relevant paragraphs of the *Guide to the Professional Conduct of Advocates* (“the Guide”) that were relevant to each complaint. In respect of Issue 5, that was paragraphs 2.1.1 and 2.2. In respect of issue 10, it was paragraph 2.1.1 alone. In respect of issue 14 it was paragraph 1.2.3. (The relevant paragraphs are set out in paragraphs [14] and [15] below.) The Member’s representatives have made submissions to the Committee on his behalf under reference to those particularised issues. The Committee was satisfied that the Member could be in no doubt as to the complaint against him. No additional complaint was added in the remittal of the complaint referred by the SLCC to the Faculty (as restricted by the court) by the Dean’s Secretariat to the Committee for investigation. The Committee therefore firmly rejects as implausible, the Member’s assertion that he has never been told what rule or principle he is alleged to have breached. Furthermore, the Committee was satisfied that in remitting the matter to the IC, and by allowing the Member the opportunity to consider and comment upon the report of the IC, the Member is fully appraised of, and has been given fair opportunity to comment upon, the evidence relevant to the complaint.

[8] The Committee determined therefore that adequate notice was thereby given to the Member as to the conduct alleged against him and the sections of the Guide alleged not to have been met.

[9] The Committee is also mindful of the length of time that this complaint has been before it. In the Committee’s experience, this complaint has been exceptional in terms of the volume and detail of material submitted. The Committee endeavoured to reach a determination without reference, and the likely inevitable delay inherent in such a reference, to the IC. However, after careful consideration of the material before it, it concluded that it could not fairly do so without further information and investigation and thus a reference was made. In part, that was due to a lack of clarity in the material provided and the submissions made, including after requests made of the Member by the Committee for further information. The IC took some time to report. This Committee make no criticism of that time in the light of the volume of

material to be considered, the investigations undertaken and the detail of the IC's report. Upon resuming consideration of the material before it, some two years or thereby after its last consideration of matters, the Committee had to familiarise itself with not only the material originally submitted, but also the detailed findings of the IC and submissions made in response thereto. The Committee regrets any delay in the determination of a complaint. Whilst the Complainer and the Member may feel a sense of frustration at the time this matter has been under consideration, that time is simply a reflection of the proper and fair process of investigation, consideration and determination of the complex matters contained within the substantial documentation submitted by both parties.

Professional Misconduct and Unacceptable Professional Conduct

[10] On a complaint being referred to the Committee it is open to the Committee *inter alia* in its sole discretion to uphold the complaint as Professional Misconduct or Unacceptable Professional Conduct in whole or in part, or to dismiss the complaint; (paragraph 18 of the 2015 Rules).

[11] The 2015 Rules provide that Professional Misconduct means any conduct that is not of the standard of competent and responsible advocates and that would be regarded by such advocates as serious and reprehensible. Unsatisfactory Professional Conduct means conduct that is not of the standard that could reasonably be expected of a competent and reputable advocate, that does not amount to professional misconduct and that is not merely Inadequate Professional Services; (i.e. professional services that are not of the quality which could reasonably be expected of a competent advocate). These definitions are provided in paragraph 3 of the 2015 Rules.

[12] Whilst the 2015 Rules are silent as to the standards to which such conduct might be assessed, the Guide provides useful and informative insight into the conduct expected of advocates. In respect of the matters that are the subject matter of this complaint before the Committee, the relevant edition of the Guide is the Fifth Edition (October 2008).

The Guide: an advocate's duty of independence

[13] The Guide is not an exhaustive statement of the requirements of professional practice, but on its own terms, it must be interpreted according to its spirit rather than its letter.

[14] General principles of professional conduct are set out in the Guide at Section 2. The Committee notes in full the terms of § 2.1.1 of the Guide:

“The many duties to which an Advocate is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as is the impartiality of the judge. An Advocate must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the Court or third parties.”

Further, § 2.2 of the Guide provides:

“Relationships of trust can only exist if an Advocate’s personal honour, honesty and integrity are beyond doubt. For the Advocate, these traditional virtues are professional obligations.”

[15] The duties of independence and personal integrity fall to be considered in the light of the status, rights and obligations of an advocate, which are canvassed in Section 1 of the Guide. Notably, the Guide is careful to distinguish between the role of counsel and the role of an agent. At its high point it records that an advocate cannot perform any act which must, in law, be performed by the client or someone empowered to act as an agent on his behalf (§ 1.2.3). However, the Guide also continues:

*“The acts of an Advocate are acts done upon his own responsibility in performance of an office and he does not, **and cannot, in any sense,** act as agent of his client; that is the function of the solicitor or other professional”* (emphasis added) (again, § 1.2.3)

Findings of fact

[16] In the determination of any complaint under the Rules the Member is to be given the benefit of any reasonable doubt. (Paragraph 69 of the 2015 Rules). The Committee approached the issues of fact on that basis having regard to the documentary material before it and the findings of the IC.

Background

[17] In or about 2009 the Complainer, Mr Worbey and Mr Farrell had discussions regarding the development of a gay dating app. The relationship between Mr Worbey and Mr Farrell on the one hand, and the Complainer on the other, broke down. Litigation ensued. The Member represented Mr Worbey and Mr Farrell in two litigations in the Court of Session arising from the breakdown in the relationship: CA109/13 and CA200/15. The Complainer was declared bankrupt during the currency of the first action. The Member appeared at the Complainer’s Public Examination before Deputy District Judge Constantine on 31 July 2015 when he questioned the Complainer. The Member also assisted Mr Worbey and Mr Farrell with efforts to

acquire intellectual property rights (in particular, trademarks) in relation to the app in the names Bender and Brenda.

Issue 5: The Member from 31 January 2015 to May 2018 continued to accept instructions from the solicitors to represent Mr Worbey and Mr Farrell in Case 200/15, despite his close personal involvement in their business affairs that made it inappropriate for him to do so.

FOUND PROVED.

[18] Much information was placed before the Committee as to the alleged relationships, business dealings and conduct of the various parties. The volume of information provided has in no small part hampered the ability of the Committee to distil the relevant evidence.

[19] Case 200/15 (more properly, CA200/15) was noted by the Member in the timeline provided by him on 29 January 2021 to have commenced on or about 2 October 2015 and to have proceeded to a proof-before-answer (“PBA”) in August 2016, with a reclaiming motion heard in July 2017 and decision of the Inner House delivered on 26 July 2017. The Member also referred to his attendance at a motion for an additional fee on 1 September 2017. He advised that he was instructed as counsel in the PBA, the reclaiming motion and the additional fee motion. The decisions of the Lord Ordinary in the Outer House and of the Court in the Inner House in that matter, confirm the Member’s appearance at both substantive hearings. The Committee was therefore satisfied beyond reasonable doubt of the Member’s appearance in that action at those hearings. The Committee noted the finding of fact by the IC, at § 154, that action CA200/15 concluded on 26 July 2017. However the Committee also noted that in his timeline of events the Member accepted that he had been instructed to appear on behalf of his clients in the motion for an additional fee that was to be heard on 1 September 2017. The Committee therefore concluded that he had accepted instructions in case CA200/15 between at least August 2016 and 1 September 2017.

[20] The Committee then turned to consider the issue of the Member’s alleged involvement in the business affairs of Mr Worbey and Mr Farrell at that time. The Committee found proved the following:

- (1) An email was sent on 31 January 2015 by the Member to Elias Paourou, then one of two joint liquidators of Bender Social Networking Limited (BSNL), whom he identified in the email as the registered owner of the trademarks,

Bender and Brenda¹. The subject of the email was “BSNL” and the email concluded “Kind regards, Andrew. Andrew Smith QC Advocate and Barrister”. In the email the Member referred to, variously “our clients” and “my clients” and set out concerns as to how the apps might be operated by the Complainer. It stated:

“Plainly you and we have an interest on having this matter controlled. And we are prepared to work with you to attempt to sort some kind of solution out as an interim measure.”

The email went on in relation to the trademarks and other matters:

“... We dispute that the company has any right to use them for reasons outlined previously. But, for now, we will be prepared to work with you without that causing difficulty. This of course means that we are fact creditors of the company and shall have a claim for breach, including an accounting for profits made by the use of the mark. In addition, it may be that we have a claim against the company for knowing receipt of profits to which it was not entitled. But again, I simply raise this to point out the financial interest our clients have as creditors.

What we wish to do is to obtain control of the App. The only method of doing so is for Mr Elliott to disclose the various codes. We can provide the technical input to then commence operating the apps, and indeed to market it in a way that makes it lucrative and progressive. The contract that is standard between Apple and an app developer contains a clause terminating the contract upon insolvency, so it may be necessary for a new company to be established to contract with those individuals.

I realise that Mr Elliott will be difficult about disclosing the details of the codings, or deny that he has them. I would anticipate through that you would have the ability to enforce that via the courts and to that end we would also wish to work with you. I agree that it would be sensible for you to be appointed as his trustee in bankruptcy, and that would of course permit you to take such steps against him personally as were necessary to investigate his personal affairs.

I have no doubt – largely from the smirk on his face in court – that he sees this as a clever trick that he has pulled. He has no job other than these apps, and no income as far as we know apart from that derived from them.

Would you be able to engage in a conference call with us at 3.00 on Monday to discuss where we go from here? As a personal creditor of Mr Elliott, holding a judgement

¹ This was an email provided by the Member to the SLCC and was referred to by the SLCC in its decision to refer the complaint to the Faculty.

against him, we would wish to make an application for your appointment as his trustee. That application could be made in very short time if we have an action plan to try to stop the damage to the company asset. You may also wish, in the circumstances, to notify the Intellectual Property Office of the company's status and your appointment, lest another application be made to change the registered owner to another company. The company would then be able to stop any other company from using the names."
(sic)

- (2) The Member took part in a conference call with the liquidator on 2 February 2015. That call was on the instructions of solicitors, with an instructing agent present. (Investigating Committee Report ("IC") § 65).
- (3) On 31 July 2015 the Member attended the public examination of the Complainer at Brighton County Court and questioned him on behalf of Mr W and Mr F. He did so on instructions as a barrister in England and Wales (IC § 51).

[21] The Committee considered other conduct on the part of the Member, but was not satisfied beyond reasonable doubt that it occurred during the period August 2016 and 1 September 2017. In particular:

- (4) The Member introduced David Grier, Duff & Phelps, to Mr Worbey and Mr Farrell which resulted in Mr Grier's suggestion that Sarah Bell, of Duff & Phelps, become a trustee in the Complainer's bankruptcy (IC § 46). This occurred after Mr Chadwick, who for a period of time was the Complainer's trustee, demitted office as trustee (again, IC § 46). The Committee was not however able to conclude beyond reasonable doubt when that occurred and therefore whether it occurred before 26 July 2017.
- (5) The Member spoke to Ms Bell, a subsequent trustee of the Complainer, sometime after her involvement in the Complainer's bankruptcy (IC § 34). She first became involved in the bankruptcy in April 2018 and therefore after the cessation of the Member's involvement in action CA200/15 in 2017.
- (6) The Member assisted in relation to applications made for rectification of the register of Trademarks. However that also occurred in and after 2018 and therefore after the Member ceased acting in the CA200/15 action (IC § 79).
- (7) The Member introduced David Smith and Edgeburn Properties Ltd to Mr Worbey and Mr Farrell. In his statement the Member refers to the involvement of David Smith occurring "following the effective conclusion of the second action" (§ 5.1 and see also § 5.3). The Committee was not satisfied that it had

been demonstrated beyond reasonable doubt that had been before the motion for an additional fee on 1 September 2017.

[22] The evidence that might support the allegation of personal involvement in the affairs of Mr Worbey and Mr Farrell was thus of actions prior to the CA200/15 action commencing. The Committee noted the tenor and language of the email of 31 January 2015. The Committee recognised that the plural pronouns “we” and “us” can be used inelegantly by lawyers to refer to their clients. However, they may also indicate a commonality of interest. Whilst the Committee noted that at times the Member referred to “my clients”, he did not do so consistently. Instead there were several references to “we” and the overall impression drawn by the Committee was of a commonality of interest and thus involvement beyond professional endeavour. Furthermore, the Committee found the email to be outside of its experience of communications by counsel, both in terms of its nature and content. The email bore more resemblance to a communication sent by a solicitor, or agent, on behalf of the agent’s principal. Taking those two considerations together and mindful of § 1.2.3 of the Guide, the Committee’s view was that when read in the round the email demonstrated close personal involvement by the Member in the business affairs of Mr Worbey and Mr Farrell.

[23] The Committee considered also the subsequent conference call with the joint liquidator and the Member’s attendance at Brighton County Court. Standing the view taken by the Committee as to the email, the Committee’s view of these subsequent actions was that they are coloured by the email communication and therefore underscore the close personal involvement demonstrated by the email: the Member was acting in furtherance to that close personal involvement, albeit that in respect of both matters the Committee accepted as a matter of fact the Member’s explanation that he was acting upon instructions. However, the Committee did not consider that denuded his conduct of close personal involvement. The formality of instruction was merely the context in which the involvement was made manifest.

[24] The Committee therefore found, beyond reasonable doubt, that the Member had accepted instructions from solicitors representing Mr Worbey and Mr Farrell in the CA200/15 action, despite having a close personal involvement in their business affairs.

[25] Finally in respect to this issue the Committee considered whether it had been inappropriate for the Member to have accepted instructions in those circumstances. The Committee had regard to §§ 2.1.1 and 2.2 of the Guide. The Committee determined that the Member’s conduct in sending the email of 31 January 2015 created the impression that he was acting as agent for Mr Worbey and Mr Farrell. It therefore compromised his independence from his instructing solicitors. Further, its terms compromised his independence from Mr Worbey and Mr Farrell. In that regard the

Committee recalled the terms of § 1.2.3 of the Guide (“... *an Advocate ... cannot, in any sense, act as agent for his client ...*”). His subsequent conduct in the call and the appearance at Brighton County Court underscored his close personal involvement. The Guide advises that the independence of an advocate is as necessary to trust in the process of justice as is the impartiality of a judge. Therefore that independence must be not only real, it must also be such as to defeat the impression of apparent lack of independence. The Committee has regard to the test for apparent bias: whether, in all the circumstances, the fair-minded and informed observer, having considered the facts, would conclude that there is a “real possibility of bias”: that is, not a remote or insignificant risk. The Committee was satisfied beyond reasonable doubt that the Member’s conduct created such a risk and thus undermined the trust that could be placed in him.

[26] The Committee therefore concluded that the Member had seriously compromised his duty of independence narrated in § 2.1.1 and the professional obligation of trust narrated in § 2.2 of the Guide. The Committee therefore concluded that in the light of the Member’s failure to adhere to those requirements of the Guide it had been proved beyond reasonable doubt that the Member’s conduct in subsequently accepting instructions in CA200/15 was inappropriate. His acceptance of instructions in the prevailing circumstances represented a further failure to meet the obligations set out in those paragraphs of the Guide.

Issue 10: The Member on 18 May 2018 inappropriately accepted an instruction to appear in court for Mr Worbey and Mr Farrell despite having such a close personal involvement with Mr Worbey and Mr Farrell and their intended business dealings that it would have created a conflict of interest and affected his ability to remain impartial and independent.

FOUND PROVED.

[27] This allegation relates to conduct in litigation CA109/13 and concerns involvement on a specific, later, date to the dates relevant to Issue 5.

[28] The Member attended Court on behalf of Mr Worbey and Mr Farrell on that day. In his statement of 9 September 2020 he accepted that he attended on that date. The Court’s interlocutor of that date also records his attendance.

[29] As to the nature of the Member’s involvement in the business affairs of Mr Worbey and Mr Farrell, in addition to the action already found proved, the Committee also found proved that by 18 May 2018:

- (1) The Member had introduced Mr Grier to Mr Worbey and Mr Farrell (*vid.* IC § 46). This must have occurred before 18 May 2018 as Mr Grier wrote a “To whom it may concern” letter on 17 May 2018 referring to Duff and Phelps being engaged by Mr Worbey and Mr Farrell.
- (2) The Member spoke to the Complainer’s trustee in bankruptcy, Ms Bell, prior to her appointment as a joint trustee (which appointment was formalised on 17 May 2018). He discussed the background facts of the Complainer’s bankruptcy and the Complainer’s potential estate (*vid.* IC § 36).
- (3) The Member introduced his brother Mr David Smith to Mr Worbey and Mr Farrell. The Member admitted that he did so in his statement at § 5.2. The Committee noted from IC § 110 that Mr David Smith’s company, Edgeburn Properties Limited, had had an interest in Bender and Brenda trademarks since 28 December 2017. The Committee therefore concluded beyond reasonable doubt that the introduction of Mr David Smith occurred before 18 May 2018.

[30] The Committee determined that these further acts also fell to be coloured by the Member’s conduct in sending the email of 31 January 2015 and his subsequent actions as found proved above. Taken together they demonstrated beyond reasonable doubt an ongoing close personal involvement in the affairs of Mr Worbey and Mr Farrell and their intended business dealings. There was no suggestion that these actions were in response to any specific instruction by the Member’s instructing solicitors. Instead, as to introductions made by the Member, the Member advised the Investigating Committee that Mr Grier was a client and a friend who had become involved “as a favour to him”. Whilst a business introduction facilitated by counsel is unlikely of itself to demonstrate a close personal involvement with the business affairs of a client, various introductions carry the risk of an advocate appearing too intimately interested with the client’s affairs. Taken with the other proven facts the Committee was satisfied beyond reasonable doubt that the introductions and discussion together demonstrated a level of interest that did indeed compromise the Member’s independence (as discussed above) from Mr Worbey and Mr Farrell. The Committee therefor determined that the Member had accepted instructions to appear in court for Mr Worbey and Mr Farrell despite having such a close involvement with them and their business dealings, which created a conflict of interest and affected his ability to remain impartial and independent and undermined his duty of independence, contrary to § 2.1.1 of the Guide.

Issue 14: *The Member was improperly in direct contact with the Complainer’s Trustee in bankruptcy Ms Bell in, or around, May 2018 as confirmed by her email to the Complainer dated 31 May 2018.*

FOUND PROVED.

[31] The Committee noted the finding of the Investigating Committee that the Member met Ms Bell prior to her formal appointment as trustee on 17 May 2018. The finding of the Investigating Committee was simply that the discussion related to the Complainer's bankruptcy and the potential estate. The Member attended upon request and not on his own initiative (IC § 36).

[32] As to whether that particular contact was improper, the Committee noted that the Member had not been instructed by his instructing solicitors to discuss Mr Worbey and Mr Farrell's affairs with Ms Bell at that time. The conversation was that which might be expected to be entered into by an agent (solicitor) for Mr Worbey and Mr Farrell. The Member's conduct was therefore determined to be acting as agent for his client in discussing matters with Ms Bell and a clear and serious contravention of the expectation of counsel set out in § 1.2.3. of the Guide.

[33] This Issue was therefore found proved.

Professional Misconduct and Unacceptable Professional Conduct

[34] The Committee turned to consider whether the Member's conduct, as found proved, amounts to Professional Misconduct or Unsatisfactory Professional Conduct.

[35] The Committee found the Member's conduct to be serious. The independence of an advocate is the bedrock of their reputation and the reputation of the profession. The Member's conduct was intentional, not accidental. He sought to provide justification for some of his actions on the basis that at times he had been acting on instructions of his instructing solicitors, for example in sending the email of 31 January 2015 and in attending the subsequent call. The Committee did not find his explanation to be mitigating. Counsel may from time to time be asked by agents to act in a manner that, with proper regard to the professional obligations of the advocate, the advocate should decline to do. The Member repeatedly failed to recognise the need for him to remain independent and to decline to act and he so failed whilst litigation was ongoing and he was instructed in regard thereto. It is in the advocate's standing before the court that the need for independence is most important; for in that independence the court can confidently expect that duties owed by an advocate to it are also observed. If the Member had elected to cease acting in the litigations whilst promoting the business interests of Mr Worbey and Mr Farrell the seriousness of the Member's actions, though less, would nevertheless remain. It is a cornerstone of an advocate's role, in which their reputation and the reputation of the profession lies, that there is a distinction between counsel and an agent. The Member's actions failed,

repeatedly, to maintain that distinction. In the event, the Member chose to ride two horses when that was professionally seriously inappropriate to do so.

[36] The Member's conduct in each and all of the issues demonstrated in the judgement of the Committee a serious failure to meet the standard of conduct expected of advocates as set out by the Guide at § 2.1.1 (as regards Issues 5 and 10) and § 2.2 (as regards Issue 5). He compounded that by holding himself out as his client's agent, contrary to § 1.2.3 (*vid.* Issue 14). The Member failed to avoid any impairment of his independence and in the process undermined the trust expected of an advocate. He compromised his professional standards in order to please his client. Furthermore the Member failed to maintain his independence on more than one occasion over a prolonged period of time in a manner that cannot be characterised as accidental or a matter of oversight.

[37] The Committee determined that its findings, taken individually and together, demonstrated conduct which failed to have regard to fundamental obligations on the part of counsel. As such it could only be described as a serious departure from the standards of competent and responsible advocates and that would be regarded as serious and reprehensible.

[38] The Committee therefore found the Member's conduct to amount to professional misconduct.

Further procedure

[39] The Committee must now consider the appropriate disciplinary penalty. The Member is invited to provide a written representation on that matter within a period of 14 days after the date of intimation of this decision.

**Chair of the Complaints Committee,
20 May 2024.**