Neutral citation [2026] CAT 13

Case No: 1672/5/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Court of Session
11 Parliament Square
Edinburgh EH1 1RQ

25 February 2026

Before:

THE HONOURABLE LORD RICHARDSON
(Chair)
PETER ANDERSON
CHARLES BANKES

Sitting as a Tribunal in Scotland

BETWEEN:

PATRICK HENRY MCAULEY

Applicant / Pursuer

- v -

FACULTY OF ADVOCATES

Respondent / Defendant

Heard at the Court of Session on 27 January 2026

RULING (PERMISSION TO APPEAL)

APPEARANCES

Patrick Henry McAuley appeared on behalf of himself.

Rachel Breen (instructed by Balfour and Manson LLP) appeared on behalf of the Faculty of Advocates.

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A. INTRODUCTION

1. On 28 August 2024, the pursuer commenced proceedings under section 47A of the Competition Act 1998. The defender in these proceedings is now the Faculty of Advocates. In these proceedings, the pursuer contends that the refusal by the defender to provide certain advocacy services directly to him is an abuse contrary to section 18 of the Competition Act 1998; and/or a direction by the defender prohibiting advocates in Scotland from accepting instructions directly from him is contrary to section 2 of the Competition Act 1998.

2. By order made on 4 February 2025, the Tribunal directed, pursuant to Rule 18 of the Competition Appeal Tribunal Rules 2015, that the proceedings are to be treated for all purposes as proceedings in Scotland.

3. Following a hearing on 14 August 2025, the Tribunal, in its judgment dated 14 October 2025, granted an application by the defender to strike out the pursuer's claims in these proceedings in their entirety ([2025] CAT 61). The Tribunal also refused to grant an application by the pursuer for interim measures.

4. Pursuant to Rule 107 of the Tribunal Rules, the pursuer now seeks leave to appeal the Tribunal's decision on strike out. No permission is sought in relation to the pursuer's application for interim measures. The pursuer requested an oral hearing in relation to his application under Rule 107. Taking account of the fact that the pursuer was representing himself, the Tribunal, contrary to normal practice, held an oral hearing on 27 January 2026. The Tribunal also invited the submission of any consequential applications arising out of its judgment, to be heard at the same time.

5. The pursuer subsequently applied under Rule 114(3) of the Tribunal Rules seeking "*correction of an error that has resulted in an accidental omission within the Tribunal's Judgment*".

6. Pursuant to Rule 104 of the Tribunal Rules, the defender applied for their expenses in the case, as taxed by the Auditor of the Court of Session.

7. This Ruling addresses the two applications filed by the pursuer, and the defender's application for expenses.

B. PERMISSION TO APPEAL

8. Under section 49(1A) of the Competition Act 1998, an appeal to the Court of Session in respect of proceedings in Scotland arises only on a point of law. In determining whether to grant permission to appeal, this Tribunal is required to consider whether the appeal would have a real prospect of success, and/or whether there is some other compelling reason for the appeal to be heard (see *Blue Planet Holdings Limited v Orkney Islands Council & Ors*, Ruling: Permission to Appeal ([2023] CAT 2) at [2]).

9. The thrust of the pursuer's application for permission to appeal is directed towards the approach taken by the Tribunal to the pursuer's pleaded case. At paragraph [24] of our judgment, the Tribunal stated that "*we have approached determination of the Strike Out Application on the basis of the pursuer's position as set out in the Claim Form, namely that he was seeking formal representation in the ongoing proceedings to which he referred*". We returned to this issue at paragraph [56] of the judgment:

> "56. For the avoidance of doubt, our conclusion in respect of the pursuer's claim relates to the claim as it was pled and advanced before us. We should not be taken as, in any way, having concluded that the Guide prevents advocates from communicating with or even providing advice to solicitors, like the pursuer, whose Practicing Certificate is restricted. That was not the pursuer's pled case and is not the case with which we have dealt. As we have noted above (at paragraph 22 and 23), during the course of oral submissions that the pursuer's position had changed or, at the very least, significantly developed in this respect. By the time of the hearing, it appeared that the pursuer would have been content to instruct an advocate on this basis not involving representation and appearance. As that position was not the subject of any developed argument before us, we simply reserve judgment on it. We simply note that Lord Keen appeared to see no difficulty with what was proposed."

10. The pursuer submits that the approach adopted by the Tribunal represents an error of law. In particular, the pursuer contends that the Tribunal erred by adopting a narrow definition of 'representation'. The pursuer's position is that the Tribunal ought to have adopted a broad definition, which would encompass

not merely representation in court proceedings but also the more general provision of advice.

11. The pursuer submits that there are six reasons why the Tribunal's approach constitutes an error of law:

    (1) the Tribunal failed to provide him with an opportunity to be heard before striking out his claim as required by Rule 41 of the Tribunal Rules;

    (2) the Tribunal failed properly to take into account the governing principles for dealing with cases justly and proportionately under Rule 4 of the Tribunal Rules, and further failed to invite the pursuer to apply to amend his claim under Rule 12 of the Tribunal Rules;

    (3) the Tribunal was not entitled to adopt this approach in circumstances where there was an 'agreed' amendment to the claim between the pursuer and counsel for the defender;

    (4) the Tribunal was obliged to adopt a broad definition of 'representation' because there was no prejudice to the defender in doing so;

    (5) there was no requirement for extensive pleadings in this case; and

    (6) the pursuer should have been provided with a greater degree of procedural flexibility given his status as a self-represented litigant in order to comply with section 6 and Article 6 of Schedule 1 to the Human Rights Act 1998.

12. We are quite satisfied that the pursuer's appeal has no real prospect of success and that there is no other compelling reason for the appeal to be heard.

13. The fundamental problem with the pursuer's appeal is that it fails to address the pleaded basis upon which his case proceeds. In short, the reason why the Tribunal adopted what the pursuer characterises as the 'narrow' definition of representation is that that is what the pursuer sought both in his Claim Form and

the underlying correspondence he exchanged with the defender which formed the basis of the dispute between the parties.

14. The purpose of a pleaded case is to delimit the boundaries of a pursuer's case and put the defender on notice of the case that it is required to answer. As summarised at paragraphs [22]-[23] of the judgment, the case advanced by the pursuer both in his Claim Form and in its supporting evidence was that he was seeking 'representation', which would include counsel appearing on his behalf in two sets of ongoing legal proceedings.

15. It was not until the hearing on 25 August 2025 that the pursuer disclosed that he would have been content only to receive legal advice from an advocate as distinct from representation in court. This was not the basis upon which the claim was pleaded by him or responded to by the defender. As that issue did not form part of the case before us and, indeed, did not appear to be contentious, we simply reserved judgment in respect of it (see paragraph [56] of the judgment).

16. It is entirely conventional and proper for this Tribunal to hold a party to its pleaded case. There is no error of law in doing so and we do not consider that the pursuer has any realistic prospects of succeeding on this matter on appeal.

17. Although we need not go any further, in relation to the more specific complaints advanced by the pursuer at paragraph [11] above, we make the following observations about the process adopted by this Tribunal in determining the strike out application.

18. As a preliminary observation, this Tribunal has, throughout the proceedings been conscious of the pursuer's status as a self-represented litigant. Taking due account of Rule 4 of the Tribunal Rules, the Tribunal has adjusted its procedures to ensure that the pursuer has had a fair hearing (see paragraphs [7]-[8] of the judgment).

19. The pursuer has clearly been provided with an opportunity to be heard before his claim was struck out under Rule 41 of the Tribunal Rules. The defender first sought to strike out the pursuer's claims at a hearing on 29 April 2025. The

Tribunal deferred determination of the strike out application so that the pursuer would both receive full written submissions from the defender and have an additional opportunity to lodge his own written submissions. There was then a full day hearing at which the pursuer was able to make oral submissions opposing the strike out application.

20. The pursuer has also had more than an adequate opportunity to plead and amend his case. As is noted in the Tribunal's judgment, the pursuer was allowed to amend his Claim Form in order to correct the identification of the defender (see paragraph [17] of the judgment). More pertinently, as summarised at paragraph [22] of the judgment, during the hearing of the strike out application, after the issue of what type of legal assistance the pursuer was seeking arose, the pursuer was given an opportunity to consider his position. No further application to amend was made by him. Finally, the Tribunal is unaware of any agreement between the parties as to any amendment by the pursuer to his case. That submission is inconsistent with the comments of Lord Keen quoted at [23] of the judgment. During the course of oral submissions in support of his application for permission to appeal, junior counsel appearing for the defender was also unaware of any such agreement and the pursuer was unable to identify the basis for this submission in the transcript of the hearing.

C. RULE 114 APPLICATION

21. As noted above, the pursuer made an application under Rule 114(3) of the Tribunal Rules "*seeking correction of an error that has resulted in an accidental omission within the Tribunal's Judgment*". The pursuer stated that the application was "*confined strictly to identifying and correcting an accidental omission and does not seek to reopen or challenge the Tribunal's findings on the separate issue of in-court advocacy.*"

22. Rule 114(3), under the heading "Irregularities", states as follows:

> "114. […] (3) Clerical mistakes in any document recording a direction, order or decision of the Tribunal, the President, a chairman or the Registrar, or errors arising in such a document from an accidental slip or omission, may be corrected by the President, that chairman or the Registrar, as the case may be, by—

> (a) sending notification of the amended direction, order or decision, or a copy of the amended document, to each party; and
>
> (b) making the necessary amendment to any information published on the Tribunal website in relation to the direction, order or decision."

23. The pursuer averred that the Tribunal misconstrued his use of the word 'representation' in his Claim Form as referring only to oral advocacy, whereas that was "*not the meaning [the pursuer] used, nor the meaning recognised in ordinary English, legal dictionaries, or professional practice*." Rather, the pursuer contended that the term 'representation' includes written legal work, including the production of a counsel's opinion. Consequently, the pursuer submitted that:

> "The Tribunal's adoption of an incorrect meaning of ['representation'] inconsistent with the dictionary led to a material omission: the Judgment does not decide whether the Faculty of Advocates' refusal to provide a Counsel's Opinion amounts to an abuse of a dominant position under section 18 CA 1998. This issue was expressly advanced before the Tribunal but was not resolved because of the inadvertent incorrect definition given of the word."

24. The pursuer characterised the Tribunal's interpretation of the word 'representation' as a slip and requested that the Tribunal correct it by (a) recognising that 'representation' as used by the pursuer included written representation, particularly a counsel's opinion; and (b) issuing a corrected judgment addressing the outstanding question relating to the refusal to provide a Counsel's Opinion.

25. The defender opposed the pursuers Rule 114(3) application, stating that "*the pursuer invites the Tribunal to go far beyond the correction of any clerical mistake, and to re-determine core aspects of the Tribunal's decision"*.

26. While the pursuer has sought to characterise his Rule 114(3) application as seeking to correct an "*accidental omission*" by the Tribunal, there has been no such omission. In our judgment, we explicitly considered what sort of representation the pursuer was seeking and how his pleaded case had been understood by the defender (see paragraphs [22]-[24] of the judgment). Accordingly, there has been no accidental omission for the Tribunal to correct and the changes to the judgment sought by the pursuer are not of the clerical

nature contemplated by the language of Rule 114(3). Accordingly, we refuse to grant the Rule 114(3) Application.

D. APPLICATION FOR EXPENSES

27. The defender applied under Rule 104 of the Tribunal Rules for their expenses in the case, as taxed by the Auditor of the Court of Session.

28. The relevant provisions of the Tribunal Rules state as follows:

> "**Costs**
>
> 104.—(1) For the purposes of these rules "costs" means costs and expenses recoverable before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland, as appropriate, and include payments in respect of the representation of a party to proceedings under section 47A (claims for damages) or 47B (collective proceedings) of the 1998 Act(a), where the representation by a legal representative was provided free of charge.
>
> (2) The Tribunal may at its discretion, subject to rules 48 and 49, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.
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> (3) For the purposes of paragraph (2), applications made under rule 62 or 63 are considered to be proceedings of the Tribunal.
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> (4) In making an order under paragraph (2) and determining the amount of costs, the Tribunal may take account of—
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> (a) the conduct of all parties in relation to the proceedings;
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> (b) any schedule of incurred or estimated costs filed by the parties;
>
> (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
>
> (d) any admissible offer to settle made by a party which is drawn to the Tribunal's attention, and which is not a Rule 45 Offer to which costs consequences under rules 48 and 49 apply;
>
> (e) whether costs were proportionately and reasonably incurred; and
>
> (f) whether costs are proportionate and reasonable in amount.
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> (5) The Tribunal may assess the sum to be paid under any order under paragraph (2) or may direct that it be—
>
> (a) assessed by the President, a chairman or the Registrar; or
>
> (b) dealt with by the detailed assessment of a costs officer of the Senior Courts of England and Wales or a taxing officer of the Court of

> Judicature of Northern Ireland or by the Auditor of the Court of Session, as appropriate."

29. The Tribunal in *Blue Planet Holdings Limited v Orkney Islands Council & Ors* [2023] CAT 3 ("*Blue Planet*") summarised the relevant principles relevant to this application, see especially at [10], [13]-[14] and [20]:

> "10. The starting point is that the successful party is entitled to recover its costs (*The Racecourse Association v OFT* [2006] CAT 1). A balance must be struck between ensuring that costs awards do not undermine the effectiveness of the competition regime whilst ensuring a just result for both parties (*CMA v Flynn Pharma* [2020] UKSC 12, para [153]). In accordance with normal practice, it is appropriate that expenses are dealt with by the first instance tribunal at this stage and not deferred until after any appeal.
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> […]
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> 13. In seeking to ensure a just result for both parties, the Tribunal has to take into account that the defenders have incurred expense in defending a claim which has been struck out.
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> 14. The procedure in this case has not been unnecessarily prolonged such as to generate excessive legal expenses. It has been decided on one substantive hearing. If any particular cost is excessive or unreasonable that can be dealt with by the Auditor.
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> […]
>
> 20. Parties have provided us with figures for expenses incurred. We take the view that detailed consideration of these figures is best done by the Auditor of the Court of Session. The Auditor has expertise in assessing whether the expenses claimed for are reasonable. The Auditor can also make enquiry as to the applicability of VAT on the fees etc of the defenders. The Auditor will also be able to determine which of the expenses are properly ascribed to the request for production."

30. The defender submitted that there is no compelling reason to depart from the general rule that expenses follow success and that the pursuer has been wholly unsuccessful in his claim. The defender applied to recover its expenses in this case and submitted that the sum should be assessed by the Auditor of the Court of Session.

31. In the course of oral hearing, the defender conceded that it had unsuccessfully opposed the pursuer's challenge to the constitution of the panel and accepted that its expenses in relation to that opposition should be excluded from its application.

32. The pursuer opposed this application on five grounds:

(1) That the Tribunal has reserved its judgment on key points in his application;

(2) That this is a complex and complicated matter where there has been mixed success;

(3) The defender failed to provide a costs estimate before the case;

(4) That the defender has behaved unreasonably; and

(5) That the defender has, in practice, been self represented as all counsel are members of the Faculty.

33. In addition, at the oral hearing, the pursuer argued that this is a case of public interest.

34. We do not consider that any of these arguments have merit. On any view, the defender has been substantially successful. The defender's success in the strike out application has, subject to the pursuer's application for permission to appeal, brought this case to a conclusion in its favour.

35. We do not consider that the case is particularly complex; nor that the defender has in any way behaved unreasonably. We also do not consider that the case raises any particular issue of public interest.

36. We understand the pursuer's reliance on there being matters on which the Tribunal has reserved judgment to be a reference to what we said in paragraph [56] of our judgment. As that paragraph makes clear, we reserved judgment on an issue which had not been pled or argued before us. In those circumstances, we did not consider it was either necessary or appropriate for us to address the issue. This approach in no way affects our conclusion that the defender has enjoyed substantial success in these proceedings.

37. The fact that counsel for the defender are both members of the Faculty does not amount to self representation by the Faculty. The Faculty appointed solicitors to manage this matter on its behalf and counsel were instructed by those solicitors on the usual commercial basis.

38. Under Rule 104 cited above, the Tribunal may either assess the amount to be paid by way of costs itself or refer the matter for assessment by the Auditor. At our request the defender has provided us with a schedule of its costs in this case, excluding the costs of the final hearing. Consistent with the approach taken in *Blue Planet,* we agree with the defender that it is appropriate that detailed consideration of these figures is best done by the Auditor of the Court of Session.

39. For completeness, we observe that, contrary to the submissions made by the pursuer, there is no requirement in proceedings before this Tribunal for costs estimates to be provided to party litigants prior to the commencement of proceedings. Furthermore, at no point in these proceedings did the pursuer ever ask for such an estimate to be provided by the defender.

E. CONCLUSION

40. For the reasons set out in this Ruling

    (1) The pursuer's application for permission to appeal is refused;

    (2) The pursuer's application under Rule 114 is refused; and

    (3) The pursuer is ordered to pay the costs of the defender in this matter, other than those costs incurred in opposing the pursuer's application regarding the constitution of the panel, all as taxed by the Auditor of the Court of Session unless otherwise agreed.

41. This Ruling is unanimous.

The Honourable Lord Richardson
Chair

Peter Anderson

Charles Bankes

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 25 February 2026