

# *Overview of how the Scottish Legal Complaints Commission deals with complaints*

## 1. Introduction

- 1.1. The Scottish Legal Complaints Commission (SLCC) was created by The Legal Profession and Legal Aid (Scotland) Act 2007 (the Act) and has been the single gateway for all complaints about legal professionals in Scotland since 1 October 2008.
- 1.2. We record receipt of complaints, assess whether they can be accepted for investigation (ie their eligibility). If we accept a complaint we either deal with it ourselves or refer it to the appropriate professional body.
- 1.3. The SLCC investigates:
  - 'Service' complaints relating to the service given by the practitioner
  - 'Handling' complaints about the way the Law Society of Scotland (LSS), Faculty of Advocates (FA) or Association of Commercial Attorneys (ACA) investigated complaints about conduct.
- 1.4. The SLCC does not investigate complaints about the conduct of legal professionals. We send them to the appropriate professional body; either the, LSS, FA or ACA for investigation.

## 2. The complaint stages

- 2.1. There are four stages to the SLCC process:
  - Eligibility
  - Mediation
  - Investigation
  - Determination
- 2.2. The route a complaint takes through these stages depends on the exact nature of the complaint and will be explained to the parties as the individual cases are processed. A brief explanation is given of each stage. If you would like more detail or advice we are happy to provide it.
- 2.3. **Assessment of eligibility**
- 2.4. If an enquiry is a complaint about a legal practitioner, the Gateway Team assesses whether it is 'eligible'. To be eligible a complaint must meet certain criteria. The criteria are slightly different depending on what type of complaint it is.
- 2.5. Whatever the type of complaint, the SLCC cannot accept it unless it is on one of our complaint forms and the complainer has signed it. The signature is important because it gives the SLCC permission to seek information from other people.
- 2.6. There are separate complaint forms for service/conduct and handling complaints.
- 2.7. **Criteria for assessing eligibility of service/conduct complaints**
  - The complainer must be a person eligible to make the complaint
  - The complaint must not be about a practitioner acting in a judicial capacity

- The complaint must normally be made within 12 months of the alleged conduct incident or from when a service was last provided. Complaints can be accepted outside this time but only in exceptional circumstances.
- The complaint must have been considered by the practitioner first. Complaints that have not been considered by the practitioner will normally be forwarded to them to be investigated and recorded by the SLCC as premature.
- The complaint must not be frivolous, vexatious or totally without merit.
- The complaint must not be covered by another regulatory scheme.

## 2.8. **Criteria for assessing eligibility of handling complaints**

- If the complaint concerns the conduct of a solicitor, advocate or commercial attorney, the professional body (LSS, FA or ACA) must have considered the complaint and written to the complainer with its decision.
- The complaint must be made by an eligible person
- The complaint must be made within six months of the date of the written decision from the professional body.

2.9. If the SLCC decides a complaint is ineligible it will not be considered further. The SLCC write to both parties to tell them why. This decision can only be appealed through the Court of Session.

2.10. If the SLCC decides a complaint is eligible and should be considered further the following happens:

- if the complaint is about service, the SLCC writes to both the complainer and the practitioner informing them it has accepted the complaint and will be looking into it further (this is known technically as 'serving notice'). The next step is mediation;
- if the complaint is about conduct, notice is served on both parties and, it is forwarded to the appropriate professional body which is required to investigate it;
- if the complaint is a handling complaint, an SLCC investigator investigates it.

## 3. **Mediation**

3.1. Mediation is a way for both parties to resolve complaints without the need for formal investigation. The SLCC offers it in most cases. Both the complainer and the practitioner must agree to participate in mediation before it can take place. If one party does not want to mediate, then the complaint is referred to a Case Investigator.

3.2. Mediation is a confidential process which gives the complainer and the practitioner the opportunity to meet each other in the presence of an independent mediator. The mediator is a neutral person who helps them to talk through the problem to see if they can agree a fair and reasonable solution.

3.3. The Mediation Manager writes to the parties to offer mediation and explain in more detail what will happen. This is usually within 15 working days of the parties being told the complaint has been accepted as eligible.

3.4. If mediation takes place and a resolution agreed, the SLCC does not consider the complaint further. The Mediation Manager writes to both parties to confirm the resolution agreed and checks to make sure it happens within the timescales agreed at mediation.

3.5. If mediation does not resolve the complaint, the Mediation Manager writes to both parties to inform them that a Case Investigator will investigate the complaint.

#### **4. Investigation**

- 4.1. The first thing the Case Investigator does is examine the complaint and agree an investigation plan with the Case Investigation Manager. Both parties are then contacted to explain our approach.
- 4.2. The Case Investigator makes initial enquiries and gives both parties the opportunity to respond and put forward their point of view. The Case Investigator also makes any other enquiries they need to. This might include:
  - examining the practitioner's, or professional body's files;
  - asking the parties for further information; or
  - approaching other people for information
- 4.3. The Case Investigator will keep both parties informed of progress.
- 4.4. When the Case Investigator has completed their enquiries and reached a conclusion about the complaint, they will contact the parties with their findings and recommendations. This is normally set out in a report. If both parties accept the findings and recommendations, the complaint is closed. If either party does not accept the investigator's report, the complaint is referred to Members (also known as Commissioners) for determination (a final decision on the complaint).

#### **5. Determination**

- 5.1. Complaints that cannot be resolved are referred to Members to make a determination. The SLCC will make a decision whether or not to uphold the complaint. If the complaint is upheld the SLCC will also determine whether and how much compensation is due and what action should be taken, and by whom.
- 5.2. The SLCC determines complaints in Determination Committees of three, five, seven or nine Members. There is always a majority of lay Members on the determination committee (lay Members are those that do not come from a legal background).
- 5.3. The SLCC decides whether the complaint can be decided based on the information we already have, whether we need more information or whether there should be a 'hearing' where the parties give information to the Determination Committee in person.
- 5.4. The SLCC's determination is final. If either party disagrees with it they can challenge it by appealing to the Court of Session.
- 5.5. The SLCC will check that action is implemented according to the determination and take action if not.

#### **6. Diagram summarising the complaint procedure – see page 4**

# Overview of the Complaint Process

