

Overview of the Complaints Process

Introduction

The Legal Profession and Legal Aid (Scotland) Act 2007 (the Act) established the Scottish Legal Complaints Commission (SLCC). From 1 October 2008, all complaints about the legal profession are received by the SLCC.

The SLCC is accessible, independent and impartial in the way in which it handles and investigates complaints. These principles underpin our services and commitment to providing an excellent, helpful service.

Types of complaint

The SLCC as the gateway for all complaints about legal practitioners - we record receipt of complaints, assess eligibility and either deal with the complaint ourselves or refer it to the appropriate professional body, Law Society of Scotland (LSS) or The Faculty of Advocates (FA). We provide advice and support on what will happen to a complaint.

The types of complaints SLCC investigates are:

- 'Service' complaints relating to complaints received after 1 October 2008 and where the practitioner was instructed on or after 01 October 2008
- 'Handling' complaints about the way the LSS or FA investigated complaints about conduct. Depending on when the conduct incident occurred (ie, before or after 1 October 2008) the complaint will follow slightly different processes as part of the SLCC's transitional arrangements.
- 'Handling' complaints about the way the LSS or FA investigated complaints about service issues which occurred before 1 October 2008.

The complaint stages

There are five stages to the SLCC process:

1. Enquiry/receipt
2. Eligibility
3. Mediation
4. Investigation
5. Determination

The route a complaint follows depends on the exact nature of the complaint and will be explained to the complainer as the individual cases are processed. A brief explanation is given here of each stage. If you have made or are thinking about making a complaint, or have had a complaint made about you, the SLCC is happy to provide further advice.

Enquiry

The first point of contact with SLCC is the Gateway Team. The Gateway Team responds to all initial enquiries and provides advice about making a complaint about a legal practitioner.

The Gateway Team:

- takes phone calls
- deals with incoming mail and email
- issues complaint forms
- helps complainers complete the appropriate complaint form
- provides general guidance on how to make a complaint
- explains how the complaint process is likely to operate for a particular complaint, based on the information sent
- contacts enquirers/complainers for further information

The Gateway Team must record the type of enquiry received and log it so that the SLCC can produce statistical data about the number and type of enquiries received.

Eligibility

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 (as laid down in the 2007 Act). The criteria are slightly different depending on what type of complaint it is and when the practitioner was instructed or the conduct incident occurred.

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 the practitioner, LSS and FA.

There are separate complaint forms for service/conduct and handling complaints.

Criteria for assessing eligibility of service/conduct complaints when instruction/incident was 1 October 2008 or later

- Service complaints – the practitioner must have been instructed on or after 1 October 2008
- Conduct complaints – the incident/alleged misconduct must have been on or after 1 October 2008
- 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 instruction/incident. 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 be forwarded to them to be investigated and recorded by the SLCC as premature.
- Is the complaint something the SLCC should investigate? Eg, is the complaint something the SLCC considers to be 'vexatious' (in a legal sense).
- The complaint must not be covered by another regulatory scheme.

Criteria for assessing eligibility of handling complaints where the conduct incident occurred on or after 1 October 2008

- If the complaint concerns the conduct of a solicitor, the LSS must have considered the complaint and written to the complainer with its decision.
- If the complaint concerns the conduct of an advocate, the FA 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 within six months of the date of the final decision of either the LSS or FA.

Handling complaints about service or conduct issues prior to 1 October 2008

- Although the SLCC deal with these complaints, they do not follow the same procedures. These complaints are dealt with under the powers formerly held by the Scottish Legal Services Ombudsman.
- For more information on this contact the Gateway Team on 0131 528 5111 or email enquiries@scottishlegalcomplaints.org.uk.

If the SLCC decides a conduct or services complaint is ineligible and so will not be considered further, the complainer is told in writing. This decision can only be appealed through the Court.

If the SLCC decides a complaint is eligible and should be considered further the following is done:

- if the complaint is about service, the SLCC writes to both the complainer and the practitioner advising them it has accepted the complaint and will be looking into it further. The next step is mediation;
- if the complaint is about conduct, it is forwarded to the LSS or FA as appropriate. They will be asked to investigate it; or
- if the complaint is a handling complaint, it is passed to an investigator to investigate.

As part of the process, the Gateway Team agrees the statement of complaint with the complainer and if accepted as eligible, serves notice on the complainer and practitioner before the complaint goes on to the next stage.

Mediation

Mediation is offered as a way for both parties to resolve complaints without the need for formal investigation. Mediation must be agreed by both the complainer and the practitioner. If one party does not want to mediate, then the complaint is referred to an investigator.

Mediation is a confidential process which gives the complainer and the practitioner (“the parties”) the opportunity to meet together with an independent third-party so they can both decide how to sort out the complaint. The neutral person (“the mediator”) helps them talk through the problem to see if they can agree a fair and reasonable solution.

The Mediation Manager contacts the parties within five working days of the decision to accept a complaint as eligible to offer mediation and explain the process.

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

If mediation does not resolve the complaint, SLCC writes to both parties to advise them that a case investigator will be assigned to the complaint.

Investigation

When a case is passed to an investigator, he/she agrees an investigation plan with his/her manager and then contacts both parties to explain the approach being taken.

The investigator makes initial enquiries and gives both parties the opportunity to respond and put forward their point of view. The investigator also makes any other enquiries he/she considers appropriate. This might include:

- examining the practitioner's, LSS's or FA's files;
- asking either party for further information; and
- approaching third-parties for information

The investigator must keep both parties informed of progress.

When the investigator has completed his/her enquiries and reached a conclusion about the complaint he/she drafts a report of their findings and sends it to both parties. If both parties accept the findings and recommendations, the complaint is closed. If either party does not accept the investigator's report (called a provisional report), the complaint is referred to Members (also known as Commissioners) for determination.

Determination

Complaints that cannot be resolved are referred to Members to make a determination – ie a decision about whether or not to uphold the complaint. Members will make a decision whether to uphold the complaint and if so how it should be settled.

Members make their decisions 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).

Determination committees decide if there is to be a hearing where the parties attend in person, or whether the complaint can be decided by them through a closed meeting or other co-ordinated contact.

The Members' determination is final. If either party disagrees with it they can appeal to the Court.

The SLCC will check that the decision is implemented and take action if not.

Overview of the Complaint Process

