

This document details the governance arrangements and the key operational and financial control procedures of the Scottish Legal Complaints Commission.

SECTION 1: INTRODUCTION

1. Status

The Scottish Legal Complaints Commission (the 'Commission') was established by the **Legal Profession and Legal Aid (Scotland) Act 2007 ("2007 Act")**. In terms of status:

- 1.1 the Commission is a body corporate;
- 1.2 the Commission is a legal entity incorporated pursuant to an Act of the Scottish Parliament;
- 1.3 the Commission is not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown.

SECTION 2: ORGANISATION

2. Definitions

The Scottish Legal Complaints Commission is a body with both 'public body' and 'private body' characteristics. It is a hybrid body whose categorisation and status varies depending on the legal context.

Public bodies are defined by the Scottish Government as "bodies which have a role in the processes of national Government, but are not a Government department or part of one, and which accordingly operate to a greater or lesser extent at arm's length from Ministers". Such bodies are known as Non-Departmental Public Bodies ("NDPBs"). While the status and functions of the Commission do not entirely correlate with the normal criteria applying to NDPBs it has been classified as such in terms of the joint Management Agreement with the Scottish Government for policy and administration purposes only.

The Commission is also not a Scottish Government Agency. These are established by Ministers as part of Government departments, or as departments in their own right, to carry out a discrete area of work and are staffed by civil servants.

The 2007 Act, however, gives the Commission certain features normally attributed to a public body:

- 2.1 the Commission is subject to the requirements of freedom of information legislation aimed at making provision for the disclosure of information by Scottish public authorities;
- 2.2 appointments to the Commission are public appointments regulated by the Office of the Commissioner for Public Appointments in Scotland;
- 2.3 the Commission must submit to the Scottish Ministers a code of conduct for its members in pursuance of legislation aimed at securing the observance of high standards of conduct by persons holding public appointments. Paragraph 4 of Schedule 5 to the 2007 Act amends Schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 to include the Commission within the definition of "devolved public bodies";
- 2.4 the Commission is a 'public authority' for the purposes of section 6 of the Human Rights Act 1998 in the exercise of its public functions, and it is therefore unlawful for the Commission to act in a manner incompatible with Convention rights.

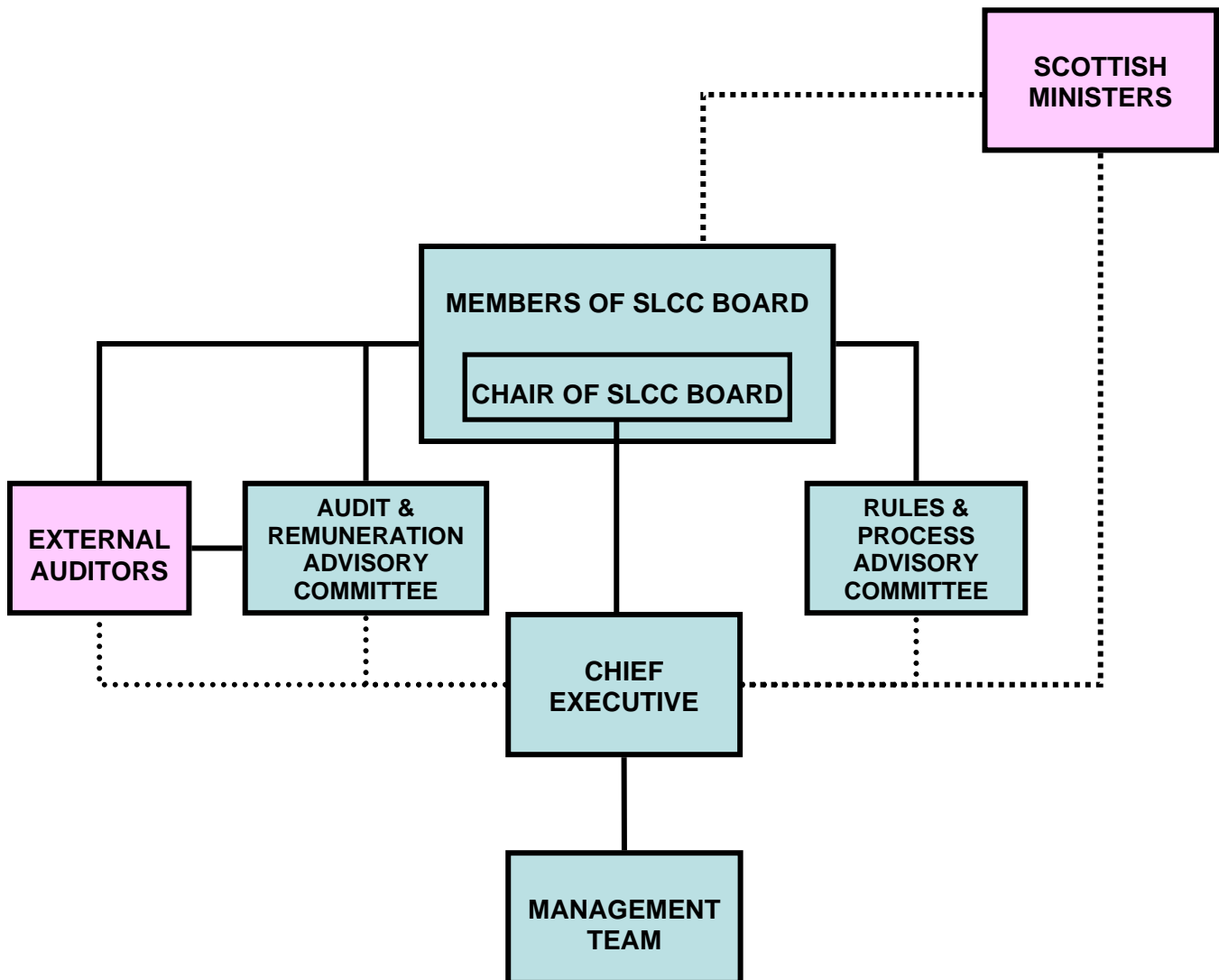
In addition to these key features, the Commission is carrying out functions of a public nature in that it is handling service complaints against practitioners and reviewing the way in which the Law Society of Scotland and the Faculty of Advocates handle conduct complaints, in the public interest.

However, there are certain provisions in the 2007 Act which indicate that the Commission has certain 'private body' characteristics:

- 2.5 whilst the start-up costs for the Commission are to be provided by the Scottish Government, the Commission will thereafter be funded entirely by levies on the legal profession. The Commission will, in operation, receive no direct funding from the public purse;
- 2.6 the Scottish Ministers may make grants to the Commission of such amounts as they consider appropriate or may lend to the Commission, sums of such amounts as the Ministers may determine, on such terms and subject to such conditions as the Scottish Ministers consider appropriate;
- 2.7 the Commission is responsible for setting its annual budget and is responsible for ensuring that its income is sufficient to meet its expenditure. The Commission, unlike some other public bodies, retains a degree of financial autonomy from the Scottish Government in terms of its operation;
- 2.8 in terms of the 2007 Act, the Commission "is not to be regarded as a servant or agent of the Crown, or having any status, immunity or privilege of the Crown nor are its members or its employees to be regarded as civil servants, nor its property as property of, or held on behalf of, the Crown." Commission staff will not qualify for civil servant status, unless on secondment from the civil service;

The Scottish Legal Complaints Commission has a hybrid status with both public and private sector characteristics and responsibilities.

Overview



3. Main Features

The main features of the Governance Arrangements are:

- 3.1 the members will form a Board, led by the Chairing member, which will have overall responsibility for the fulfilment of the Commission's statutory remit;
- 3.2 the Board will operate in accordance with agreed Standing Orders (which will be subject to review at least annually) and within a Code of Conduct. The Standing Orders and the Code of Conduct are contained in a separate but related document to which reference should be made;
- 3.3 a separate Audit and Remuneration Advisory Committee will oversee the management of risk and audit issues, reporting to the Board and Chairing member;
- 3.4 the Chief Executive is the Accountable Officer;
- 3.5 the day-to-day operational and financial management of the Commission will be the responsibility of a Management Team which will report on performance, issues and actions to the Board on a monthly basis;

3.6 all fora will have a formal constitution as defined by Terms of Reference.

SECTION 3: CONTROL PROTOCOLS

4. Overview

The Commission's Governance Arrangements are a series of protocols by whose proper implementation:

- 4.1 the Commission can demonstrate that they are meeting their responsibilities as defined in the 2007 Act;
- 4.2 the Chief Executive can demonstrate that they are meeting his/her responsibilities as Accountable Officer.

The Governance Arrangements also defines how the members of the Commission and the Chief Executive, as Accountable Officer, will monitor and manage risk to the Commission and its operations, including:

- 4.3 fundamental risks (risks to the Commission's ability to implement its statutory obligations);
- 4.4 strategic risks (risks to the Commission's direction and to the achievement of its Business Plan);
- 4.5 operational risks (risks to core business activities, processes and service standards);
- 4.6 technical risks (risks of managing assets, IT failure, etc.);
- 4.7 financial risks (risks with financial controls and systems, fraud, etc.);
- 4.8 compliance risks (risks to meeting regulatory obligations);
- 4.9 reputational risks (risks to the Commission's name, influence and standing);
- 4.10 monitoring and managing the financial performance of the Commission against statutory and other agreed standards;
- 4.11 monitoring and managing the operational performance of the Commission against agreed standards of service, quality, cost and efficiency;
- 4.12 monitoring and managing the delivery of the Commission's Business Plan.

5. Effectiveness

The effectiveness of the Governance Arrangements must be guaranteed by:

- 5.1 constantly checking that it is correctly applied;
- 5.2 regularly reviewing the definition and appropriateness of each protocol within the Governance Arrangements and of other Commission policies;
- 5.3 establishing an appropriate system of sanctions.

The Chairing Member or the Chief Executive may, at any time and acting on his/her own discretion, check that the Governance Arrangements are being effectively and correctly applied.

The Chairing Member or the Chief Executive may ask to consult any documents relating to any activities carried out by the Commission and by those individuals in charge of the processes that are being controlled.

The Chief Executive will periodically check the effectiveness of the protocols by means of re-examining the management of specific incidents, checking how much Commission staff know about the Governance Arrangements and reviewing the protocols against changing operational circumstances.

SECTION 4: THE MEMBERS OF THE COMMISSION

6. Membership

In terms of the membership of the Commission, the 2007 Act specifies that the Commission is to consist of a person to chair the Commission ("the Chairing Member") and 8 other Members.

Members are appointed by the Scottish Ministers, having consulted the Lord President of the Court of Session. The Chairing Member and 4 other Members of the Commission (the non-lawyer Members) cannot fall within any one of the following categories:

- 6.1 solicitors;
- 6.2 advocates;
- 6.3 conveyancing practitioners or executry practitioners;
- 6.4 any persons exercising a right to conduct litigation or a right of audience.

The other 4 Members of the Commission (lawyer Members) can be any of the above. Three of the lawyer Members must have practised within any or any combination, of the categories mentioned for at least 10 years.

The Scottish Ministers may, subject to consultation, by order amend the number and balance of the Members. However:

- 6.5 the number of non-lawyer Members must be greater than the number of lawyer Members;
- 6.6 the number of non-lawyer Members must be no fewer than 4 and no greater than 8;
- 6.7 the lawyer Members must be no fewer than 3 and no greater than 7.

The current Commission of 9 Members could continue to function if one lawyer Member resigned or was removed.

If a non-lawyer Member resigned or was removed, the current Commission could only continue to function if a lawyer Member stood down until such times as another non-lawyer Member was appointed.

In such a circumstance, it would be the responsibility of Scottish Ministers, subject to consultation, to select and require a lawyer Member to stand down until such times as another non-lawyer Member was appointed.

7. Terms of appointment:

The Chairing Member is to be appointed for a period of 5 years.

Two non-lawyer Members will be appointed for 4 years and two for 6 years.

Two lawyer Members will be appointed for 4 years and two for 6 years.

Under statute, appointments are not renewable on expiry.

A Member may, by giving notice in writing to the Scottish Ministers, resign his/her office as a Member of the Commission. Otherwise, a Member holds and vacates office in accordance with the terms and conditions of appointment.

A person is, on ceasing to be a Member, eligible for reappointment for a single further period; but not before a period of 3 years has elapsed.

8. Conduct of Members

All Members are expected to, at all times, respect and act in accordance with:

- 8.1 The Legal Profession and Legal Aid (Scotland) Act 2007;
- 8.2 the governance arrangements of the Commission;
- 8.3 the declaration and registration of Members' interest;
- 8.4 the Commission processes, standards and Rules;
- 8.5 the *Principles of Public Life* set out by the Committee on Standards in Public Life;
- 8.6 the Commission financial, operational and personnel policies;

8.7 the SLCC Code of Conduct.

All Members are expected to act, at all times, in the best interests of the Commission and not to act in any manner that undermines the effectiveness, status or reputation of the Commission.

9. Removal of Members

The Chairing Member may, by written notice, remove a Member from office if the Chairing Member is satisfied as regards any of the following matters, the Member has:

- 9.1 become insolvent and/or adjudged bankrupt;
- 9.2 has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission;
- 9.3 has been convicted of a criminal offence;
- 9.4 is otherwise unable or unfit to discharge the functions of a Member or is unsuitable to continue as a Member.

The Lord President may, by written notice, remove the Chairing Member from office if the Lord President is satisfied as regards any of the matters mentioned above. The Chairing Member may not remove a Member from office without the agreement of the Lord President of the Court of Session.

In the event of the Chairing Member being removed from office, it would be the responsibility of Scottish Ministers, subject to consultation, to select and invite another non-lawyer Member to temporarily assume the office of Chairing Member until such times as a new Chairing Member could be recruited. It would also be the responsibility of Scottish Ministers to select and require a lawyer-Member to stand down until such times as another Chairing Member was appointed.

If two or more non-lawyer Members resigned or were removed from office at the same time, Scottish Ministers would be required to consult the Commissioner for Public Appointments in Scotland regarding emergency appointments to the Commission.

If any three or more Members resigned or were removed from office at the same time, Scottish Ministers would be required to consult the Commissioner for Public Appointments in Scotland regarding emergency appointments to the Commission.

10. Disqualification from Membership

A person is disqualified from appointment and from holding office, as a Member of the Commission if that person is a:

- 10.1 member of the House of Commons;
- 10.2 member of the Scottish Parliament;

10.3 member of the European Parliament.

A person who has held any of the offices above is also disqualified from appointment as a Member of the Commission for a period of one year starting from the day on which the person last held any of those offices.

11. Remuneration, allowances and pensions for Members

The Commission is to pay to its Members such remuneration as the Scottish Ministers may in each case determine.

The Commission is to pay to its Members such allowances as the Scottish Ministers may in each case determine.

The Commission may, with the approval of the Scottish Ministers, in respect of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a Member of the Commission, as the Commission may determine:

11.1 pay or make arrangements for the payment;

11.2 make payments towards the provision;

11.3 provide and maintain schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a Member of the Commission, as the Commission may determine.

The reference to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

12. Responsibilities of individual Members of the Commission

Individual Members of the Commission should be aware of their wider responsibilities as Members of the Commission. Like others who serve the public in Scotland, they should follow the ***Principles of Public Life*** set out by the Committee on Standards in Public Life.

The principles are:

- I. ***Selflessness***: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- II. ***Integrity***: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- III. ***Objectivity***: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merits.

- IV. **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- V. **Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- VI. **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.
- VII. **Leadership:** Holders of public office should promote and support these principles by leadership and example.
- VIII. **Respect:** Holders of public office must respect fellow members of your public body and employees of the body and the role they play, treating them with courtesy at all times.

In addition, all Members of the Commission must:

- 12.1 undertake, on appointment, to comply at all times with these Governance Arrangements and with Rules relating to the use of public funds;
- 12.2 act in good faith and in the best interests of the Commission;
- 12.3 not misuse information gained in the course of his/her service for personal gain or for political purpose, nor seek to use the opportunity of public service to promote his/her private interests or those of connected persons, firms, businesses or other organisations;
- 12.4 declare publicly any private interests which may be perceived to conflict with his/her duties;
- 12.5 ensure that they comply with the Commission's Rules on the acceptance of gifts and hospitality.

Members of the Commission are expected not to occupy paid party political posts or hold particularly sensitive or high-profile unpaid roles in a political party. Subject to this, Members of the Commission are free to engage in political activities, provided that they are conscious of his/her general responsibilities and exercise a proper discretion, particularly in regard to the work of the Commission.

On matters directly affecting the Commission, Members of the Commission should not make political speeches or engage in other political activities.

Members of the Commission will normally be removed from office if they fail to perform the duties required of Members of the Commission to the standards expected of persons who hold public office.

13. Conflicts of interests

Members of the Commission should declare any personal or business interests which may be externally perceived by a fair-minded and informed observer as conflicting with their responsibilities as Members of the Commission. Any potential conflicts should be declared at the earliest possible opportunity to allow appropriate action to be taken to resolve them.

The Commission maintains a Register of Interests, which is open to the public. Members of the Commission are required to register any pecuniary interests, which Members of the public might reasonably think could influence Member's judgement, and non-pecuniary interests that relate closely to the Commission's activities, and interests of close family members and persons living in the same household as a Member of the Commission.

The Members of the Commission should not participate in the discussion or determination of matters in which they have a direct pecuniary interest; and that when an interest is not of a direct pecuniary kind, Members should consider whether participation in the discussion or determination of a matter would suggest a real danger of bias. This should be interpreted in the sense that Members of the Commission might either unwittingly or otherwise unfairly regard with favour or disfavour the case of a practitioner or complainer or professional organisation.

In considering whether a real danger of bias exists in relation to a particular decision, Members of the Commission should assess whether they, a close family member, a person living in the same household as a Member of the Commission, or a firm, business, practice or organisation with which a Member of the Commission is connected are likely to be affected more than the generality of those affected by the decision in question. This would cover, for example, the consideration of a complaint against a practitioner with whom a Member of the Commission was connected.

Whether or not Members of the Commission are able in the light of the considerations above to participate in the discussion or determination of a complaint or similar matter, they should declare as soon as practicable if they have an interest, pecuniary or other, in a matter being considered.

They should also disclose any interests in it of which they are aware on the part of close family members and persons living in the same households as a Member of the Commission. In addition, Members of the Commission should consider whether they need to disclose relevant interests of other persons or organisations which Members of the public might reasonably think could influence the Member's judgement.

14. Attendance

The Chairing Member is expected to attend the Commission on a minimum of 4 days per calendar month. The Chairing Member is expected to attend to Commission business on a further 2 days per calendar month if required.

All other Members should expect to attend to Commission business on 4 days per calendar month.

The Chairing Member, following consultation with the Chief Executive, can request other Members to attend the Commission for more than 4 days per calendar month.

Where possible, Members will agree with the Chairing Member their actual days of attendance at least one calendar month in advance.

The Clerk shall be responsible for recording attendance of the Members of the Commission at meetings.

SECTION 5: THE COMMISSION

15. Constitution

The 2007 Act specifies that:

- 15.1 any quorum of the Commission as contained in Rules made under section 32(1) must consist of a greater number of non-lawyer Members than lawyer Members;
- 15.2 the Chairing Member must, if present, chair meetings of the Commission or any standing committee of the Commission, apart from those defined as determination committees;
- 15.3 if the Chairing Member is not available to be present at a meeting of the Commission or any committee of the Commission, the Chairing Member is to appoint another non-lawyer Member to chair the meeting or committee;
- 15.4 the Chairing member has a casting vote. In the absence of the Chairing Member, any person appointed by that Member to chair has a casting vote for the purposes of that appointment;
- 15.5 the validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a Member.

16. General powers

The Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, or appears to it to be conducive to, the exercise of the Commission's functions. In particular the Commission may:

- 16.1 enter into contracts;
- 16.2 with the consent of the Scottish Ministers borrow money;
- 16.3 with the consent of the Scottish Ministers acquire and dispose of land;
- 16.4 obtain advice or assistance from any person who, in the Commission's opinion, is qualified to give it;
- 16.5 pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the Commission may, with the approval of the Scottish Ministers, determine.

17. Delegation of functions

The Commission may authorise the following to exercise such of its functions (to such extent) as it may determine:

- 17.1 the Chief Executive;
- 17.2 any of its committees;
- 17.3 any of its Members;
- 17.4 any of its other Members of staff;

The Commission may only delegate to one of its committees or one of its Members the function of deciding whether a complaint is frivolous, vexatious or totally without merit.

The Commission may only delegate to one or more of its Members the functions of deciding the following:

- 17.5 whether any element of a complaint is capable of being dealt with under a specified regulatory scheme;
- 17.6 whether any element of a complaint is about the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths.

One or more Members of the Commission will, by rota or as required by the Chairing Member, be available to staff on a weekly basis to make any such decisions.

The Clerk to the Commission should ensure that accurate records are maintained as a Member of the Commission is excluded from any further involvement in the determination of any complaint upon which they have previously provided advice or approval.

18. Determination Committees

The Commission may authorise the following functions to be exercised only by a determination committee:

- 18.1 the formal determination of a complaint under section 9(1);
- 18.2 the formal direction to the practitioner following the determination of a complaint under section 10(2);
- 18.3 the publication of a report under section 13;
- 18.4 the making of a decision under section 23(2) relating to the handling of conduct complaints;
- 18.5 the making of a direction under section 24(6) relating to non-compliance;

The 2007 Act states that it is for the Commission to determine the composition of its committees. However, the Act does require the Commission to ensure that:

- 18.6 any Determination Committee must be chaired by a lawyer Member;
- 18.7 any Determination Committee must have at least 3 Members, of which the majority are non-lawyer Members of the Commission;
- 18.8 a committee is to comply with any directions given to it by the Commission, notably the agreed Rules of the Commission.

19. Retained functions

The Commission cannot delegate of the making of Rules under section 32(1);

The Commission cannot delegate any of the following functions, however the Commission must consult with the Chief Executive in recognition of the Chief Executive's responsibilities as Accountable Officer:

- 19.1 the approval of annual reports and accounts;
- 19.2 the determination of the amount of the annual general levy and the complaints levy;
- 19.3 the approval of any budget or other financial plan.

20. Annual Report

The Commission must prepare and publish an Annual Report, including financial accounts.

A copy of the Annual Report should be sent to the Justice Committee of the Scottish Parliament. The Chairing Member must make him/herself available to attend, if requested, the Committee to discuss the performance of the Commission and issues arising.

SECTION 6: THE STAFF OF THE COMMISSION

21. The Commission as an employer

The Commission should ensure:

- 21.1 that it complies with all relevant legislation and that it employs suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of the Commission. All staff should be familiar with the Commission's main aims and objectives;
- 21.2 that the Commission adopts management practices which use resources in the most economical, efficient and effective manner and that the level and structure of its staffing, including grading and numbers of staff, is appropriate to its functions;

- 21.3 that the Commission's policies for the recruitment and management of staff provide for appointment and advancement on merit on the basis of equal opportunity for all applicants and staff and where there is no discrimination on grounds of gender, marital status, sexual orientation, race, colour, ethnic or national origin, religion, disability, community background or age;
- 21.4 that its staff, and the Members of the Commission, have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively;
- 21.5 the Commission should adopt an appropriate code of conduct for its staff;
- 21.6 the performance of its staff at all levels is satisfactorily appraised and the commission's performance measurement systems are reviewed regularly;
- 21.7 its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the commission's objectives;
- 21.8 proper consultation with staff takes place on key issues affecting them;
- 21.9 adequate grievance and disciplinary procedures are in place;
- 21.10 whistle-blowing procedures consistent with the public interest disclosure act are in place.

22. Chief Executive

The Commission is to employ a Chief Executive. The Chief Executive is, with the approval of the Scottish Ministers, to be appointed by the Commission on such terms and conditions as the Commission may, with such approval, determine.

The Chief Executive must act at all times in accordance with the powers delegated to him/her by the Commission. The Chairing Member has a responsibility to monitor the performance of the Chief Executive.

The Chief Executive is directly accountable to the Chairing Member and ultimately to the Commission.

23. Accountable Officer

The 2007 Act names the Chief Executive as the Accountable Officer. The functions of the Accountable Officer are:

- 23.1 signing the accounts of the expenditure and receipts of the Commission;
- 23.2 ensuring the propriety and regularity of the finances of the Commission;
- 23.3 ensuring that the resources of the Commission are used economically, efficiently and effectively;

The Accountable Officer has a duty, where required by the Commission to act in some way that he or she consider would be inconsistent with the proper performance of his/her functions, to:

- 23.4 obtain written authority from the Chairing Member of the Commission before taking the action;
- 23.5 send a copy of the authority as soon as possible to the Auditor General for Scotland and to Scottish Ministers.

In addition, the specific responsibilities of Accountable Officers, as defined in the **Public Finance and Accountability (Scotland) Act 2000: Memorandum to Accountable Officers of other public bodies** (Annex 2 to the Accountability section of the Scottish Public Finance Manual), are also to;

- 23.6 ensure that from the outset proper financial systems are in place and applied and that procedures and controls are reviewed from time to time to ensure their continuing relevance and reliability, especially at times of major changes;
- 23.7 sign the accounts and in doing so accept personal responsibility for their proper presentation as prescribed in legislation or in the financial memorandum or other similar document;
- 23.8 ensure that proper financial procedures are followed and that accounting records are maintained in a form suited to the requirements of the management statement/financial memorandum or other similar document as well as in the form prescribed for published accounts;
- 23.9 ensure that the public funds are properly managed and safeguarded, with independent and effective checks of cash balances in the hands of any official;
- 23.10 ensure that assets such as land, buildings or other property, including stores and equipment, are controlled and safeguarded with similar care, and with checks as appropriate;
- 23.11 ensure that, in the consideration of policy proposals relating to the resources, all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account, and where necessary brought to the attention of the Commission;
- 23.12 ensure that any delegation of responsibility is accompanied by clear lines of control and accountability together with reporting arrangements;
- 23.13 ensure that effective management systems appropriate for the achievement of the organisation's objectives, including financial monitoring and control systems, have been put in place;
- 23.14 ensure that risks, whether to achievement of business objectives, regularity, propriety or value for money, are identified, that their significance is assessed and that systems appropriate to the risks are in place in all relevant areas to manage them;
- 23.15 ensure that arrangements have been made to secure Best Value;

- 23.16 ensure that managers at all levels have a clear view of their objectives, and the means to assess and measure outputs or performance in relation to those objectives;
- 23.17 ensure managers at all levels are assigned well defined responsibilities for making the best use of resources (both those consumed by their own commands and any made available to organisations or individuals outside the Commission) including a critical scrutiny of output and value for money;
- 23.18 ensure managers at all levels have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.

24. Other staff

The Commission may appoint such other employees on such terms and conditions as the Commission may determine. The Scottish Ministers may give directions to the Commission as regards the appointment of employees (including the number of appointments) and the terms and conditions of their employment.

The Commission may, with the approval of the Scottish Ministers, in respect of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as the Commission may determine:

- 24.1 pay or make arrangements for the payment;
- 24.2 make payments towards the provision;
- 24.3 provide and maintain schemes (whether contributory or not) for the payment.

SECTION 7: FINANCIAL FUNCTIONS

25. Key functions

Under the terms of the **Legal Profession and Legal Aid (Scotland) Act 2007**, in addition to the key functions of the Accountable Officer, the Commission must:

- 25.1 keep proper accounts and accounting records;
- 25.2 prepare an annual statement of accounts in respect of each financial year; and send the statement of accounts to the Scottish Ministers, in accordance with such directions as the Scottish Ministers may give;
- 25.3 if requested by any person, the Commission must make available at any reasonable time, and without charge, in printed or in electronic form, the audited accounts, so that they may be inspected by that person.

In relation to all financial matters and functions, the Chief Executive and the Commission must act in accordance with such directions as the Scottish Ministers may give.

The financial year of the Commission is the period beginning with the date on which the Commission commences operation and ending with 30th June next following that date, and each successive period of twelve months ending with 30th June.

26. The Funding of the Commission: Annual General Levy

The Commission is primarily funded through an annual general levy. This is levied on the following:

- 26.1 any practising advocate;
- 26.2 any practising conveyancing practitioner or executry practitioner;
- 26.3 any person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act;
- 26.4 any solicitor who has in force a practising certificate;

The relevant professional body is responsible for collecting the annual levy from any of their Members falling into the above categories and paying all monies collected to the Commission. Late payment may attract interest at a rate set by Scottish Ministers.

The professional bodies are liable to the Commission for the full sum to be collected. They have some powers to recover (as a debt) any sum due by one of their Members to the Commission.

In the event that an eligible person is not represented by a recognised professional body, that person must make contact with the Chief Executive and make arrangements for the annual levy to be paid direct to the Commission.

27. Complaints levy

At the discretion of the Commission a practitioner may be required to pay a complaints levy where any of the following applies:

- 27.1 a settlement proposed as respects the complaint by the Commission under section 9(2) of the 2007 Act (Step 4: Provisional Settlement) is accepted by both parties;
- 27.2 the Commission makes a formal determination under section 9(1) of the 2007 Act (Step 5) upholding the complaint.

The complaints levy is paid directly by the practitioner or the practitioner's firm to the Commission. The practitioner and the practitioner's firm will be given a set time to pay the amount owed. The time allowed is set by the Commission. The Commission may charge interest on outstanding amounts at a rate specified by the Scottish Ministers.

If any person who is liable to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late, the Commission will report the matter to the relevant professional organisation.

28. The Amount of the Levies

Each financial year, the Commission, having consulted with the relevant parties, shall determine the amount of the levies.

The amount of the annual general levy and the complaints levy, in respect of each financial year is such amount as may be determined by the Commission, having had regard to any views expressed in its consultation in respect of the financial year in question.

The amount of the annual general levy must be the same amount for each of the individuals who are liable to pay it; but Rules may provide for circumstances in which the Commission may waive a portion of the amount which would otherwise require to be paid.

29. The Commission's budget

The Commission must, in January each year, consult each relevant professional organisation and its Members on the Commission's proposed budget for the next financial year. The proposed budget must include the following:

- 29.1 an estimate as respects resource requirements;
- 29.2 the proposed amount of the annual general levy and the complaints levy;
- 29.3 the Commission's projected work plan for the next financial year.

Each relevant professional organisation must provide the Commission with an estimate of the number of persons it anticipates should be liable to pay the annual general levy for the financial year concerned. The Commission will need to allow a contingency in its budget to cover for any inaccuracies in the estimates provided.

The Commission must secure so far as is reasonably practicable that, taking one financial year with another, the amount of the annual general levy and the banked complaints levy is reasonably sufficient to meet its expenditure.

The Commission will set the annual general levy at an amount sufficient to recover the full budgeted expenditure for the financial year concerned, taking account of any monies collected by the Commission.

The Commission cannot set a budget on the expectation that it will receive any amount from complaint levies.

The Commission must, no later than 31 March in each year, publish the responses it has received in the consultation carried out in the immediately preceding January, apart from any responses which are subject to have requested confidentiality.

The Commission must lay a copy of the finalised budget before the Parliament no later than 30 April in each year.

30. Grants, Loans and Guarantees

The Scottish Ministers may make grants to the Commission of such amounts as they consider appropriate. Any grant may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.

The Commission may, subject to such conditions as the Scottish Ministers think fit, borrow from them. The Scottish Ministers may lend to the Commission sums of such amounts as the Ministers may determine.

Any loan made, including interest, is to be repaid to the Scottish Ministers at such times and by such methods as they may from time to time direct.

The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by the Commission. Immediately after any guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.

31. Scheme of Delegation

The Chief Executive will prepare for approval by the Board a Scheme of Delegation for the Commission. The Scheme of Delegation will define the responsibilities delegated to individuals in terms of financial decision making (authorisation limits, etc.).

The Scheme of Delegation will be reviewed annually and will be made available to the Audit and Remuneration Advisory Committee and the external auditors.

32. Liabilities

Neither the Commission nor any Member of the Commission nor an employee of the Commission is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Commission's functions. This exemption from liability in damages does not apply if:

32.2 the act or omission is shown to have been in bad faith; or

32.3 an award of damages made in respect of an act or omission was prevented, on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Any Member of the Commission or an employee of the Commission who knowingly discloses any information obtained when employed by, or acting on behalf of, the Commission is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Any Member of the Commission or an employee of the Commission who misuses information gained by virtue of their position may be liable for breach of confidence under common law or may commit a criminal offence under insider dealing legislation. Reference should also be made to the Confidentiality Requirements contained in the Code of Conduct.

33. Indemnity

As a body corporate the Commission has a legal identity separate from the individual Commissioners. It is therefore the Commission as a body which will enter into contracts and take on obligations and liabilities, not the individual Commissioners. The Commission will therefore:

- 33.1 indemnify the Commissioners provided that any individual Commissioner has not acted in bad faith;
- 33.2 secure professional indemnity insurance cover or appropriate indemnity from the Scottish Government;
- 33.3 secure public liability and employer's liability insurance cover.

SECTION 8: THE BOARD: TERMS OF REFERENCE

34. Purpose

The Board of the Scottish Legal Complaints Commission is authorised to consider and determine any matter concerned with the planning, development and operation of the Commission.

Note. Reference should be made to the Board Standing Orders in relation to this section.

35. Duties

The Board's duties are;

- 35.1 to ensure the Commission meets all its statutory obligations;
- 35.2 to develop the Commission's Three-year Strategic Plans and Annual Business Plans and to ensure the successful delivery of such plans to agreed standards and timetable;
- 35.3 to agree relevant operational targets and standards for the Commission and to monitor the performance against such targets;
- 35.4 to agree relevant service targets and standards for the Commission and to monitor the performance against such targets;
- 35.5 to review and assess the strategic development of the Commission in response to external factors (political, legislative, etc.);
- 35.6 to endeavour to ensure the successful management of all risks relating to the Commission;
- 35.7 to monitor the welfare, reward and development of staff against all relevant targets, the Commission's HR policies and all statutory requirements;

- 35.8 to ensure that the budgetary performance of the Commission achieves the key financial targets;
- 35.9 to approve the annual budget and accounts of the Commission as submitted by the Chief Executive;
- 35.10 to monitor ongoing compliance to the Commission's Governance Arrangements and to oversee the annual review of the Governance Arrangements;
- 35.11 to receive and respond to reports from the Commission's Management Team and the Audit and Remuneration Advisory Committee;
- 35.12 to establish a learning culture that contributes to the continual improvement in efficiency and effectiveness;
- 35.13 to ensure that effective channels of communication are established and maintained with all key stakeholders.

36. Membership: Voting

- 36.1 Chairing Member
- 36.2 all other Members

Any decisions will be made by a simple majority of the voting Members. Every Member has one vote. Members are not entitled to abstain from voting. The Act gives the Chairing Member the casting vote in the event of a tie.

37. Attendance: Non-Voting

- 37.1 Chief Executive

The Chief Executive as Accountable Officer will normally have the right of audience in relation to all matters of finance, governance, risk and audit.

- 37.2 Clerk to the Commission

The Clerk to the Commission will act as Secretary to the Board and will be responsible for the organisation of the Board as instructed by the Chairing Member of the Commission.

38. In Attendance

The Board may also invite relevant employee and/or external advisors to attend meetings. No other persons have any right of attendance.

39. Chair

The Chair of the Board shall be the Chairing Member. If the Chairing Member is absent, they will appoint another non-lawyer Member as chair with a casting vote.

40. Frequency of meetings

Meetings shall normally be held quarterly. The Chair can cancel a meeting for operational purposes but there cannot be a gap of more than four calendar months between meetings.

The Chair can convene a meeting of the Board at any time subject to quorum.

41. Quorum

The quorum of the Board shall be five voting Members.

Any quorum of the Board must consist of a greater number of non-lawyer Members than lawyer Members.

42. Agenda

The Board shall normally follow a standing agenda including:

- 42.1 Chair's Report;
- 42.2 Chief Executive Officer's Report;
- 42.3 HR/Staff Governance;
- 42.4 Finance and Audit;
- 42.5 Communications;
- 42.6 Complaints;
- 42.7 Policy and Procedural Matters;
- 42.8 Conduct Oversight
- 42.9 Master Policy/Guarantee Fund Oversight

Any agenda can be supplemented by any other matters agreed for inclusion by the Chair. The Chair can also postpone discussion of a particular matter until a later date or meeting.

43. Minutes

Draft minutes of the meetings of the Board will be submitted to the Chairing Member for approval. The approved draft minute will then be placed on the agenda of the next available Board meeting. The Board will formally approve minutes of the previous meeting.

44. Limitations

The Board is not a determination committee.

The Board cannot consider individual complaints that have yet to be determined or to have completed their progress through the processes of the Commission.

The Board can consider anonymised complaints, where there is no reasonable possibility of identifying either the complainer or the practitioner.

SECTION 9: AUDIT & REMUNERATION ADVISORY COMMITTEE: TERMS OF REFERENCE

45. Remit

To provide assurance to the Board on financial probity, financial management arrangements, risk management, overall internal control systems and the arrangements for the appraisal and remuneration of senior staff.

46. Membership

The Advisory Committee will be composed of five Commissioners; a Chair, Vice-Chair and three Members as appointed by the Chairing Member of the SLCC.

47. Quorum

Three Commissioners will constitute a quorum.

48. Attendance

The Chief Executive Officer will normally attend in an ex-officio capacity to provide information, advice and guidance. In matters relating to remuneration the Chief Executive Officer may, at the invitation of the Chair, attend meetings in whole or in part when issues concerning senior officers directly accountable to him/ her are being considered. The Chief Executive Officer will not attend when his/her remuneration is being discussed.

The Advisory Committee can require the attendance of any officer of the SLCC.

The Chairing Member of the SLCC may attend in an ex-officio capacity.

The Internal Auditor should attend committee meetings as appropriate and required. The External Auditor should attend at least one meeting per annum. Neither Internal nor External Audit should be in attendance when matters relating to remuneration are being considered.

The Advisory Committee may also invite external advisers to attend for the purposes of obtaining further professional advice.

49. Meetings

The Advisory Committee will meet at least four times per annum. Additional meetings may be called by the Chair.

The agenda and supporting papers should be sent to Members at least five working days before a meeting.

50. Authority

The Advisory Committee is authorised to investigate and advise on any matters which fall within its Terms of Reference and to obtain any information it requires from any employee of the Commission in order to perform its duties.

The Advisory Committee may also seek external professional advice but any anticipated costs will require prior approval in accordance with the Scheme of Delegation.

51. Audit

The Committee will:-

- 51.1 Monitor and review the internal control arrangements of the Commission including Financial Management Reports, Treasury Management systems, Performance Indicators and the operational effectiveness of the Internal Audit function.
- 51.2 Agree and authorise the Internal Audit Strategic Plan.
- 51.3 Consider reports and recommendations from Internal Audit.
- 51.4 Undertake an annual review of the Risk Assessment and Risk Management process and oversee the coordination and implementation of all Risk Management arrangements in terms of the Risk Register.
- 51.5 Consider External Audit reports and in particular annual reports and any management letters relating to the certification of the SLCC's annual accounts.
- 51.6 Oversee the action taken by the Chief Executive Officer on audit recommendations.
- 51.7 Oversee and review the Commission's insurance and indemnity arrangements.
- 51.8 Oversee the budget preparation arrangements.
- 51.9 Consider any other important issues concerned with the regulation and control of the financial affairs and performance of the Commission.

52. Remuneration

- 52.1 Ensure that arrangements are in place for setting objectives for and monitoring the performance of senior officers ie the Chief Executive Officer, Head of Investigations, Head of Communications and the Human Resources Manager.
- 52.2 Consider reports from the Chief Executive Officer and/or the Chairing Member, as appropriate, on the performance of the senior officers in relation to their set objectives.
- 52.3 Advise the Board on any recommended salary awards or adjustments in salary for the said senior officers
- 52.4 Consider any policies and proposals relating to staff and/or Member benefits such as payment of allowances, travel and subsistence expenditure etc.

53. Reporting Arrangements

Minutes will be kept of the proceedings of the Advisory Committee and will be submitted to the Board.

The Advisory Committee will propose to the Board any actions required as a result of its activities and thereafter will act in accordance with the Boards decisions.

SECTION 10: RULES & PROCESS ADVISORY COMMITTEE: TERMS OF REFERENCE

54. Remit

To provide assurance to the Board on the competence of the Rules and the efficacy and effectiveness of the resultant processes.

55. Membership

The Committee will be composed of three Commissioners; a Chair and two Members as appointed by the Chairing Member of the SLCC.

56. Quorum

Two Commissioners will constitute a quorum.

57. Attendance

The Head of Investigations will attend in an ex-officio capacity to provide information derived from operational experience and to give advice and guidance.

The Committee can require the attendance of any officer of the SLCC.

The Committee may also arrange the attendance of and consultation with external advisers and relevant stakeholders.

The Chairing Member of the SLCC may attend in an ex-officio capacity.

58. Meetings

The Committee will meet as required at the discretion of the Chair.

The agenda and supporting papers should be sent to Members at least five working days before the meeting.

59. Authority

The Committee is authorised to investigate and advise on any matters which fall within its Terms of Reference and to obtain any information it requires from any employee of the Commission in order to perform its duties.

The Committee may also seek external legal or professional advice but any anticipated costs require the prior approval of the Board.

60. Duties

The Committee will:-

- 60.1 oversee and monitor the functioning of the Rules and related procedures and processes and review and assess their efficiency and effectiveness;
- 60.2 consider comments and observations received from complainants, staff stakeholders and any other parties regarding the competence and functioning of the Rules and processes;
- 60.3 support the Head of Investigations, Mediations Manager and staff in implementing the Rules and processes and be available to provide any clarification or guidance requested;
- 60.4 assist with the production of training programmes for staff on use of the Rules and related processes and procedures.

61. Reporting Arrangements

Minutes will be kept of the proceedings of the Committee and will be submitted to the Board for information.

The Committee will propose to the Board any action required as a result of its activities and thereafter will act in accordance with the Board's decisions.

62. Whistle-Blowing Arrangements

The Board shall review the Commission's whistle-blowing arrangements for its employees to raise concerns, in confidence, about possible wrongdoing in financial reporting or other matters. The Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow up action.

SECTION 11: MANAGEMENT TEAM: TERMS OF REFERENCE

63. Duties

The duties of the Management Team shall be to:

- 63.1 manage the day-to-day operation of the Commission and the execution of its functions, processes, policies and procedures;
- 63.2 manage operational issues relating to staff welfare, conduct, development, performance and health and safety;
- 63.3 manage the Commission's property, assets and resources;
- 63.4 monitor and report operational and service quality data;
- 63.5 consider, suggest and implement improvements to operational and functional performance;
- 63.6 review and redraft Commission policies and procedures for consideration at the Board;
- 63.7 implement Board instructions;
- 63.8 consider other topics as defined by the Board;

64. Authority

The Management Team is authorised by the Board to act as appropriate to execute its duties.

65. Membership

The provisional membership of the Management Team shall be the:

- 65.1 the Chief Executive;
- 65.2 the Head of Investigations;
- 65.3 the Head of Communications;
- 65.4 the Human Resources Manager;

If any Manager is unable to attend, and if so required by the Chair, they shall nominate and ensure the attendance of an empowered deputy from their team for all relevant agenda items.

66. Chair

The Chair of the Management Team shall be the Chief Executive. The Head of Investigations will normally chair the meeting in the absence of the Chief Executive.

67. Attendance

Members of the Commission may be invited to attend Management Team meetings. The Chair may also invite any other member of staff to attend meetings.

68. Frequency of Meetings

Meetings shall normally be held monthly. The Chief Executive can call a meeting of the Management Team at any time without notice.

69. Quorum

The quorum of the Management Team Meeting shall be three Managers, one of whom should be either the Chief Executive or the Head of Investigations.

70. Actions

The Chair of the Management Team Meeting shall make available any appropriate details of actions agreed by the Management Team plus notification of any issues that need to be addressed by the Board.

SECTION 12: QUALITY ASSURANCE

71. Quality assurance responsibilities

The following hierarchy of responsibilities has been established to ensure appropriate control over the quality of output from the Commission:

- 71.1 the Board has delegated their authority to the Chief Executive in respect of the management of individual cases, subject to limitations, as specified in the Commission Rules and standards and consistent with the Legal Profession and Legal Aid (Scotland) Act 2007;
- 71.2 the Chief Executive has overall responsibility for the quality of the work produced by the staff of the Commission;

- 71.3 the Head of Investigations has responsibility for the quality and quantity of work produced by the Gateway Team, the Investigations Teams, and the Mediation Manager;
- 71.4 the Head of Investigations has responsibility for making all staff aware of the Commission's Rules, standards and process guidance and for ensuring compliance to the same;
- 71.5 every month, the Head of Investigations will review a random sample of reports drafted and/or investigations in progress from each Investigation Team. The Head of Investigations will check whether the reports and the investigations have been produced/progressed in line with the Commission's Rules and standards;
- 71.6 the Investigation Managers are responsible for the work produced by their teams and they should review all investigation plans and all draft reports;
- 71.7 the Investigation Managers are responsible for ensuring that all complaints are investigated in accordance with the Commission's Rules and standards and as defined in the Commission's Process Guidance;
- 71.8 the Investigation Managers are responsible for ensuring that all necessary case details are retained and logged as appropriate and that all issued correspondence conforms to the Commission's guidelines on format, style and content.
- 71.9 the case investigators (CIs) must at all times consider and investigate complaints in line with the Commission's Rules, standards and process guidance.

72. Quality Review Meetings

A Quality Review Meeting should be held every month at which the Head of Investigations will share the results of the previous month's sample review with each Investigation Manager and advise on any required actions. The Investigation Manager will be responsible for recording any actions agreed at the Quality Review Meeting. The Chief Executive may also attend the Quality Review Meeting.

The Quality Review Meeting may seek the advice of the Rules and Process Advisory Committee on one or more of the following:

- 72.1 matters relating to the interpretation of Commission's Rules;
- 72.2 matters not seemingly covered by Commission's Rules.

The Head of Investigations will advise the Clerk to the Commission, of any referral to the Committee.

The Head of Investigations will meet with the Chief Executive every month to review the Quality Review Meetings and to consider and address any issues arising.

73. Complaints against the Commission

The Commission has a published process for the investigation of complaints about the service provided by the Commission. The basic features of the process are that

- 73.1 all complaints will be acknowledged within 3 working days;
- 73.2 complaints relating to the service provided during the consideration and investigation of cases will be managed by the Head of Investigations.
- 73.3 a full response will be sent to the complainer within 4 weeks. If this, for any reason, is not possible, the Commission will write to the complainer to let them know what is happening and when they should receive a full response;
- 73.4 if the complainer is unhappy with the response, they can appeal to the Chief Executive. They should write, stating the reasons for their appeal, to the Chief Executive within 20 working days of receipt.
- 73.5 the Chief Executive will respond to appeals within a further 20 working days. The Chief Executive's Decision is final.

The above policy does not cover complaints relating to the outcome of determination of complaints, including the determination of jurisdiction or eligibility.

- 73.6 if the complaint concerns the action of a member in the way they dealt with a complaint, these will be dealt with by the Chair (using the same timescales as above).

SECTION 13: GOVERNANCE

The Governance Arrangements cannot be amended without the recorded agreement of the Board.

The External Auditors should be consulted on any changes to the Governance Arrangements.

The Governance Arrangements should be reviewed annually, or whenever appropriate, by the Audit & Remuneration Advisory Committee.

The Governance Arrangements will be available to members of the general public under the Freedom of Information legislation.