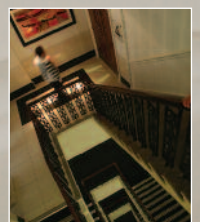
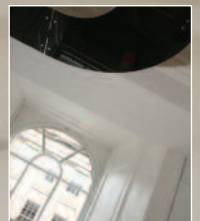


Scottish Legal Complaints Commission Annual Report 1 July 2010 - 30 June 2011



**Scottish Legal Complaints Commission
Annual Report 2010 - 2011**

This Report covers the SLCC's period from 1 July 2010 to 30 June 2011

Laid before the Scottish Parliament by the Scottish Ministers,
pursuant to section 16 of Schedule 1 of the
Legal Profession and Legal Aid (Scotland) Act 2007

November 2011

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Chair's Foreword



This is the third annual report of the Scottish Legal Complaints Commission covering the year 1 July 2010 to 30 June 2011. It has been a year of significant progress as the SLCC started to use the full range of its statutory powers.

The SLCC registers and carries out the initial assessment of all complaints against legal practitioners in Scotland, and deals wholly with all complaints alleging inadequate professional service. The SLCC Board has begun to examine whether the way in which we handle complaints supports our aims of achieving early resolution, efficiency and meeting user needs. As we do this it is increasingly apparent that although sophisticated in parts; the level of proscription in the Legal Profession and Legal Aid (Scotland) 2007 Act limits our ability to deal proportionately with complaints. We raised this with our stakeholders and continue to lobby the Scottish Government for changes to the Act to allow our complaint handling to become more efficient and user-friendly.

Having criticised the Act, I also recognise it gives us wide powers to report on trends and issue guidance on complaints handling. This work is essential. Any good complaints handling system must encourage learning from complaints so we continue to gather information to enable us to do this. However, we have decided to be cautious about drawing conclusions from the limited information we hold; including statistics regarding numbers and types of complaints coming to us. It is not sensible to draw inferences from only two and a half years of limited information about a profession as complex as the Scottish legal profession. I am keen that the SLCC should start saying more. It is interesting to start to see themes emerge and I hope the examples of complaints in this report help people to understand the types of issues we deal with to prepare for a time when we open wider debate on particular practices and procedures.

A strength of the 2007 Act is that it gives us oversight of the indemnity insurance arrangements and conduct processes operated by the Law Society of Scotland, the Faculty of Advocates and Association of Commercial Attorneys. This year we have published research into management of indemnity insurance by the Law Society of Scotland and commenced oversight of the profession's handling of conduct complaints. Over the longer term, conduct complaints oversight work will be crucial in confirming where regulation of legal practitioners by those bodies is effective and highlighting where it could be improved. In governance terms, we took a hard look

at the SLCC structure and governance arrangements, adjusting the structure of our operational team and strengthening the role of our Audit Committee.

It is not possible to make significant progress without a committed Board and enthusiastic operational team: the SLCC has both. Through the SLCC Board Members I have always been confident of a breadth of knowledge covering all areas of governance, and all staff and Members work hard at their operational duties. Over the year we have sadly said goodbye to George Irving who contributed greatly to the establishment of our governance arrangements. I have also had to face the prospect of losing all the original Board members at the end of 2011, and plan the transition of a new Board. I have been fortunate to welcome Maurice O'Carroll, as our first advocate Board Member and Fiona Smith, Siraj Khan and Iain McGrory as Lay Members. Together they will form the bridge to the new Board and they strengthen our commitment to create a complaints system that matches users' needs and help me prepare for the time when all the very hardworking founding Board Members leave in December 2011. On the operational side it has been extremely rewarding to see Rosemary Agnew appointed as Chief Executive Officer, re-structuring and leading her team.

I thank everyone who has worked with us over the past year. As ever I welcome feedback on whether this report and our service meet needs.

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

Chief Executive Officer's report



I am extremely pleased to present this report which covers my first full year as CEO (part interim and part permanent). The year has seen huge change for the SLCC; change which could only have been implemented so successfully with the commitment and hard work of all the staff and the SLCC's Board.

As we develop our role and function, the last year has seen us progress on our journey towards excellence. Like many young organisations, we have dealt with the challenges of inexperience but have also reviewed, revisited and reformed the way in which we operate, learning from our experience and the challenges we have overcome. We sought and continue to seek ways of operating more effectively and delivering services more efficiently.

As CEO, I had four main operational aims crucial to the achievement of the SLCC's vision and strategy, these were to: review the organisational structure to ensure we had the right number of people in appropriate roles to deliver our business; review and refine complaints handling, both as an ongoing activity and in light of the end of the transitional arrangements; to establish the way forward for the delivery of our oversight roles; and to support the Board in ensuring governance and financial management arrangements remained robust.

The greatest changes for the SLCC came as a result of the review of the organisation and the end of the transitional arrangements.

Between January 2011 and the end of June 2011, the SLCC implemented a new organisational structure. Our emphasis shifted compared to earlier years from being a new organisation facing the challenges of establishing ourselves to one of being a young organisation keen to achieve continuous improvement and excellence in all we do. As we gained experience and had a better understanding of the level of complaints we were likely to deal with, it became apparent to us that the structure we had in place needed to change. We needed less expertise at senior level as functions and processes became established and more resource and expertise at delivery level. As a result we reduced the number of managers and increased the number of investigators, oversight staff and administrative support staff. It was

with sadness that we said farewell to three of our colleagues who had all been instrumental in the setting-up of the SLCC but with gladness we welcomed new colleagues.

The transitional arrangements (as set out in SSI 2008 No.332 (The Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008)) ended on 30 September 2010. This had significant operational impact, increasing the number of complaints that the SLCC had to deal with directly, particularly by our Gateway Team. The greatest strategic impact was on the SLCC's ability to understand our complaints profile, as it was not until every complaint sent to us had to be dealt with under the 2007 Act that we were able to begin to gain an accurate picture. It is too soon to identify clear trends but the indications are that the number of complaints will remain lower than originally anticipated and that our focus on resolution is effective.

Working with my team and with the Board, I am looking forward to the next stage of our journey; development of our resolution-based approach, more activity on oversight and a focus on quality and service excellence.

Rosemary Agnew
Chief Executive of the
Scottish Legal Complaints
Commission

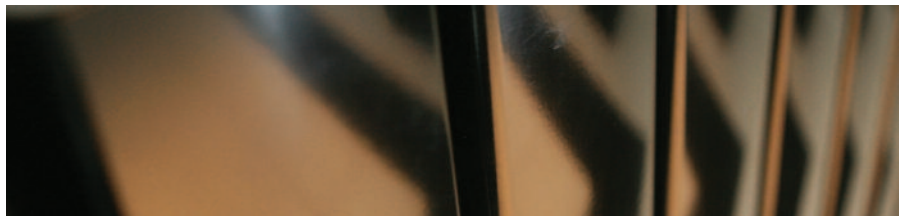
What we do

“We are so much more than a complaint handling body. The SLCC has a range of powers and duties and I think over the longer term our duty to comment on trends in complaints and our comments on conduct procedures will be viewed as our most valuable contribution to providers and clients of legal services within Scotland.”

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

Our purpose is to investigate and to either resolve or decide complaints about legal professionals registered in Scotland. Where appropriate we direct the settlement of complaints. We have a role to look into the way the professional bodies concerned deal with complaints about their members’ conduct, and how these bodies make arrangements for professional indemnity insurance. We also have a role in promoting and advising on good complaint handling across the legal profession. We make recommendations in order to contribute to the development of good professional legal practice in Scotland.

We do this independently of the Scottish Legal Profession and Government and impartially, basing our decisions and recommendations on careful analysis and evaluation of evidence. We aim to be accessible to all who need to use our services.



The Scottish Legal Complaints Commission – the SLCC – was created by the Scottish Government under the Legal Profession and Legal Aid (Scotland) Act 2007 – “the Act”.

The SLCC is the Gateway for all complaints about Legal Practitioners in Scotland. We register complaints and decide if they can be accepted for investigation. We deal with complaints about the service provided by legal practitioners ourselves. We send complaints about legal practitioners’

conduct to the appropriate professional body. Complaints about solicitors’ conduct go to the Law Society of Scotland (LSS). Complaints about advocates go to the Faculty of Advocates (FoA). Complaints about Commercial Attorneys go to the Association of Commercial Attorneys (ACA).

The SLCC is defined in the 2007 Act as “a body corporate”. We have public responsibilities and private attributes. Our public responsibilities include being a body covered by the Freedom of Information

(Scotland) Act 2002 and being subject to the Scottish Public Finance Manual. Our private attributes include being able to set our own budget. The SLCC is independently funded. This is by way of a levy paid by legal practitioners through their professional bodies. Each year we set a budget and the annual general levy, consult with the professional bodies and lay our final budget and levy rates before Parliament.

Strategic objectives and values

As part of its three-year strategy, the SLCC aims to:

1. provide a high quality, independent and impartial complaint handling service which focuses on early resolution
2. be an efficient, accountable organisation that works to best-value principles
3. support and contribute to high standards in the legal profession in Scotland through our oversight and complaint-handling functions
4. promote understanding of our role
5. be recognised as expert in complaint handling and an organisation that attracts and retains experienced and skilled people

In achieving these aims we will apply our values of:

OBJECTIVITY

We are focused and impartial in everything we do

ACCOUNTABILITY

We each take ownership of our work and are answerable for what we do

OPENNESS

We listen to and accept new ideas and suggestions readily

PERSONAL RESPONSIBILITY

We are responsible for our own actions and promote the SLCC's values

CONSISTENCY

We make the same decisions on cases with similar circumstances and facts, and learn from experience

PROPORTIONALITY

We take a flexible, balanced approach and use a range of investigation techniques which reflect the needs of the parties involved, their circumstances and the nature of the complaint



Who we are

“Complaints handling is a people business in every sense. That is why the people who work for the SLCC are key to its success. As Chair I am committed to team working so we use the best skills we have to provide the best service we can within the constraints under which we operate.”

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

The Board of the SLCC		
	Appointed From	Will serve To
Chairing Member (Lay)		
Jane Irvine	01.01.2008	31.12.2012
Lay Members		
Ian Gordon	01.01.2008	31.12.2011
Siraj Khan	01.04.2011	31.03.2016
Iain McGrory	01.04.2011	31.03.2016
Dr. Linda Pollock	01.01.2008	31.12.2011
Fiona Smith	01.04.2011	31.03.2016
Douglas Watson	01.01.2008	31.12.2011
Legal Members		
David Chaplin	01.01.2008	31.12.2011
Maurice O’Carroll	01.04.2011	31.12.2016
Prof. Alan Paterson	01.01.2008	31.12.2011
Margaret Scanlan	01.01.2008	31.12.2011
David Smith	01.01.2008	31.12.2011

The SLCC is governed by its Board. The Board is made up of 12 Members (Commissioners as they are also known). They are public appointments made in consultation with the Lord President.

The SLCC has 12 Members, seven of whom are lay (i.e. not part of the legal profession in Scotland) and five of whom are legal Members (ie are or have been part of the legal profession). It is chaired by Jane Irvine.

During the year Prof. George Irving stepped down from the Board and four additional Members joined us. We are grateful to Prof Irving for all his hard work while we were establishing ourselves and are very pleased to welcome Siraj Khan, Iain McGrory, Maurice O’Carroll and Fiona Smith.

Between them, our Members have a wealth of knowledge and experience of governing organisations, of dealing with complaints and of Scottish Law. If you would like to know more about the Board please visit our website at www.scottishlegalcomplaints.org.uk

The Senior Management Team

Rosemary Agnew

The SLCC's Chief Executive, Rosemary has been with the SLCC since we opened for business in October 2008 and took up the post permanently on 21 October 2010. She is supported by the senior management team.

Lorna Johnston

Lorna is Gateway Team Manager, responsible for the gateway team. Her team is the first point of contact providing a range of advice and information about making complaints. They register complaints, assess whether they are eligible for investigation under the 2007 Act and refer them to the appropriate body for investigation.

David Buchannan-Cook

David is the Case Investigations Manager, responsible for the investigation team which investigates and resolves or settles complaints about the service provided by legal practitioners.

Alan Davidson

Alan joined us recently as the Finance and Corporate Services Manager, responsible for corporate functions, such as finance, facilities and communication, essential to enabling the rest of the organisation to operate effectively.

Our people

We recognise that our greatest asset is the people with whom we work; the dedicated and hard-working staff who deliver our business day-to-day.

All of our staff have clear personal goals that support the SLCC's aims and objectives, are appraised regularly and enjoy competitive terms and conditions. The SLCC is committed to ensuring staff at all levels are given access to, and opportunities for, learning and development.

At an individual level, we ensure that learning and development reflects needs identified through personal development plans. Last year this included technical training on skills and areas of law, induction training for new staff, and personal development in areas such as communication and report writing. At an organisational level, we have in place systems to ensure that the

organisation benefits from the learning and development of individuals. We also ensure that all staff receive mandatory training in relation to Health and Safety, and skills and knowledge training in areas identified by the organisation as being a priority.

As part of our training activity and in support of our strategic aim of being recognised as excellent complaint handlers, all staff involved in complaints handling (in post at the time), including managers, received accredited investigative skills training. We remain committed to ensuring new staff achieve the same accreditation.

At 30 June 2011 the SLCC had 33 members of staff, a mixture of full and part time, giving the equivalent of 31.5 full time staff. 29 of our 33 staff are directly involved in complaint handling and oversight.



Governance

“The SLCC is unusual; we provide a public service with funding from the private sector. As Chair of the Audit Committee I believe this places a responsibility on us to give assurance that we have appropriate controls in place to ensure proper management of our finances and our organisation. The Audit Committee is an important part of our governance framework.”

David Chaplin
Chair of the Audit Committee

The SLCC recognises that as a body corporate we are responsible for ensuring that governance arrangements are robust and provide assurance that our activities comply with standards and legislation, promote quality and efficiency in how we do business and are supported by appropriate policies and procedures. At the end of the year we were part-way through a complete review of governance arrangements, aiming to build on the very firm foundations already in place.

We are confident from the feedback from our internal and external auditors that our governance approach is sound and that we manage risk effectively. However, we also recognise that excellence is only achieved and maintained through active monitoring and adjustment of practice in light of experience. In pursuit of excellence in standards of governance, the SLCC is reviewing each of the core areas of our governance framework, the main one over the last year being a review of the role of the audit committee.

The role and remit of the SLCC’s audit committee has been strengthened to ensure that it monitors and supports the Accountable Officer and provides assurance to the Board in respect of:

- financial management and performance
- strategic processes for risk, control and governance
- activity of internal and external audit and

implementation of recommendations, including proposals for tendering for audit services or for purchase of non-audit services from contractors who provide audit services

- the effectiveness of the internal control environment including best value and efficiency
- the SLCC’s corporate governance requirements
- anti-fraud and whistle-blowing policies and arrangements for special investigations

We have put in place revised Terms of Reference for the Audit Committee, working closely with our internal auditors and following good practice guidance issued by the Scottish Government and the Auditor General for Scotland.

The review of governance arrangements will be completed next year with the review of and update to our published Governance Arrangements.

Talking and Listening

“It is vital that any public body looks outwards and actively seeks external views on its service. That is why whilst I am Chair the SLCC will remain keen to listen to constructive feedback – positive or negative.”

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

TALKING

The SLCC continues to give presentations and deliver seminars to a range of stakeholders. We have spoken to them on topics that include our role and responsibilities, the value of mediation in complaint resolution and good practice in complaint handling.

The SLCC responds regularly to consultations from, for example, government departments, MSPs and policy makers.

During the year we responded to:

- Scottish Government Consultation on the proposal to introduce a requirement to pay financial contributions in criminal legal aid and changes to financial eligibility in criminal legal assistance
- Scottish Government consultation on the proposals for the ownership and control of firms

providing legal services under the provisions of the Legal Services (Scotland) Act 2010

- The Parliamentary & Health Service Ombudsman’s (England) consultation on the proposal to introduce a system for members of the public who complain they have experienced poor public services from Westminster government departments (and other specified public bodies), to have direct access to the Ombudsman’s office without first getting a referral from a Member of Parliament

LISTENING

Under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007, we are required to consult with the professional bodies and ministers on our budget proposals. We issued our consultation budget in January 2010 for comment on proposals for the financial year starting in July 2011. The budget consultation also included consultation about the general levy we intended to charge for the coming year.

The responses we received were published on our website. It was not until the end of the consultation period on 31 March that we made a final decision about our budget, which we then laid before Parliament in April 2011 and published on our website.

The SLCC now issues feedback questionnaires to everyone who has had a complaint dealt with by us. Responses will be monitored and

used to actively inform service delivery.

We are also keen to listen to internal stakeholders. During the year we have formally elected two staff representatives with whom we consult over such issues as pay, terms and conditions and staff policies.

We ensure that everybody in the SLCC has a route to raise issues and make a contribution to the way we run and manage ourselves.

Freedom of Information

The SLCC is committed to the ethos of Freedom of Information and aims to be as open as it can be in the information it shares.

We reviewed our publication scheme and adopted the model scheme published by the Scottish Information Commissioner. We put in place steps for regular review to ensure that we put as much information as we can on our website.

We complied with our statutory duties as a body subject to the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) by responding to information requests. We did not receive any requests under EIRS.

Number of requests under FOISA and who made them

	2008/09	2009/10	2010/11
Legal Profession	0	1	0
Member of public	40	42	37
Media/press	3	7	11
MSP/MP	0	5	8
Other	0	0	1
total	43	55	57
number and percentage of requests above made by the same individual	18 (42%)	16 (29%)	22 (39%)

NB figures for 2008-09 cover the nine months 1 October 2008 to 30 June 2009

The outcomes of requests under FOISA

	2008/09	2009/10	2010/11
Information Supplied	11	26	18
Information Partially Supplied	17	14	25
Information Withheld	14	11	13
Insufficient information provided by the requestor to respond	0	0	1
Request Withdrawn	1	4	0
total	43	55	57

Summarised Accounts 2010-11

The information set out here is a summary extracted from the SLCC's audited annual accounts for the year ending 30 June 2011.

The full accounts are available on our website: www.scottishlegalcomplaints.org.uk

The SLCC set only anticipated expenditure requirements for 2010-11 at £2,839,000 against which we received income of £2,232,000. Actual expenditure was £2,408,000 leaving an annual deficit of £175,000 compared to the previous annual surplus of £394,000.

Total reserves held at the end of the year amounted to £1,816,000 (compared to £2,025,000 at 30 June 2010) but it should be noted that in line with our Reserves Policy the SLCC ring-fenced £1,000,000 to underwrite the general levy in the 2011-2012 operating year. This leaves an actual reserve of £816,000, in line with policy targets of three to four months of running costs for the current year.

Statement of Comprehensive Income and Expenditure for year ending 30 June 2011		
	2011 £'000	2010 £'000
Operating Income	(2,232)	(2,492)
Expenditure		
Staff Costs	1,415	1,292
Other Administration Costs	989	804
Depreciation	4	3
Pension Interest Cost and Expected Return on Pension Assets	(1)	(1)
Net Operating Cost/(Income)	175	(394)
Other Comprehensive Income		
Actuarial Gain/(Loss) on Pension Scheme	(8)	15
Net (Deficit)/Surplus for Year	167	(379)

Statement of financial position as at 30 June 2011		
	2011 £'000	2010 £'000
Non Current Assets		
Property, Plant and Equipment	64	110
Total Non Current Assets	64	110
Current Assets		
Trade and Other Receivables	94	88
Cash and Cash Equivalents	3,365	3,948
Total Current Assets	3,459	4,036
Total Assets	3,523	4,146
Current Liabilities		
Trade and other payables	(1,709)	(2,118)
Total Current Liabilities	(1,709)	(2,118)
Non Current Assets plus Net Current Assets excluding Pension Liabilities	1,814	2,028
Pension Scheme Liability	2	(3)
Non Current Assets plus Net Current Assets including Pension Liabilities	1,816	2,025
Non Current Liabilities		
Assets less Liabilities	1,816	2,025
Equity		
General Fund	1,757	1,924
Donated Asset Reserve	59	101
Total Equity	1,816	2,025

Complaints - July 2010 to June 2011

“The SLCC recognises our role in monitoring and raising standards across the Legal Profession. We also recognise that this will be better achieved by the parties to a complaint resolving their differences rather than arguing about them.”

Rosemary Agnew
Chief Executive of the
Scottish Legal Complaints
Commission



OVERVIEW

How we performed

The SLCC set time targets for dealing with complaints, summarised in the following Key Performance Indicator. This is the first year we have set and monitored against the KPI.

- 50% of cases dealt with in 100 working days
- 85% of cases dealt with in 200 working days
- 95% of cases dealt with in 300 working days

	% in 100 days	% in 200 days	% in 300 days
2010/11	73	86	91
target	50	85	95

ENQUIRIES

Enquiries	
Enquiries in hand at the start of the year	25
Enquiries received in year	2,598
Enquires dealt with in year	2,619
Enquiries in hand at the end of the year	4

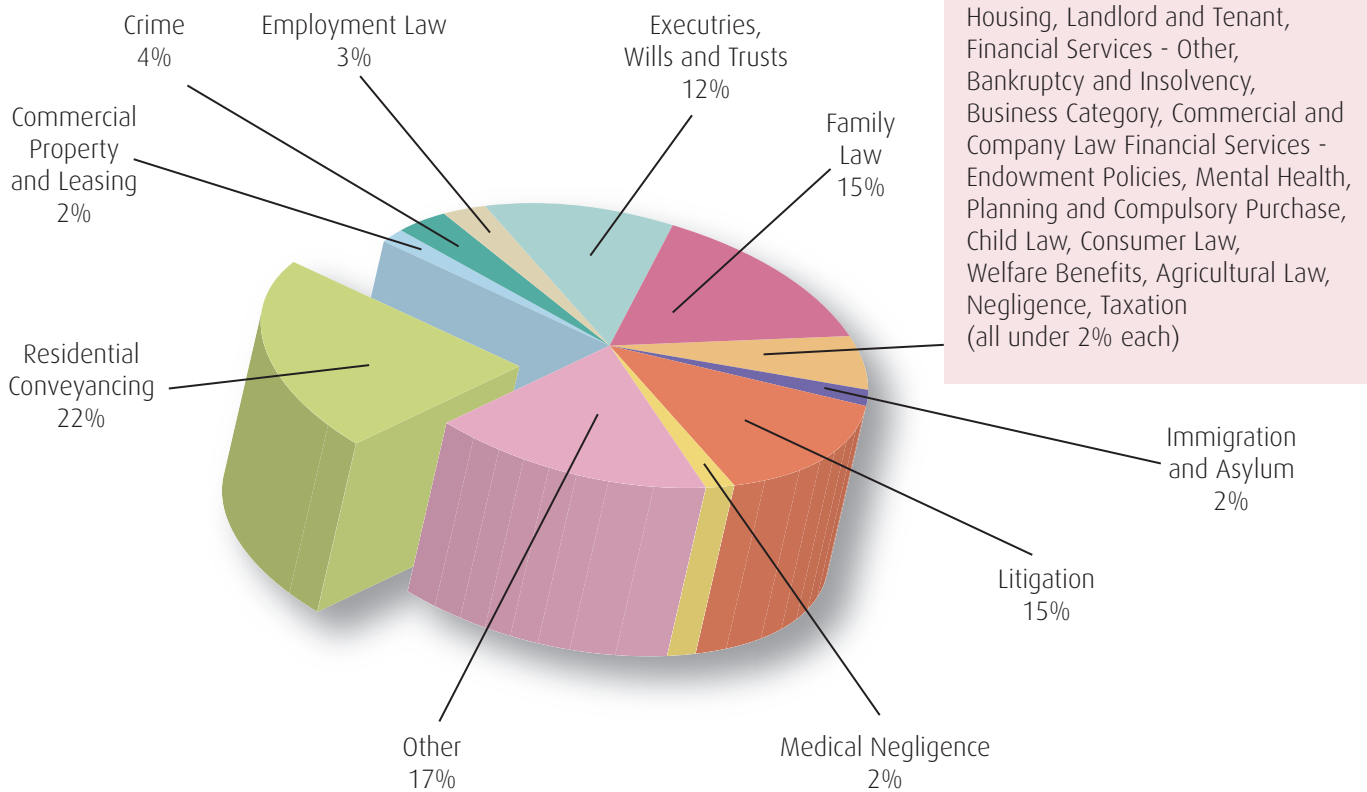
COMPLAINTS

Complaints	
Complaints in hand at the start of the year	274
Complaints received in year	1,090
Complaints ineligible for investigation	503
Eligible conduct complaints referred to professional body for investigation	85
Eligible service complaints dealt with and closed by SLCC	210
Complaints in hand at the end of the year (including 290 awaiting the eligibility decision)	566

Split between conduct and service complaints accepted as eligible for investigation

	2008/09	2009/10	2010/11
Conduct	84%	45%	29%
IPS	16%	55%	71%

BREAKDOWN BY BUSINESS CATEGORY

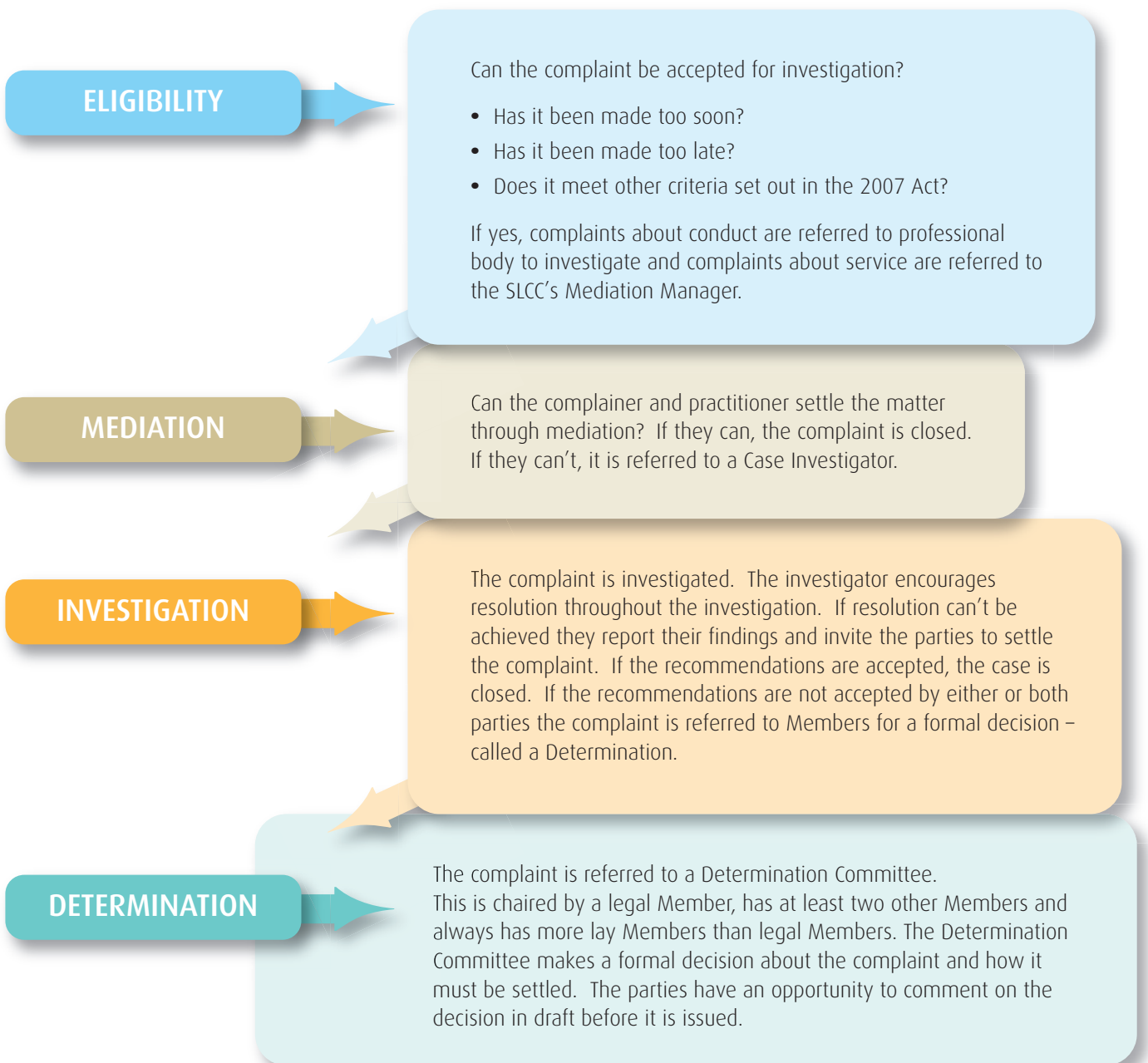


The complaint process

Complaints often start as an enquiry. The first point of contact is our Gateway Team. They give support and guidance to the people and organisations who contact us.

We help them to complete a complaint form, give advice about our processes and policies and if we can't help them direct them to people or organisations who can.

When we receive a signed complaint form, we deal with it as summarised here and explained in more detail over the following pages.



Eligibility

It is at this stage we consider whether a complaint is eligible – by this we mean we assess whether it meets the criteria set out in the 2007 Act and the SLCC’s Rules to be accepted for investigation. The assessment includes: is it in time, has the practitioner been given a reasonable opportunity to resolve the complaint and does it meet the test of not being frivolous, vexatious or totally without merit? We make limited enquiries to ensure that we have enough information to allow us to make a decision.

Summary of decisions taken about the eligibility of complaints	
Sent to the LSS under the transitional arrangements	144
Sent to the FoA under the transitional arrangements	1
Premature - practitioner not give reasonable opportunity to resolve the complaint	37
The complaint was about a practitioner acting in a judicial capacity	1
The complaint was made outside time limits	146
Frivolous, vexatious or totally without merit (101 were totally without merit, 4 frivolous, 2 vexatious and 53 were a combination of reasons)	160
Resolved before an eligibility decision was taken	14
Accepted as an eligible conduct complaint	85
Accepted as an eligible service complaint	210
Total	798

As can be seen from the breakdown of decision types, two of the commonest reasons for not accepting complaints were that they had been made outside the time limits or were frivolous, vexatious or totally without merit.

COMPLAINTS MADE OUTSIDE TIME LIMITS

The SLCC does not normally accept complaints made outside time limits unless there are exceptional circumstances or the complainer could not, in our view, have been reasonably aware of the issues complained about. The time limit generally runs one year from when the professional relationship ended.

Case 1

Ms C complained in May 2011 that her solicitor did not represent her properly in respect of a criminal trial in 1999. She alleged he did not provide her with adequate advice and did not follow her instructions.

Even though the matter appeared to be well outside the time limits the SLCC understands that there can be exceptional reasons why complainers don't come to us sooner so we asked Ms C why she did not complain earlier. Ms C told us that she was advised by her new solicitor at the time to concentrate on her appeal and that he would look into the representation given to her by her previous solicitor.

We considered this carefully but decided that her complaint should not be accepted for investigation as these reasons were not exceptional.

Case 2

Mr C complained in May 2011 that his solicitor had provided poor advice regarding the purchase of a business and had not given him clarification regarding the terms of a lease. The work done by the solicitor ended in August 2008 when the firm billed him.

We know that sometimes issues about the purchase of business or

property, and property related matters only become apparent years later. We looked at the information we had available to see whether the alleged poor service was something Mr C could have been aware of in 2008, even though it was from before we even opened in October 2008. We concluded that Mr C knew about the alleged poor service in time to make his complaint to us because we had a letter that showed Mr C and his landlords had been in

discussion about the issues and losses the alleged poor service appeared to have caused.

While we appreciate that Mr C may have suffered losses because of his solicitor's actions in 2008, there were no exceptional reasons for not complaining to the SLCC sooner. This case highlights the importance of complaining as soon as the issues are known about.

Case 3

Mr C complained in June 2011 that when he bought his house in 2007, his solicitor Mr P failed to seek confirmation from the sellers that all relevant building and planning warrants had been obtained and were in order in relation to alterations noted in a survey done in May 2007. Mr C only became aware of the issue in May 2011 when he came to sell his house and discovered he would have to exhibit and pay for retrospective listed building consent.

The SLCC accepted this complaint as being within time. Although the service provided by Mr P was more than one year ago, Mr C could not reasonably have known of the matter until he came to sell his house because Mr P did not tell him at the time and there was no other reason the issue would have come to light.

COMPLAINTS THAT ARE FRIVOLOUS, VEXATIOUS OR TOTALLY WITHOUT MERIT

The SLCC must not accept complaints for investigation if they are “frivolous, vexatious or totally without merit”. These terms were not written by the SLCC but are contained in the 2007 Act. The 2007 Act does not define them, and they are often subject to discussion by the Court in the course of appeals.

The SLCC does not underestimate how important complaints are to those who make them. We know that to receive a decision that a complaint is not going to be investigated for any of these reasons can be upsetting - both because the complaint is rejected and because of the terms themselves. Examples of how the terms are used include:

“Frivolous” could be applied to a complaint that has very little merit or is of a very trivial nature or where to investigate it would be out of all proportion to the seriousness of the issues complained about.

A “Vexatious” complaint could be one made with the intention of causing annoyance or trouble for the person or firm complained about.

“Totally without merit” could be applied to a complaint that could not amount to a breach of service or conduct standards, is insupportable in law or has no substance whatsoever to it.

Case 4

Mrs C complained about Mr P, the solicitor who was representing her husband in divorce proceedings. Mrs C is represented by her own solicitor. This is a ‘third-party complaint’. By this we mean it is a complaint from somebody who is not the client of the solicitor complained about.

In her complaint, Mrs C alleged that Mr P, her husband’s solicitor, sent her a letter that was threatening and inflammatory. Mr and Mrs C were in dispute about whether she should remain in the family home against his wishes. Mrs C says that Mr C had already told her that he would not seek to have her

removed, yet the letter from his solicitor talked about all the things her husband could do. This included serious measures like exclusion orders and powers of arrest. Mrs C was unhappy with the tone and content of the letter. Mrs C also alleged that Mr P was not acting in the best interests of her husband, his client. Her view was that he gave her husband poor advice which included removing her belongings and changing the locks. She felt this was not helpful to Mr and Mrs C because it was not encouraging an amicable and mature relationship which she felt was important to them and their children.

What we consider in third-party complaints is whether the issues

complained about could amount to a breach of conduct standards, or whether the service provided to the client – in this case Mr C – was inadequate.

We decided that the complaint was not eligible for investigation because it could not amount to a breach of conduct standards nor was the service provided to Mr C inadequate when considered against service standards. The SLCC knew the issues were important to Mrs C and understood that letters setting out legal measures can be upsetting. However, Mr P was correct in the advice he gave his client and was following Mr C’s instructions in sending the letter. In our decision we said the complaint was totally without merit.

Case 5

Mrs C complained about the service she received from Mrs P in relation to her accident at work in April 2010. Mrs C complained that Mrs P initially advised her that she would not be charged a fee and would receive 100% of any compensation awarded. Mrs P later deducted 10% of the compensation awarded as fees.

Article 2 of the Service Standards states that a solicitor has to act diligently on behalf of their client and provide prompt and transparent fee arrangements. This means that solicitors have a duty to ensure that they have advised their clients of their fee arrangements in advance. It was clear from the information provided that Mrs P had made her client aware of fees because Mrs C signed an agreement in relation to taking court action that said if she won her case she would pay 10%. For this reason the SLCC did not accept the complaint for investigation, as it was totally without merit.

If a complaint is 'eligible' it is categorised as conduct or service (or both). **Conduct complaints** are those that allege breaches of Solicitors' and Advocates' Standards of Conduct. These are not investigated by the SLCC but are sent to the Relevant Professional Organisations (RPO) for investigation (The Law Society of Scotland, The Faculty of Advocates or the Association of Commercial Attorneys). Our role at this point is one of oversight, part of which involves monitoring the way in which conduct complaints are dealt with by the RPOs generally.

Eligible Conduct Complaints	
Conduct complaints sent to LSS	81
Conduct complaints sent to FA	4
Conduct complaints sent to ACA	0
Total eligible conduct complaints	85

Service complaints are those which allege a solicitor or advocate has breached service standards and in doing so has provided an inadequate professional service. Eligible service complaints are accepted for 'investigation' by the SLCC. By this we mean we will deal with the complaint ourselves and the term investigation is used to cover activity in all the steps following. Our focus is on resolution of a complaint. We aim to resolve the complaint with the agreement of the parties.



Mediation

Mediation gives the parties the opportunity to resolve the complaint with the help of an impartial, independent mediator. Mediation is voluntary which means both parties must agree to it.

Complaints resolved by mediation or closed before mediation took place	
Resolved at mediation	57
Withdrawn by complainer	1
total	58

Mediation is confidential. The parties sign an agreement before the mediation takes place which includes agreeing not to tell anyone about the content of what is

discussed or the details of any settlement they reach. At no point is this or the actual detail of the mediation made known to anyone except the parties, the mediator, and the SLCC's Mediation Manager. Even if a complaint goes on to be investigated, the details of the mediation remain confidential.

The types of complaints we have mediated cover a range of subjects.

The resolution the parties reached included; acceptance of the explanation given by the solicitor, accepting an apology, expediting the work the solicitor was doing, the solicitor agreeing to do future work at no charge, rebating fees which generally ranged from £140 to £1,800 (but with one of £4,000) and compensation to the complainer which generally ranged from £80 to £1,500 (but with one of £10,000).

Issue	Resolution
Difficulties arising from poor communication during a child custody case	Following discussion between the parties at mediation, the firm agreed that the complainer should receive some financial compensation. The parties decided that the compensation would be paid directly to the child's bank account
Problems arising from mis-communication about whether the solicitor was to represent the complainer in court	The firm provided relevant information for no charge to enable the complainer to continue the court action alone
Mistakes and mis-communication during the winding-up of an estate	The complainer paid the fees of the firm for the original work. The parties agreed that additional work to resolve problems would be undertaken by the firm for a fixed amount
Dispute surrounding the level of fees charged and alleged poor communication during a property purchase	After discussion at mediation and improved understanding between the parties, the complainer paid the fees of the firm who withdrew their Summary Cause action to recover the amount
Complaint about perceived abrupt treatment by the solicitor and office staff at the firm	This was resolved through constructive and positive discussion. The Firm's opening remarks at the mediation set the tone for this. The Client Relations Partner told the complainer that he had spoken to staff to remind them that although they deal with deceased estates on a daily basis, they must remember that it's usually a one-off experience for clients who may be struggling to cope with a loved one's death. The complainer felt reassured by this and accepted the firm's offer of £100 in recognition of the perceived offhand treatment

If mediation does not resolve the complaint or is not accepted as an approach, the complaint is passed to an investigator.

Investigation

An investigator will investigate the complaint, making enquires appropriate to the issues. The approach is inquisitorial and aimed at resolution. If the complaint can be conciliated (settled) during the investigation then it is closed as resolved. If it cannot be conciliated and the investigation is completed, a report setting out the investigator's recommendations and proposed settlement (if appropriate) is sent to both parties. If both parties accept the report then the complaint is closed as resolved.

During the year we resolved more complaints through conciliation during the investigation process than we reported on and settled.

Resolved at investigation by report	18
Resolved at investigation by conciliation	24
Withdrawn by the complainer at investigation stage	22
	64

22 complaints were withdrawn by the complainer. Of these, five were withdrawn because the complainers told us they had sorted matters out with the solicitors. On one occasion the complainer died and his family did not want to pursue the matter. 16 complaints were withdrawn by the complainers for other reasons and the SLCC did not consider the complaints to be of sufficient public interest to refuse to withdraw them.

The resolution reached between the parties covered a range of actions and compensation. This included the solicitors taking action such as apologising, reducing or refunding their fees, and paying compensation for distress and inconvenience, and costs incurred by the complainer that were the consequence of the alleged inadequate service they received.

42 cases were resolved at investigation. Of these 42 cases, the parties agreed to the solicitors abating fees, taking action and/or paying compensation in 17. Some cases required a combination of these.

	Abatement of fees	Specific action to rectify the issue	Solicitor to take action	Compensation	Training
Investigation	6	0	3	13	0

Summary of the amounts paid

	Abatement of fees	Compensation
Total amount awarded at investigation	£5,356	£6,723
Average per case (of those where payment made)	£893	£517
Highest amount awarded	£2,000	£2,061
Lowest amount awarded	£200	£40

Complaints resolved at investigation or mediation may identify inadequate professional service but unlike determinations they are not formally upheld/not upheld. Any agreements made at mediation or investigation stage are monitored to ensure they are delivered.

INVESTIGATION CASE STUDIES

Case 6

Mr C complained about the service Mr P and his Firm provided in relation to his separation. He complained about the way the Firm advised him on costs and subsequently charged him. He alleged they charged nearly double the verbal quote and that they did not tell him when the costs became higher than the limit he was able to pay, even though they had agreed to. The Firm did not respond to his requests for a breakdown of costs for over ten months, they did not take payments from his debit card even though he instructed them to do so and the amounts they charged him differed between invoices without any explanation as to why.

Mr C was also unhappy with the poor communication and delay in dealing with his case. It took five months to draft a document Mr P told him was straightforward, by

which time it was out of date. The Firm did not keep him informed or updated as the terms of business letter said they would. Nor did they respond to his complaint about the delay and the fees. At the point Mr C complained to us, the Firm had started to chase him for payment of his fees and although he paid them in full, did not acknowledge receipt.

The SLCC investigated this complaint by examining the Firm's files and all the information Mr C sent. We spoke directly with both parties and took into account all they had to say. We found that that Mr C's case was not as straightforward as it appeared to be. There were unavoidable reasons for the delay and although the fees were higher than originally quoted, it was clear the work was both necessary and instructed by Mr C. The SLCC did not uphold the allegations about these aspects of the service.

However, it was apparent that neither Mr P nor his Firm kept Mr C informed. Their communication

with him was sporadic, did not answer his questions and contained a lot of jargon that he may not have understood easily. There was no evidence they had answered his complaint. Had they communicated more regularly and effectively with Mr C to help him understand why there were delays and why the matter was more complex than originally thought, they may have avoided the complaint, and would not have caused Mr C the inconvenience of writing to them or of complaining.

We reported these findings to both parties and recommended a settlement that they both accepted. The Firm apologised. It also paid Mr C £550 compensation for the distress and inconvenience caused by the poor communication. We did not recommend a rebate of fees because although they were higher than Mr C was expecting, the service and advice provided in relation to his separation were not found to be inadequate.



Case 7

Ms C's car was hit by a road sign that was being placed by a construction worker. It caused sufficient damage that she made a claim on her car insurance. Ms C's insurers instructed a local firm to act on her behalf in relation to the claim for damages as a result of the alleged negligence of the construction company.

Ms C complained to the SLCC that the Firm delayed for over six months in pursuing her claim and that they did not follow her instructions in relation to pursuing the site manager

whom she believed had already accepted responsibility for the incident. She said that they failed to communicate with her properly or progress her case until she made a complaint to them.

Our investigations took into account information from both parties. We concluded that; the actual work in pursuing the claim had been carried out properly but that the case had not been managed effectively, and that the level and frequency of communication was not of a level a reasonable person would expect. It was apparent to our investigator that there had been several periods of avoidable delay, that had the file been reviewed regularly would have

been noticed earlier and which may have been avoided altogether. This in turn may have avoided Ms C having to complain to the Firm to get matters moving. Our view was this delay and lack of effective review could amount to inadequate professional service.

We put our findings and the recommendation that the Firm should pay Ms C £150 compensation for distress and inconvenience to both parties. They agreed the findings and settled the complaint on this basis. We did not recommend a rebate or reduction in fees because we were not critical of the work that Firm had done in relation to pursuing the claim.

Case 8

Mr and Mrs C complained about the way Ms P and her Firm dealt with their house purchase. They were unhappy with her alleged failure to settle on the date they were expecting, 21 October 2010 which they agreed the week before in a telephone call. They called the Firm on 20 October to confirm everything was in order and were told by Ms P that she was not expecting to settle until 22 October. She said that settlement could not take place unless a new disposition was issued and delivered to the purchaser's solicitor for the next day. This was quite late in the working day. Mr and Mrs C decided they wanted settlement to take place on 21 October as planned. Ms P prepared a new disposition which was hand-delivered.

The exchange took place followed by settlement late afternoon on 21 October. This meant Mr and Mrs C could not complete their move and had to pay their removal company for an extra day.

When the SLCC examined the Firm's file and the information that Mr and Mrs C provided, it emerged that the conveyancing was not straightforward. There were problems with the sale of Mr and Mrs C's current property resulting from the completion of remedial works identified by their buyer's survey. We could see that Ms P had raised doubts in her letters about being able to settle on 21 October and had kept Mr and Mrs C informed. Equally, it was evident that she was aware that 21 October was their desired date. The consequence of the uncertainty about the settlement date meant that Ms P was unprepared for

settlement on 21 October and as a result settlement was not until late in the afternoon of 21 October.

Our view was that the service was adequate and did not breach any Service Standards. We appreciated it was a stressful time for Mr and Mrs C and that they had done everything they could. We could also see that the Firm had made strenuous efforts on their behalf and had managed to settle on the day they wanted. We considered very carefully the matter of the extra costs for the removal company, but did not recommend these be compensated as they were not the consequence of inadequate professional service.

Although we did not uphold the complaint, our findings and recommendations were accepted by both parties and no further action was taken.

Determination

If either party does not agree to settle a complaint at the investigation stage, it is referred for determination. Members make a formal and binding decision about the complaint, which is enforceable and challengeable only through appeal to the Court of Session – we call this decision a determination. The parties are each sent the draft determination so have an opportunity to comment before a final determination is made.

Determination is by a Determination Committee usually consisting of three Members of the SLCC (Chaired by a legal member). The Determination Committee considers the whole of the complaint afresh, including the supporting evidence and whether that evidence is sufficient on which to make a robust decision. The Committee is not bound by any earlier attempts at resolution but makes its own decision about appropriate outcomes and redress. Like our investigations, the approach is inquisitorial.

Complaints wholly upheld at determination	7
Complaints partially upheld at determination	20
Complaints Not upheld at determination	61
Total number of cases determined	88

88 Cases were determined. 26 of these required the practitioner to refund or abate fees and/or pay the complainer compensation (some required both).

Summary of the amounts paid

	Abatement of fees	Compensation
Total amount awarded	£4,550	£25,446
Average per case (of those where compensation paid)	£650	£979
Highest amount awarded	£2,000	£9,261
Lowest amount awarded	£200	£75



DETERMINATION CASE STUDIES

Case 9

Mr C complained about the service Mr P provided in relation to divorce matters, ailment and contact with his children. He alleged that Mr P failed to: represent and argue his case properly in court, act on his instructions regarding his ex-wife's failure to comply with a court order for contact, arrange acceptable alternative representation in his absence. At a court hearing he arranged for his ex-wife's (the defender's) solicitor to represent both parties.

The Determination Committee considered afresh a wide range of information which included the Firm's file, Mr C's comments, Mr P's comments and the Service Standards.

The Determination Committee did not uphold any element of the complaint. Its view was that Mr P had exercised his professional judgement in relation to the representation and saw no evidence that this was improperly done. The Committee understood that it may have appeared odd to Mr C that his ex-wife's solicitor was instructed to

provide alternative representation but this was not inadequate professional service. It is standard and acceptable practice for one party's agents to represent both parties where a case like this was calling in regard to a non-contentious matter, and it was appropriate in this case. There was no substance to the complaint about failure to follow instruction. Not only was Mr C unable to clarify or provide any evidence of all of the instruction he claimed he gave to Mr P but where instruction was given, records demonstrated it was followed.

Case 10

Mr and Mrs C instructed Mrs P in the purchase of their property. They allege that they were provided with an inadequate professional service because Mrs P failed to examine the title deeds properly and so advise them whether they would be responsible for communal maintenance costs.

In examining the evidence on this complaint the Determination Committee noted that Mrs P had written to Mr and Mrs C setting out the likelihood of costs in relation to the maintenance of common areas. The Committee also noted that the

letter was sent to the wrong address; it was sent to the house they were buying, not the one they lived in and so it was reasonable to assume they did not receive the advice. The Committee's view was this amounted to inadequate professional service.

It acknowledged this was one small issue in what had otherwise been a well conducted conveyance. The Determination Committee upheld the complaint.

It then went on to consider what redress there should be as a consequence of the error. The Committee determined that although there was inadequate professional service, there was no

detrimental consequence to the complainers and so no compensation was awarded. Mr and Mrs C told the SLCC that they would have negotiated a discount on the purchase price had they been aware of the maintenance costs. The Committee's view was that even if the letter had been sent to the correct address, the option of negotiation would not have been open to the complainers. Mrs P had correctly concluded missives on behalf of Mr and Mrs C to secure the property at an agreed price. There were no onerous burdens which meant that Mrs P should have concluded when she did, and once missives were concluded it was no longer possible to negotiate on the price.

Case 11

Mrs C was dismissed by her employers. She was of the view her dismissal was unfair and instructed Miss P to write to her ex-employer on her behalf to request the reasons for dismissal. She paid Miss P £500. Mrs C complained to the SLCC that the letter was not sent.

Investigation showed that the circumstances of the complaint were not as simple as they first appeared. Mrs C was employed via a recruitment firm. It was on the

basis of the information the recruitment firm provided to her ex-employer that Mrs C was dismissed. Miss P decided it was in her client's best interests to contact the recruitment firm rather than her ex-employers. It was clear from her case file that Mrs C was unhappy with this and had asked for an explanation as to why.

The SLCC established that Miss P: did not take clear instruction from Mrs C, failed to issue a terms of business letter in line with the Law Society of Scotland's guidance, and did not communicate effectively with Mrs C, including failing to provide an explanation as to why

she contacted the recruitment firm rather than the ex-employer.

The Determination Committee upheld the complaint and determined that Miss P had provided an inadequate professional service. The Committee also determined that Miss P should pay Mrs C £250 compensation for distress and inconvenience and refund £250 of the £500 of fees already paid. The Committee did not consider that a full refund should have been made as Mrs C had attended a consultation meeting and had received advice from Miss P, following which action was taken by Miss P.

Appeals

During a complaint, the SLCC makes two decisions: the first is whether it is eligible for investigation and the second is whether or not it should be upheld. Every complaint will have a decision about eligibility (ie can we accept it for investigation). Not every complaint has a formal determination to say whether or not it should be upheld because if it is resolved during mediation or investigation it is closed and recorded as settled by the parties.

The only way a decision or determination can be challenged or changed is by appealing it to the Court of Session. This applies as much to the SLCC as to the parties, so even if new information comes to light that may have influenced our original decision, the SLCC cannot change a decision except through the court process.

At the start of the year the SLCC had nine appeals outstanding from before 1 July 2010. These were all

concluded during the year and remitted back to the SLCC to reconsider the decisions in light of the guidance that came out of the decision on a lead case (The LSS v SLCC (2010) C SIH 79 - this has since come to be known as the "McIntosh Case").

The SLCC received nine new appeals in 2010-11. Three of these are still to be heard. Of the six that were heard, five were remitted back to the SLCC for a fresh decision and in one the Court substituted its own decision in place of ours. All of the appeals against the SLCC's decisions have been about the assessment of eligibility. We have not received any appeals to date about determinations.

Of the nine new appeals, six were from lawyers who did not agree with our decisions to **accept** their complaints for investigation and three were from complainers who did not agree with our decisions to reject their complaints as ineligible.

Oversight

“I see our oversight role as being a huge opportunity to give independent assurance about how conduct complaints are dealt with. We are under no illusions that developing our role will be a challenge but it is one we are looking forward to.”

Rosemary Agnew
Chief Executive of the
Scottish Legal Complaints
Commission

THE SLCC’S OVERSIGHT ROLE IS WIDE RANGING AND ENCOMPASSES:

- Dealing with complaints about the way the Law Society of Scotland, Faculty of Advocates and Association of Commercial Attorneys deal with complaints we refer to them about the conduct of legal practitioners (we call these handling complaints)
- Monitoring practice, identifying trends and reporting on the way the profession deals with conduct complaints or matters that result in conduct complaints
- Monitoring the effectiveness of the Scottish Solicitor’s Guarantee Fund and professional indemnity arrangements such as the Law Society of Scotland’s Master Policy
- Issuing of guidance to the legal profession about standards for systems for dealing with complaints

Our oversight role includes monitoring, identifying trends and making recommendations.



HANDLING COMPLAINTS

As you can see from the statistics, the SLCC received very few handling complaints.

This is largely due to the impact of the transitional arrangements. We expect handling complaint numbers to increase as the number of complaints about conduct dealt with under the Legal Profession and Legal Aid (Scotland) Act 2007 increases, following the end of the transitional arrangements.

In hand at 01.07.10	1
New complaints received	11
Ineligible	4
Premature	4
Time Barred	0
Investigated and Closed	5
Unsatisfactory and accepted by RPO	2
Satisfactory and accepted by RPO	2
Withdrawn	1
In hand at 30 June 2011	3

CONDUCT COMPLAINTS OVERSIGHT

Conduct complaints oversight is an exciting area of our work that we have been keen to get started on. We believe that by reporting on how conduct complaints are dealt with, the SLCC can bring a real openness and transparency for both complainers and those complained about that has not existed before.

We recognised that the work was heavily dependent upon there being a body of conduct complaints and information about conduct complaints to analyse and monitor. Despite our keenness, the SLCC decided reluctantly that it would not be operationally effective or

cost effective to commit resources to this until such a body of complaints existed. We are delighted to report that, in line with our operational plans, over the last six months we have recruited a team to take this work forward. This includes an oversight investigator and a qualified internal auditor.

We have already established a baseline of information such as current existing policies and practices of the professional bodies and information requirements for ongoing monitoring of complaints and statistics. We have now moved

into the monitoring of this information to enable us to identify trends.

The oversight investigator works closely with the oversight auditor. The auditor will apply audit techniques and tools to examine the records of the professional bodies relating to conduct complaint handling. The aim of our audits is to identify good practice and areas for improvement in complaint handling about which we will make recommendations. The first of these audits is due to be carried out and completed late in 2011.

SCOTTISH SOLICITORS' GUARANTEE FUND AND INDEMNITY INSURANCE

This year the SLCC commissioned two pieces of research in this area:

- an extension to the research completed last year by the University of Manchester on the Master Policy and the Scottish Solicitors' Guarantee Fund
- a further piece of research on satisfaction levels of claimants on the Scottish Solicitors' Guarantee Fund

The research did not highlight anything new in relation to the Master Policy.

The two pieces of research into the Guarantee Fund each looked at different aspects of the Fund. The research by the University of Manchester was focused on analysis of purely statistical data; the other on claimant satisfaction levels.

The full reports of the research are available on the SLCC's website, but in summary concluded that:

- claimants were generally more satisfied than not with the handling of their claims, but there was scope for improved communications
- there is a statistical relationship between the number and total value of the claims made on the fund in the same year as an individual claim, and the level of payment made in individual claims. This suggests that the outcome of claims is influenced by factors other than the merits of the claims

As regards satisfaction levels and communication, the SLCC is aware that changes had already been made by the Law Society of

Scotland since the publication of the report on the first piece of research. We intend monitoring satisfaction levels through the issuing of questionnaires at the conclusion of each claim to give an indication of how effective these changes are. This approach is being discussed with the Law Society of Scotland to implement in 2011-12.

As regards the statistical relationship identified, the SLCC recognises that this is a starting point for further investigation. While the statistics report the relationship they do not give any indication as to what gives rise to it. The SLCC oversight auditor will begin this investigation in 2011-12 by auditing the actual claim files from which the statistics were drawn. This approach has been agreed by the Law Society.

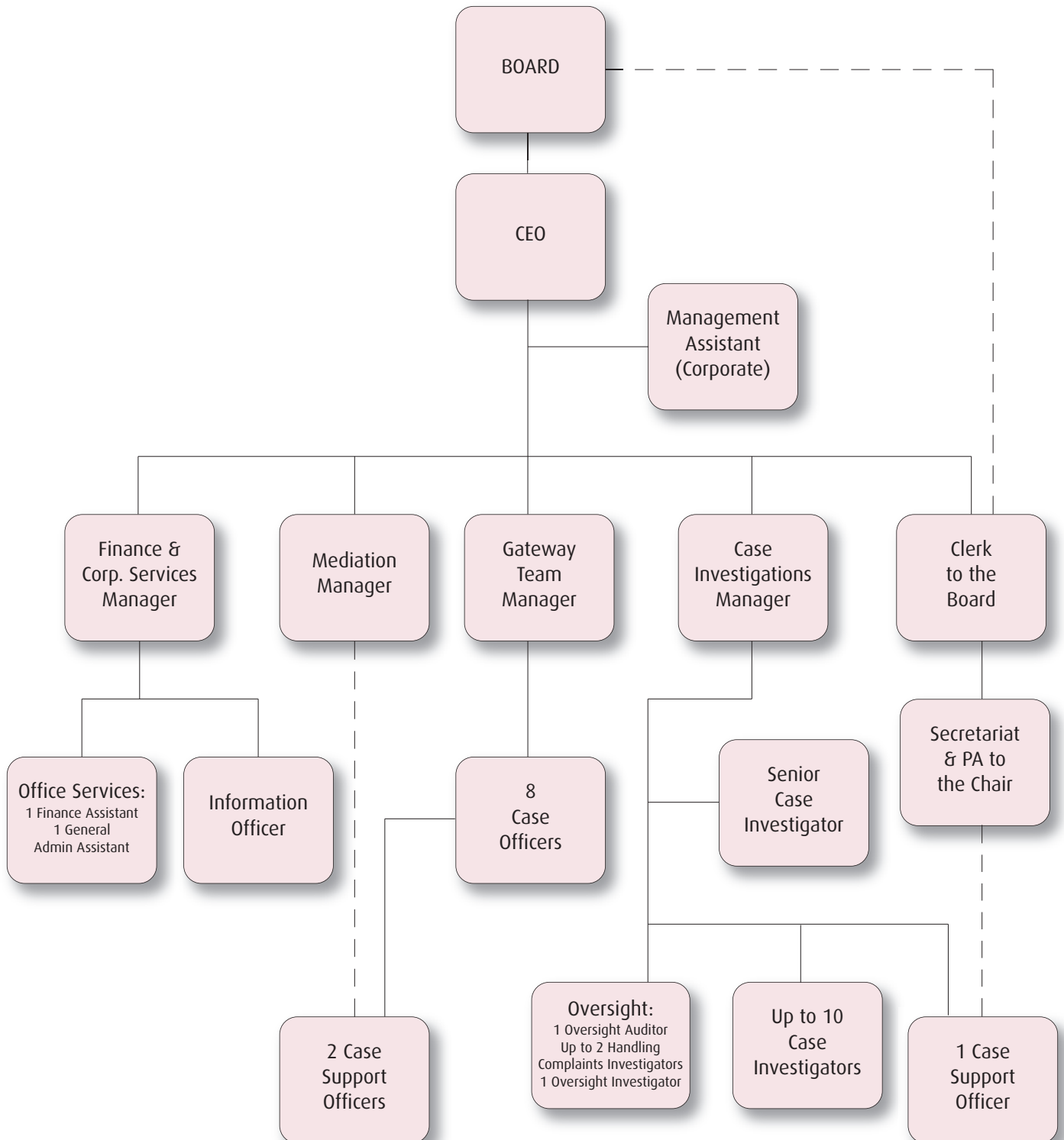
SLSO LEGACY WORK

The SLCC continues to deal with handling complaints that under transitional arrangements are dealt with under the powers of the ex- Scottish Legal Services Ombudsman. This element of our work is funded by the Scottish Government.

In the year we dealt with the following:

Complaints in hand at 1 July 2010	49
New complaints received	141
Complaints not accepted for investigation	40
Complaints investigated and closed	146
Complaints in hand	4

Our organisation





Contacting the SLCC

We want to hear from you and welcome your calls, emails, faxes or letters.

Contact us if you require information on how to make or respond to a complaint or if you would like to comment on the service you have received or if you have suggestions on how we can improve our service.

The SLCC can provide speakers for community, consumer and advocacy groups, legal firms and Faculties.

The SLCC is open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training from 10am - 11am.

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