

Overview of the process for dealing with service and conduct complaints

Introduction

What we do

The Scottish Legal Complaints Commission (SLCC) was created by the Legal Profession and Legal Aid (Scotland) Act 2007 and is the single gateway for all complaints about **legal practitioners** in Scotland. Legal practitioners include solicitors, advocates, commercial attorneys and qualified conveyancers.

The SLCC does **not** handle complaints about those acting in a judicial capacity (Justices of the Peace, Sheriffs, Judges) or other court-appointed individuals.

When we receive complaints about legal practitioners, we assess their eligibility in order to decide whether they can be accepted for investigation. If we accept a complaint as eligible, we either deal with it ourselves or refer it to the relevant professional organisation (RPO) to investigate. This depends on the type of complaint.

If the complaint or part of the complaint concerns inadequate professional service, the SLCC itself will investigate. If the complaint or part of the complaint concerns the conduct of a legal practitioner, the SLCC won't directly investigate and the complaint will be passed to the appropriate RPO to investigate. There is the possibility that both the SLCC and the RPO will investigate your complaint if it concerns both inadequate professional service and the conduct of a legal practitioner.

The RPOs are the Law Society of Scotland (LSS), The Faculty of Advocates (FoA) or the Association of Commercial Attorneys (ACA).

The complaint process

Whatever the complaint, the SLCC must be satisfied that the substance of the complaint has been made known to the practitioner and that the practitioner has had a reasonable opportunity to deal with the complaint. This is a legal requirement and the SLCC will not usually be able to take any action on a complaint where this has not happened as the complaint will be deemed premature.

The SLCC also cannot consider a complaint unless it is on one of our complaint forms and the complainer has signed it. The signature is important because it gives us permission to seek information from other people, if necessary.

Once a signed complaint form has been received by the SLCC, together with evidence that the practitioner and/or firm concerned has been made aware of the complaint and had a reasonable opportunity to deal with the complaint (at least four weeks), the complaint can then move towards resolution through the SLCC's process.

There are four potential stages to the SLCC process:

- Eligibility
- Mediation
- Investigation
- Determination

The route your complaint takes depends on the choices the parties make and the exact nature of the complaint. The SLCC will always explain the options available at each stage to the parties. A brief explanation of each stage is given below. If you would like more detail or advice, please contact us on 0131 201 2130 or visit our website at www.scottishlegalcomplaints.org.uk.

Eligibility

Provided the complaint is not premature, we then agree a "Summary of Complaint" with the complainer. This is to check that the SLCC understands the complaint and all parties are aware of the specific issues of concern.

Once the Summary of Complaint has been agreed, the SLCC will undertake an assessment of the eligibility of the issues of complaint. To be eligible, a complaint must meet certain criteria. The criteria can differ, depending on what type of complaint it is.

If we decide a complaint/part of a complaint is ineligible, we will not consider it further and we will write to both parties explaining why.

If we decide a complaint/part of a complaint is eligible and should be considered further, there are different routes which can be followed, depending on the type of complaint:

- If the complaint is about **service only**, we write to both the complainer and the practitioner informing them it has been accepted and that we will be looking into it further (this is known technically as 'serving notice'.) The parties will also be provided with the offer of mediation at this stage.
- If the complaint is about **conduct only**, we will write to both parties before forwarding the complaint to the appropriate RPO, which will carry

out an investigation. The SLCC's involvement in the conduct complaint ends at this stage and our file is closed.

- If the complaint is about both **service and conduct** (we refer to this as a 'hybrid complaint'), we serve notice on both parties advising whether the SLCC or the RPO will investigate first.

Any decision to accept or reject a complaint/part of a complaint can only be appealed through the Court of Session.

Mediation

Mediation is a confidential process which gives parties the opportunity to resolve **service** complaints through the assistance of an independent third party ("the mediator"). If successful, mediation removes the need for formal investigation as the complaint will be closed at this stage as resolved. Both parties must agree to participate in mediation before it can take place. If one party does not want to mediate, the complaint will be passed on to the investigation stage.

In service only complaints, the Mediation Co-ordinator writes to the parties to offer mediation and provides more detail about what mediation involves. This letter is usually sent at the same time as the parties are served notice that the complaint has been accepted as an eligible service complaint.

In hybrid complaints where the conduct element of the complaint has already been considered by the RPO and the complaint has been returned to the SLCC, the Case Investigator may write to the parties to offer mediation.

There is no charge for mediation.

The mediator is a neutral person who helps parties to talk through the problem to see if they can agree a fair and reasonable solution to the complaint. The mediation process is flexible and takes place at a mutually convenient location for the parties or by telephone or Skype. It can involve the parties meeting in the same room to talk through matters or in separate rooms, with the mediator acting as an intermediary.

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

If mediation does not resolve the complaint, the Mediation Co-ordinator writes to both parties to inform them that a Case Investigator will now be allocated to their complaint in order to undertake an investigation.

In general, 4 out of 5 mediations result in an agreement. This means that you leave with peace of mind that the complaint has been sorted out and you do not have to wait for a formal lengthy investigation. Most importantly, you have control over the words and terms – no one will force any agreement on you.

Investigation

If the complaint is not resolved at mediation, it may take four weeks for it to be allocated to a Case Investigator. If it is not allocated after approximately four weeks, the Head of Investigations will contact you to provide an update.

When a case is allocated, the Case Investigator evaluates the evidence currently available and considers the complaint made. They may contact the parties if they consider resolution should be possible on the information available. Otherwise they will make further enquiries which might include:

- examining the practitioner's files
- asking the parties for further information
- approaching other people for information

The Case Investigator will always advise parties when they will next be in touch.

When the Case Investigator has completed their investigation and reached a conclusion about whether or not the complaint should be upheld, they contact the parties with their findings and recommendations. These findings are normally set out in an Investigation Report or Letter. If both parties accept the findings and recommendations of the Investigation Report, the complaint is closed.

Throughout the process, the SLCC encourages resolution directly between the parties. It is open for either party to make an offer for settlement at any stage of the process, even after an Investigation Report or Letter has been issued.

If either party does not accept the terms of the Investigation Report or doesn't respond, the complaint is referred to Members of the Commission for determination (a final, non-negotiable decision on the complaint).

Determination

Complaints that cannot be resolved at the investigation stage of the complaint process are referred to Members to make a determination. The Members make a decision whether or not to uphold the complaint. If the complaint is upheld, they will also determine whether any compensation should be

awarded and how much is due, what action should be taken, and by whom. The Members can also order a refund or partial refund of fees.

The SLCC determines complaints in Determination Committees of three Members. There is always a majority of lay Members on the Determination Committee (lay Members are those who are not practising as a solicitor or advocate in Scotland).

The Members may decide whether the complaint can be determined based on the information already available or whether more information is needed. In some instances they decide that it would be appropriate to hold an 'oral hearing' where the parties can give information to the Determination Committee in person.

The SLCC checks that action determined by the Committee is implemented and will take further enforcement action if it is not.

The determination is final. If parties disagree with it, their only recourse is to appeal to the Court of Session.

Current timescales for dealing with service complaints

As an independent and impartial body, we have to investigate complaints very thoroughly, taking time to gather evidence and ensure that each case receives the consideration which it deserves. We are committed to working through cases as quickly as we can, but legal complaints are often extremely complicated and demand close and diligent investigation, especially since questions of redress and professional reputation are involved.

How long your complaint takes can vary.

Where a complaint is not resolved earlier in the process and goes through to determination, it can take up to 16 months, although some complaints may take more or less time. An example of this is set out in the table below.

We strongly encourage parties to try to reach a resolution as soon as possible, without the need for a formal decision. Although we understand that is not always possible you will see that this is something that is offered and encouraged at every stage of our process.

Please remember that conduct complaints are considered by the relevant professional organisations (RPOs). RPOs have their own processes and set their own timescales.

Stage:	What happens:	Estimated average time per stage of the process:
Initial Assessment	<p>We will carry out some basic checks to make sure your complaint form is completed in full and also make sure that you have included all the paperwork you have referred to. We will also check that you have already made your complaint to the lawyer or firm and given them a chance to respond.</p> <p>At all stages of our process if we see an opportunity for an early informal resolution, we will contact you to see if you'd consider that.</p>	2-6 weeks
Pre - eligibility	You complaint will be held in a queue until a Case Investigator is available to start the eligibility assessment. While there will be a wait at this stage, your case will usually proceed without delay after that. To ensure that happens, you will be asked to keep to various time scales in each stage of the process after this.	3 months
Eligibility	We will assess your complaint to decide if it is eligible to be admitted to the complaint process.	2 months
Mediation	If your complaint is suitable for mediation, this will be offered to you.	2 months
Investigation	If your complaint does not resolve at the mediation stage, or if you are not offered mediation, your complaint will be allocated to a Case Investigator who will carry out an investigation and a recommendation will be made.	6 months
Determination	If one party or both parties do not accept the recommendation, the complaint is referred for determination. At this stage, a committee of our Board Members makes a formal decision about your complaint.	3 months
	EXAMPLE TOTAL TIME	16 MONTHS

If you have any queries about this information, please contact us on 0131 201 2130 or enquiries@scottishlegalcomplaints.org.uk

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