

***Rules of the Scottish Legal  
Complaints Commission 2016  
(amended December 2016)***



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## **Rules of the Scottish Legal Complaints Commission 2016 (amended December 2016)**

### **Definitions and Interpretation**

"the Act" means the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) or any amendment or reenactment thereof for the time being in force;

"the Clerk" means the person appointed under paragraph 8(3) of schedule 1 to the Act to be Clerk to the Commission;

"the Commission" means the Scottish Legal Complaints Commission and includes, unless the context otherwise requires, a determination committee and, if and in so far as authorised to exercise a function of the Commission, a single member of the Commission;

"Conduct Complaint" means a complaint, or any part of a complaint, that is made under section 2(1)(a) of the Act";

"a Determination" means any determination made under Part 1 of the Act, including but not limited to a determination under section 2(1A)(a), section 2(4), section 9(1) and section 15.

"Determination Committee" means a committee of members established under paragraph 11(1)(a) of schedule 1 to the Act;

"Handling Complaint" means a complaint made under section 23 of the Act;

"Hearing Statement" means a written statement which outlines the case relating to the matters to be considered at an oral hearing which a party intends to put forward at that hearing.

"Member" means a member of the Scottish Legal Complaints Commission appointed in terms of the Legal Profession and Legal Aid (Scotland) Act 2007

"the parties" in respect of a Conduct Complaint or Services Complaint means the complainer, the practitioner, the practitioner's firm and, where the practitioner is an employee of another practitioner, that other practitioner;

"the parties" in respect of a Handling Complaint means the complainer, the relevant professional organisation and the practitioner;

"person" includes a body of persons (corporate or unincorporate);

"Services Complaint" means a complaint, or any part of a complaint, made under section 2(1)(b) of the Act";

"Supporter" means an individual who accompanies a person to an oral hearing at the Commission, but does not represent them in either a legal or lay capacity; and

In these Rules, unless the contrary intention appears –

- (a) any words importing the masculine gender include the feminine;
- (b) any words importing the feminine gender include the masculine;

(c) words in the singular include the plural and words in the plural include the singular.

Where the provisions of these Rules expressly or impliedly confer any power or impose any duty then, unless the contrary intention appears, that power may be exercised and that duty shall be performed from time to time as occasion requires.

## **Chapter 1: General**

### **1. Status of Rules**

- (1) These Rules are made by the Scottish Legal Complaints Commission ("the Commission") under section 32 of the Act, after consultation under subsection (5) of that section. The Rules apply to all procedures of the Commission and any Committee, member of the Commission or member of staff of the Commission carrying out any functions under these Rules. The Rules are to be read in conjunction with the Legal Profession and Legal Aid (Scotland) Act 2007 and orders made under that Act by the Scottish Ministers.

### **2. Directions as to procedure**

- (1) The Commission may regulate its own procedure as regards a particular complaint and, in particular, may give such direction as it thinks fit as to the procedure to be followed at any stage in the complaint (provided the direction is consistent with the Act, with the other Rules and with the interests of justice and is made with regard to considerations of proportionality).
- (2) A direction under paragraph (1) is to include, in so far as it is appropriate to the stage in question, provision as to the evidence which may be required or admitted and as to the extent to which any such evidence may be oral or written. For 'Hearings', see Chapter 5 of these Rules.

### **3. Admissibility of evidence**

The Commission may, in proceedings under these Rules, admit such evidence, in whatever form—

- (a) as it considers it would be fair to admit, and
- (b) as appears to it to be relevant to a Services Complaint, Conduct Complaint or Handling Complaint,

whether or not the evidence would be admissible in proceedings in an ordinary civil action in a Scottish court.

### **4. Waiver of confidentiality and consent to processing of personal data**

The Commission is not to—

- (a) investigate a Services Complaint by virtue of section 9 of the Act,
- (b) remit a Conduct Complaint to a relevant professional organisation under section 6(2)(a) or 15(5)(a) of the Act, or
- (c) investigate a Handling Complaint by virtue of section 23 of the Act,

unless the complainer has or, where the Services Complaint, Conduct Complaint or Handling Complaint is made on behalf of another person who has the capacity to consent, the complainer and that other person have, for the purposes of Parts 1 and 2 of the Act, waived their right to confidentiality in relation to matters to which the complaint relates and consented to the processing of their personal

data to enable the Commission to carry out its functions under the Act.

**5. Complaint made or continued on behalf of other person**

- (1) A complaint may be made by a person (“A”) on behalf of another person (“B”) but only if the Commission is satisfied, as regards the particular complaint, that A has B’s authority to make the complaint on B’s behalf. The Commission is free to contact the person on whose behalf a complaint has been made, as appropriate, regarding that complaint.
- (2) A Services Complaint, Conduct Complaint or Handling Complaint may be made on behalf of a deceased person by that person’s executor, where the deceased person had not by the time of his or her death made the complaint to the Commission.
- (3) Where a complainer who has already made a Services Complaint, Conduct Complaint or Handling Complaint to the Commission dies, the complaint can be continued by his or her executor.
- (4) If the complainer is acting in a special capacity, the complainer must specify that capacity.

## **Chapter 2: Services Complaints and Conduct Complaints**

### *Making a Services or Conduct Complaint*

#### **6. Making a complaint**

- (1) A Services Complaint or a Conduct Complaint is made when it is submitted on a Commission Complaint Form and registered as received at the office premises of the Commission at a time when those premises are open for business. Where a complaint form is submitted on line, the received date will be deemed to be the date on which the electronic form is received by the Commission. Where a complainer contacts the Commission to indicate that they are unable to complete a Complaint Form, the Commission will provide such reasonable assistance as is necessary to enable a Complaint Form to be completed by, or on behalf of, the complainer and will take appropriate steps to verify with the complainer that the completed Complaint Form identifies all aspects of his or her complaint.
- (2) The Commission is to maintain a register for the purposes of paragraph (1).
- (3) To be registered, a Complaint Form submitted to the Commission —
  - (a) must identify the complainer clearly and give a full postal address for communication with the complainer,
  - (b) may include any e-mail address and telephone number for the complainer and a statement as to which means of communication is preferred,
  - (c) must contain information sufficient to enable the Commission to understand the factual basis upon which the complaint proceeds, and
  - (d) must be signed by the complainer or, where a complainer is unable to sign, by a person authorised by that complainer to sign on behalf of that complainer. Where a complaint form is submitted on line, the electronically submitted form will be deemed to have been sent and signed by the complainer, or by a person authorised to make the complaint on behalf of that complainer.
- (4) The Commission will, in fulfilling its duty under section 34(1) of the Act to provide advice as respects the process of making a service complaint or a handling complaint to it, also provide such guidance and practical assistance to the person requesting the advice as appears to it to be appropriate in relation to making such a complaint (and, without prejudice to the generality of this paragraph, such assistance may include assistance in formulating a complaint).
- (5) A request under paragraph (4) above by any person may be made in whatever reasonable manner the person thinks fit.

#### **7. Time limits**

- (1) For a conduct complaint where the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of was prior to 1 April 2017, or a services complaint (other than a services complaint by a third party as defined in Rule 7(1)(c)) where any professional services in respect of that matter were first provided by the practitioner to the client prior to 1 April 2017, or a

services complaint by a third party (as defined in Rule 7(1)(c)) where the specific act or omission complained of as constituting inadequate professional services was prior to 1 April 2017, and subject to the provisions contained in Rule 7(4), the following rules will apply:

- (a) A conduct complaint will not be accepted if, in the opinion of the Commission, it is made more than 1 year after the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of.
  - (b) A services complaint, (other than a services complaint by a third party as defined in Rule 7(1)(c) where Rule 7(1)(c) will apply) will not be accepted if, in the opinion of the Commission, it is made more than 1 year after the date on which any professional services in respect of that matter were last provided by the practitioner to the client.
  - (c) A services complaint made by a third party, (that is where the professional services have been provided by a practitioner in connection with any matter in which the practitioner has not been instructed by the complainer or by any party on whose behalf the complaint is made), will not be accepted if, in the opinion of the Commission, the complaint is made more than 1 year after the date of the specific act or omission complained of as constituting inadequate professional services.
- (2) For a conduct complaint where the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of was on or after 1 April 2017, or a services complaint (other than a services complaint by a third party as defined in Rule 7(2)(c)) where any professional services in respect of that matter were first provided by the practitioner to the client on or after 1 April 2017, or a services complaint by a third party (as defined in Rule 7(2)(c)) where the specific act or omission complained of as constituting inadequate professional services was on or after 1 April 2017 and subject to the provisions contained in Rule 7(4), the following rules will apply:
- (a) A conduct complaint will not be accepted if, in the opinion of the Commission, it is made more than 3 years after the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of.
  - (b) A services complaint will not be accepted if, in the opinion of the Commission, it is made more than 3 years after the date on which any professional services in respect of that matter were last provided by the practitioner to the client.
  - (c) A services complaint made by a third party, (that is where the professional services have been provided by a practitioner in connection with any matter in which the practitioner has not been instructed by the complainer or by any party on whose behalf the complaint is made), will not be accepted if, in the opinion of the Commission, the complaint is made more than 3 years after the date of the specific act or omission complained of as constituting inadequate professional services.
- (3) In determining whether the period of 1 year mentioned in paragraph (1) or the period of 3 years mentioned in paragraph (2) has elapsed, there is to be disregarded any time during which the complainer was, in the opinion of the Commission, excusably unaware –

- (a) of the professional misconduct or unsatisfactory professional conduct or conviction in question, or
  - (b) of the inadequacy of the professional services in question.
- (4) Notwithstanding paragraphs (1), (2) and (3) above, the Commission may accept a complaint that has not been made within the time limits set out in these paragraphs if there are, in the opinion of the Commission:
- (a) exceptional reasons why the complaint was not made sooner;
  - (b) exceptional circumstances relating to the nature of the complaint; or
  - (c) the circumstances are such that the Commission considers it to be in the public interest to accept it.

## **8. Premature complaints**

- (1) This Rule applies to a Services Complaint or Conduct Complaint registered under Rule 6(1) but made prematurely.
- (2) Other than in circumstances such as are mentioned in paragraph (3) below, if the Commission is not satisfied that:
  - (a) the substance of the complaint has been duly communicated in accordance with section 4(4)(a) of the Act, and
  - (b) the person to whom the communication was made has been given a reasonable opportunity to deal with the complaint,
 it need not take any preliminary steps or further action in respect of a Services Complaint or Conduct Complaint.
- (3) The Commission may at once proceed to take preliminary steps and further action as regards a Services Complaint or Conduct Complaint deemed to have been made prematurely under paragraph (2) if the circumstances—
  - (a) are exceptional, or
  - (b) though not exceptional, are such that the Commission considers it to be in the public interest so to proceed.
- (4) Without prejudice to the generality of section 4(4)(a) of the Act, a person is not to be considered, for the purposes of that section, to have been given a reasonable opportunity to deal with a Services Complaint or Conduct Complaint unless at least 4 weeks have elapsed since that communication was made.

## **9. Preliminary steps**

- (1) After a Services Complaint or Conduct Complaint is registered under Rule 6(1), a single member of the Commission or, if the Commission thinks fit, a committee of the Commission, is to determine—
  - (a) under paragraph (a) of section 2(4) of the Act, whether the complaint is frivolous, vexatious or totally without merit, and
  - (b) under section 3(1) of the Act, whether any element of the complaint is

capable of being dealt with under a specified regulatory scheme.

- (2) A member of the Commission, or a committee, making a determination under paragraph (1) is to give reasons for the determination.

*Obtaining information in respect of a Services or Conduct Complaint*

**10. Obtaining information**

In the performance of its functions under the Act, the Commission may invite a practitioner or a complainer to provide to the Commission, by a date to be specified by the Commission, any:

- (a) documents,
- (b) explanations,
- (c) other information,
- (d) written representations,

as it considers appropriate in respect of a Services or Conduct Complaint.

**11. Failure and delay in provision of documents or explanations**

- (1) Paragraph (2) applies where the Commission, by notice under section 17(1) of the Act, requires a practitioner, a practitioner's firm or an employing practitioner to produce or deliver documents or explanations.
- (2) If the time specified in the notice for compliance elapses without such production or delivery having been obtained, the Commission may, where appropriate—
- (a) inform the relevant professional organisation of the delay and of the relevant circumstances;
  - (b) apply to the court for an order in terms of Schedule 2 to the Act;
  - (c) proceed to make a determination under section 2(4) or section 9(1) of the Act.
- (3) Paragraph (4) applies where, by notice under section 17(4) of the Act, the Commission requires a complainer to produce or deliver documents or to provide an explanation.
- (4) If the time specified in the notice for compliance elapses without such production or delivery having been obtained, the Commission may:
- (a) apply to the court for an order in terms of Schedule 2 to the Act;
  - (b) where appropriate, proceed to make a determination under section 2(4) or section 9(1) of the Act.
- (5) Where a person other than a practitioner, practitioner's firm, employing practitioner, complainer or relevant professional organisation fails to comply with a request that documents or information in their possession or control be produced to the Commission for the purposes of an investigation by the Commission under the Act within a timescale specified by the Commission, the Commission may

proceed to deal with the matter in accordance with section 19 of the Act.

*Discontinuing and reinstating Services Complaints*

**12. Power to discontinue and reinstate Services Complaints**

- (1) The Commission may at any time during the investigation of a Services Complaint discontinue the investigation in the following circumstances:
  - (a) where a complainer repeatedly fails to respond, co-operate and/or provide information to the Commission;
  - (b) in the event that a complainer withdraws a complaint; or
  - (c) where a complainer dies and the complaint is not continued by the complainer's Executor.
- (2) Where the investigation of a complaint has been discontinued, the Commission may reinstate the investigation on the request of the complainer.
- (3) A complaint may not be reinstated if, in the opinion of the Commission,:
  - (a) the complainer has given inadequate reasons for reinstatement of the complaint; or
  - (b) there has been excessive delay between the complaint being discontinued and the request to reinstate.
- (4) Where the Commission discontinues, reinstates or declines to reinstate an investigation of a Services Complaint it will give notice in writing to the complainer and the practitioner specifying the reasons for its decision.
- (5) Where notice is given under paragraph (4) above, the complainer or the practitioner may request that the Commission review the decision specified in that notice. Such a request must be:
  - a. made in writing; and
  - b. received by the Commission within 14 days of the date on which notice is given in terms of paragraph (4).

On receipt of such a request the Commission will invite the complainer and the practitioner to make representations within such period as the Commission considers appropriate. After the expiry of that period the Commission will consider any representations made and will review its decision. The Commission will give notice in writing to the complainer and the practitioner of the outcome of that review. That notice will specify the reasons for the Commission's decision.

### *Mediation*

#### **13. Offer of mediation**

- (1) In giving notice under section 8(4) of the Act offering mediation in relation to a complaint, or any element of a complaint, alleging inadequate professional services, the Commission will provide the complainer and practitioner with a written explanation of the nature and purpose of mediation and of the fact that mediation (or mediation in relation to an element of the complaint)—
  - (a) will be discontinued if either the complainer or the practitioner withdraws consent to it, or
  - (b) may be discontinued in other circumstances if the Commission thinks fit.
- (2) The Commission may give such notice at any time, whether or not it has begun to investigate the complaint (and, where such investigation has begun, whether or not it began by virtue of section 9(1)(c)(ii) of the Act).

### *Representations and Settlements*

#### **14. Representations**

- (1) Pursuant to section 9(1) of the Act, where the Commission investigates a Services Complaint it will provide details of its completed investigation in writing to the parties to the complaint for the purpose of giving those parties the opportunity to make representations on its findings and recommendations.
- (2) To be considered by the Commission before determining the complaint, such representations must be made within 3 weeks after the Commission has provided details of its completed investigation to the parties.

#### **15. Settlement of a Services Complaint**

- (1) In respect of a Services Complaint which falls within the terms of section 9(2) of the Act, the Commission will, at the same time as providing details of its completed investigation, also provide the parties with a proposed settlement of the complaint.
- (2) If all parties accept the proposed settlement within 3 weeks of it being proposed (whether or not after adjustment of the terms of settlement), the Services Complaint will be resolved on that basis, and the Commission will not proceed to determine it.
- (3) If the settlement proposed is not accepted by the practitioner and complainer within 3 weeks after being so proposed, the Commission, under section 9(1) of the Act, will proceed to determine the Services Complaint.

## **Chapter 3: Handling Complaints**

### *Making a Handling Complaint*

#### **16. Making a Handling Complaint**

- (1) A Handling Complaint is made when it is submitted on a Commission Handling Complaint Form and registered as received at the office premises of the Commission at a time when those premises are open for business.
- (2) The person making the complaint will be known as the “handling complainer” for the purposes of these Rules.
- (3) Where a handling complainer contacts the Commission to indicate that they are unable to complete a Complaint Form, the Commission will provide such reasonable assistance as is necessary to enable a Complaint Form to be completed by, or on behalf of, the handling complainer and will take appropriate steps to verify with the handling complainer that the completed Complaint Form identifies all aspects of his or her complaint.
- (4) The Commission is to maintain a register for the purposes of paragraph (1).
- (5) A Handling Complaint—
  - (a) must clearly identify the handling complainer and give a full postal address for communication with the handling complainer;
  - (b) may include any e-mail address which the handling complainer has, a telephone number for such communication and a statement as to which means of communication is preferred;
  - (c) must contain information sufficient to enable the Commission to understand the factual basis upon which the Handling Complaint proceeds; and
  - (d) must be signed by the handling complainer or, where the handling complainer is unable to sign, by a person authorised by that handling complainer to sign on their behalf.

### *Investigation of a Handling Complaint*

#### **17. Obtaining information**

- (1) At the commencement of its investigation of a Handling Complaint, the Commission is -
  - (a) to notify the parties about the Handling Complaint and provide them with a copy of the complaint form and such other information as the Commission considers necessary; and
  - (b) to require the following:
    - (i) from the relevant professional organisation, its investigation file in respect of the original Conduct Complaint; and

- (ii) from the handling complainer, any additional information or documents in support of the Handling Complaint;

to be submitted to the Commission by a date to be specified by the Commission.
- (2) During the course of its investigation of a Handling Complaint, the Commission is to invite the parties to provide written representations to the Commission in respect of that complaint, as the Commission considers appropriate.
- (3) During the course of the investigation, the Commission may require:
  - (a) information and documents from the practitioner and the complainer;
  - (b) the relevant professional organisation to provide:
    - (i) such information that is within the knowledge of that organisation;
    - (ii) such documents that are within the possession or control of that organisation;

as the Commission considers relevant for any of the purposes of sections 23 or 24 of the Act;

and the Commission may specify a date for the submission to it of such information and documents.

## **18. Delay in provision of information**

- (1) Paragraph (2) applies where, for the purposes of an investigation into a Handling Complaint under section 23, the Commission has required the provision of information or documents under section 37 of the Act.
- (2) If the date specified in a requirement under section 37(1) or 37(3) of the Act by the Commission for the production of information or documents, as appropriate, either by the relevant professional organisation or by the practitioner, elapses without production of such information or documents to the Commission, or without explanation as to why the information or documents cannot be produced by the specified date, the Commission may deal with the organisation or practitioner in accordance with Schedule 2 to the Act.

### *Discontinuing and reinstating Handling Complaints*

## **19. Power to discontinue and reinstate Handling Complaints**

- (1) The Commission may at any time during the investigation of a Handling Complaint discontinue the investigation in the following circumstances:
  - (a) where a handling complainer fails repeatedly to respond, co-operate and/or provide information to the Commission;
  - (b) in the event that a handling complainer withdraws a complaint; or
  - (c) where a handling complainer dies and the complaint is not continued by the handling complainer's Executor.

- (2) Where the investigation of a Handling Complaint has been discontinued, the Commission may reinstate the investigation on the request of the handling complainer.
- (3) A complaint may not be reinstated if, in the opinion of the Commission,:
  - (a) the handling complainer has given inadequate reasons for reinstatement of the Handling Complaint; or
  - (b) there has been excessive delay between the Handling Complaint being discontinued and the request to reinstate.
- (4) Where the Commission discontinues or reinstates an investigation of a Handling Complaint, it will give notice in writing to the complainer, the practitioner and the relevant professional organisation specifying the reasons for its decision.

*Reports of Handling Complaint Investigations*

**20. Written Interim Reports**

- (1) Where the Commission exercises its power to issue a written interim report under section 23(8), it must provide a copy of that report to each of the parties and may invite written comments on that report. Where it does invite such comments on that report, it must do so from each of the parties. Such comments are to be provided to the Commission in writing within a timescale to be specified by the Commission.
- (2) Where written comments have been received from the parties on the interim report within the specified timescale, the Commission must consider those comments before producing its final written report under section 24(1) of the Act and before making any recommendations under section 24(2) of the Act.

## **Chapter 4: Determination committees**

### **21. Determination committees**

- (1) A determination committee authorised to exercise functions in terms of paragraph 13 of Schedule 1 to the Act is to consist of 3, 5, 7 or 9 members of the Commission, as the Commission, in establishing it, thinks fit.
- (2) The majority of the members of a determination committee are to be non- lawyer members and the committee is to be chaired by a lawyer member.
- (3) Where the Commission proposes a settlement of a Services Complaint under section 9(2) of the Act but the settlement is not accepted and it then falls to a determination committee to determine the Services Complaint under section 9(1), or to make a determination or direction under section 10(2), of the Act, the members of the committee are not to include anyone who was involved in any aspect of—
  - (a) investigating the Services Complaint (including deciding under section 2(4)(a) of the Act whether the complaint was frivolous, vexatious or totally without merit); or
  - (b) the formulation or making of the proposed settlement.

## **Chapter 5: Determination of Oral Hearings**

### **22. Dealing with a complaint in the presence of parties**

- (1) Where the Commission is required to proceed to determine a complaint, the Commission may, at its own instance or on written request supported by reasons from any of the parties, decide that the complaint, or any matter in relation to the complaint, is to be dealt with in the presence of parties (an “oral hearing”).
- (2) In deciding whether to hold an oral hearing, the Committee to which a complaint has been allocated will decide whether it is necessary, in the interests of fairness, that an oral hearing be held.
- (3) The Committee will decide, on a case by case basis, whether any oral hearing is to be held in public or private, taking into account all relevant information.

### **23. Scope of oral hearing**

- (1) An oral hearing will be heard by a Determination Committee, or by the Commission sitting as a whole.
- (2) The Determination Committee, or the Commission, as appropriate, will decide what matters are to be considered at the oral hearing including, but without prejudice to that generality, any of the following matters:
  - (a) any issues that the Committee/Commission considers will require to be explored;
  - (b) any disputes of fact that the Committee/Commission considers will require to be resolved;
  - (c) any witnesses that the Committee/Commission considers should give evidence;
  - (d) any other matter that the Committee/Commission considers should be addressed at the hearing.

### **24. Attendance at oral hearing**

- (1) Any person who is to give evidence at an oral hearing may do so on their own behalf or be represented by any other person.
- (2) Any person who is to give evidence at an oral hearing may be accompanied to the oral hearing by a supporter.
- (3) Oral evidence may be given, in proceedings under this rule, through a live television link (or through any other electronic means by which a live image is transmitted) if –
  - a. the parties agree, or
  - b. though they do not agree, the Commission is satisfied that its being so given would not prejudice the fairness of those proceedings.

- (4) If either of the parties declines or fails to be present at the place, date and time fixed for an oral hearing, the Commission may proceed forthwith to hold the oral hearing in the absence of one or more said parties and thereafter to proceed to make a determination under section 9(1), or a direction under section 24(6), of the Act.

***Chapter 6: Procedural defects, extension of time, deferment etc.***

**25. Procedural defects**

- (1) The Commission may, where it considers it appropriate to do so in the interests of fairness, relieve a party from the consequences of a procedural defect in relation to—
- (a) the making of a complaint under Part 1 of the Act, or
  - (b) the Commission dealing with such a complaint,
- and may give such procedural directions as it thinks fit to enable the complaint to proceed as if the failure had not occurred.
- (2) In paragraph (1), "procedural defect" includes any failure to comply with a time limit, but the period of 1 year referred to in Rule 7(1) is not a time limit for the purpose of this rule.

**26. Extension of time**

The Commission may, if it thinks fit, grant a request to it from a party for—

- (a) an extension of time, or
- (b) permission to take a procedural step out of time.

**27. Deferment**

The Commission may at any time, at its own instance, defer further proceedings in any complaint, either indefinitely or to a date or event specified by it.

## **Chapter 7: Miscellaneous and general**

### **28. Further provision regarding prior involvement**

Where it falls to the Commission itself (and not to a determination committee) to make a determination under section 9(1), or to make a determination or direction under section 10(2), of the Act, the members of the Commission who are involved in doing so are not to include anyone who was involved in any aspect of –

- (a) investigating the complaint (including deciding under section 2(4)(a) of the Act whether the complaint was frivolous, vexatious or totally without merit; and
- (b) the formulation or making of the proposed settlement.

### **29. Quorum**

- (1) Any quorum of the Commission or of any committee of the Commission will consist of a greater number of non-lawyer members than lawyer members.
- (2) A quorum of the Commission is 5, at least 3 of whom are to be non-lawyer members.
- (3) A quorum of any committee established by the Commission is 3, at least 2 of whom are to be non-lawyer members.

### **30. Standing orders**

The Commission is to provide, in the form of Standing Orders, guidance to—

- (a) its committees (including a committee to be known as the Board of Governance); and
- (b) any working party or group set up by the Commission

regarding the exercise of their respective functions.

### **31. Giving of Reasons**

The Commission is to give reasons in writing, whether or not required to do so by the Act, for any determination, direction, decision or recommendation made by it under Part 1 of the Act.

### **32. Annual general levy**

- (1) The Commission may waive a proportion of the annual general levy payable under section 27(1) of the Act if, after consultation with relevant professional organisations (as defined in section 46(1) of the Act), it determines that it should do so.

- (2) A sum falling to be paid under section 27(2)(b) of the Act to the Commission by a relevant professional organisation in respect of a financial year is due on the day before the financial year commences.
- (3) The Commission may charge interest on the sum, at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) of the Act, from the day on which the sum is due until the sum is paid.
- (4) In this rule, "financial year" means a period of 12 months ending on 30 June.

### **33. Complaints levy**

- (1) The Commission may waive any requirement under section 28 of the Act for a practitioner to pay the complaints levy in part or full
- (2) Any sum falling to be paid to the Commission under section 28(1) of the Act by a practitioner is due to be paid within 28 days, commencing with the date immediately following the date of the invoice.
- (3) The Commission may charge interest on the sum, at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) of the Act, from the date 29 days after the date of the invoice until the sum is paid.

### **34. Citation and commencement**

- (1) These rules may be cited as the Rules of the Scottish Legal Complaints Commission 2016 (amended December 2016) and come into force on 1 April 2017 (the "date of commencement").
- (2) These rules do not apply to complaints received by the Commission before the date of commencement.

(Signed)

] Chairing Member

] Members

Edinburgh

29 November 2016