



scottish legal
complaints commission **slcc**

SLCC COMPLAINTS PROCESS

policy & procedure manual

DISCLAIMER

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about how this document is used.

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1 Introduction

1.1 Purpose of this manual

- 1.1.1 This manual sets out in the policies and procedures our staff will usually follow in dealing with complaints made to us about legal practitioners.
- 1.1.2 However, all cases will be dealt with on their individual merits. This manual is not legally binding and does not have the same status as our [Rules](#).

1.2 Terms

The following terms and abbreviations used throughout this policy / process document are explained below:

The Act - the Legal Profession and Legal Aid (Scotland) Act 2007

The Commission / SLCC – the Scottish Legal Complaints Commission

Complainer - the person who makes the complaint or the person on whose behalf the complaint has been submitted

Conduct – a single term to include unsatisfactory professional conduct and professional misconduct

UPC – unsatisfactory professional conduct

PM professional misconduct

IPS – inadequate professional service

Service issue / element – an issue / head of complaint that if upheld, could amount to IPS

Conduct issue / element – an issue, head of complaint, event or incident that, if upheld, could amount to UPC or PM

Third party complaint - a complaint made by a party who was not a client of the firm or practitioner complained about

FVTWM – Frivolous, Vexatious, Totally Without Merit

Investigation – any point in the SLCC's complaints procedure *after* a complaint has been accepted as eligible and mediation has not been considered appropriate or has been unsuccessful

QA – Quality Assurance

RPO – Relevant Professional Organisation

IR – Investigation Report

CSO – Case Support Officer

CI – Case Investigator

IMT – Investigation Management Team

SMT – Senior Management Team

ISM – Investigation Support Manager

CIM – Case Investigations Manager

DOR – Director of Resolution

HSI- Head of Strategic Insight

CM – Clerking Manager

DC - Determination Committee

DR – Determination Report

CS – Clerking Secretariat

Board – the SLCC Board of Members

LSS – the Law Society of Scotland

FA - Faculty of Advocates

ACA - Association of Commercial Attorneys

DPO – Data Protection Officer

2 General protocol

2.1 Who makes decisions at each stage?

2.1.1 For the purposes of this manual, the relevant decision makers detailed in the SLCC's Scheme of Delegation are set out below.

Section of the Act	Decision	Main decision maker	Alternative decision maker and circumstances
All	Approval of policy	Board	Two of the following: <ul style="list-style-type: none"> • Chair • Designated Board Member Or <ul style="list-style-type: none"> • Delegated committee
All	Approval of operational procedure which are business critical, unusual or may have an impact bigger than just the operational part of the SLCC	SMT	Two of the following <ul style="list-style-type: none"> • CEO • One member of SMT • Nominated deputy to any of the SMT
2(1A)	Determination of the nature of a complaint	CI, CIM or DOR	<ul style="list-style-type: none"> • ISM • Any Board Member
2 (2)	Person eligible to make a complaint	CI, ISM, CIM DOR	
2(4)(a)	Reject complaint in entirety as FVTWM	One Board Member	DC or Board
2(4)(a)	Accept complaint that is borderline or contentious	One Board Member	DC or Board
2(4)(a)	Accept complaint that is not FVTWM in entirety	CI, CIM or DOR	ISM
3	Reject complaint covered by other regulatory scheme	One Board Member	
4(1) and (3)	Reject a complaint that is out of time in entirety	One Board Member	DC
4(1) and (3)	Accept a complaint which out of time but where there are exceptional circumstances and/or it is in the public interest	One Board Member	DC
4(1) and (3)	Accept a complaint as being within time	CI, CIM or DOR	ISM
4(1) and (3)	Reject a complaint as partially out of time	CI, CIM or DOR	ISM

Section of the Act	Decision	Main decision maker	Alternative decision maker and circumstances
4(2) and (4)	Reject complaint that is premature, accept complaint that is premature but circumstances are exceptional	CSO	Any Member of IMT
9(1A)	Discontinuing or reinstating complaints	CI	Any Member of IMT
9 (A)	Remaking eligibility decisions	CIM or DOR	ISM
9(2)	Propose settlement at investigation stage (ie approval of investigation report) and amount of complaint levy	CI	Any Member of IMT
10	Determination of complaint, direction on settlement and complaint levy	DC	
13	Publication of a report	DC	
15	Serve notice that complaint/issue is conduct rather than service	One of <ul style="list-style-type: none"> • CIM • DOR • Clerking Manager • Clerk on instruction of DC 	ISM
17	Serving of notice	<ul style="list-style-type: none"> • CI • Any member of IMT • Clerking Manager • Clerk on instruction of DC 	
19	Court action to recover documents and other information	CEO	One of: <ul style="list-style-type: none"> • Chair • Board
20	To enforce direction under 10(2)	CEO	One of: <ul style="list-style-type: none"> • Chair • Board
23(2)(a)	Not to investigate a handling complaint	DC	
23(2)(b)	Handling complaint – discretionary decision to discontinue an investigation	DC	
23(4)(b)	Handling complaint – accept as in time	OM	One of the following <ul style="list-style-type: none"> • HSI • CEO
23(4)(b)	Handling complaint – reject as out of time	One Board Member	Other Member or DC

Section of the Act	Decision	Main decision maker	Alternative decision maker and circumstances
23(5)	Handling complaint – accept or reject ongoing complaints	OM	One of the following <ul style="list-style-type: none"> • HSI • CEO
23(8)	Handling complaint – authority to issue interim report	OM	One of the following <ul style="list-style-type: none"> • HSI • CEO
24(1)	Handling complaint – report with recommendations	HSI	
24(6A)	Determine a longer period of time for a RPO to respond	HSI	OM
24(6)	Handling complaint – giving direction when RPO does not accept 24(1) report	DC	
25	Handling complaint – petition court for non-compliance	CEO	HSI
25	Application to the court to comply with direction	CEO	HSI
35(2)	Publication of reports	CEO	2 of SMT
35(3) and (4)	Protocols and MOUs (including with other organisations not only RPOs)	CEO	Board
36	Publication of guidance and recommendations	CEO	2 of SMT
39(2)	Recommendations to RPO on Guarantee Fund and Indemnity Arrangements	CEO	2 of SMT
40	Issuing of Section 40 guidance	CEO	2 of SMT
Schedule 2	Enforcement of any provision through the Courts	CEO	Board
Schedule 3 1(e)	Decide to hold an oral hearing	DC	

2.2 Complaint timescales

2.2.1 The SLCC has to investigate complaints very thoroughly, taking time to gather evidence and ensure that each case receives the consideration which it deserves. The SLCC is committed to working through cases as quickly as it can, but legal complaints are often extremely complicated and demand close and diligent investigation, especially since questions of redress and professional reputation are involved.

2.2.2 The current timescales for dealing with a complaint are set out on our website.

2.3 Correspondence with the SLCC

- 2.3.1 The SLCC recognises the importance of keeping parties to the complaint updated on progress.
- 2.3.2 The SLCC endeavours to provide a response to correspondence within 10 working days. Individual departments may have internal targets which differ from this, but overall we should not exceed 10 working days.
- 2.3.3 When sending letters or emails the SLCC will always provide a timescale in which the parties can expect to hear further from us OR set a timescale for when we expect to hear back from parties.
- 2.3.4 It is open to the parties to request additional time to respond. Where the SLCC considers this is reasonable, the party will be asked to agree a new timescale in which they will be able to respond.
- 2.3.5 When writing to parties to the complaint or speaking to them the SLCC will address individuals formally i.e. Mr, Mrs, Ms etc.
- 2.3.6 When writing to other stakeholders the SLCC will address individuals formally, however, may also use first names where that person is known to us and it is appropriate to do so.
- 2.3.7 Correspondence issued by the SLCC will be written in plain English. Where it is necessary to refer to legal terms the SLCC will explain the meaning of those terms in plain English as far as possible.
- 2.3.8 Where the SLCC receives a request for information to be translated or for interpreting support be provided, this should be referred to the employee's line manager who will consider the circumstances of the request and decide whether it is reasonable to proceed.

2.4 Authority to deal with complaint

- 2.4.1 For reasons of confidentiality and data protection, the SLCC will not discuss the complaint with anyone other than the parties to the complaint, unless they provide authority for someone else to deal with the matter on their behalf.
- 2.4.2 Where telephone calls are received, the SLCC will also ask for two pieces of information to verify the identity of the person calling. This might include the case reference, address, post code, telephone number or email address.
- 2.4.3 If the complainer would like someone else to deal with the complaint on their behalf, and has not completed the relevant section of the Complaint Form, they must provide the relevant authority as set out under the Eligible Person section of this manual.
- 2.4.4 If the complainer would like someone to make telephone calls on their behalf they will be asked to provide written authority for the SLCC to communicate with that named person.
- 2.4.5 Once the SLCC is satisfied that sufficient authority has been established, the SLCC will communicate only with the authorised representative. It will be the responsibility

of the actual complainer to advise the SLCC directly if and when they are no longer being represented by that individual.

- 2.4.6 Similarly where a practitioner has instructed someone else to deal with the complaint on their behalf, it remains their responsibility to advise the SLCC directly if and when they are no longer being represented.
- 2.4.7 Where a representative has been appointed the SLCC will send all correspondence, including Notices, to the representative only.

2.5 Correspondence from MPs and MSPs

- 2.5.1 The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 means that the SLCC can assume that where a letter is received from an MP or MSP on behalf of a constituent, that the constituent has given their consent to the disclosure of their personal data including sensitive personal data (e.g. information about an individual's racial or ethnic origin or about an individual's health).
- 2.5.2 There may be occasions when we receive a letter from an MP or MSP where we would still wish to obtain written permission such as if the MP or MSP appeared to be acting on their own without having been approached by the constituent or there was anything on the files that we would be concerned about disclosing or discussing without double checking. If in doubt, check with the DPO.
- 2.5.3 When a letter is received by an MP or MSP it can be dealt with in the usual way – so if a general query on the file or a service delivery complaint the usual process should be followed. If the letter is of a more general nature or is seeking information on strategy, policy or process, this should be referred to the CEO.
- 2.5.4 All correspondence, of any kind, to an MP or MSP must be seen by the CEO before it is sent (or in his absence the DOR).

2.6 Correspondence with prisoners

- 2.6.1 This section sets out the policy and process for writing to prisoners in accordance with Part 8 of The Prisons and Young Offenders Institutions (Scotland) Rules 2011.
- 2.6.2 The Scottish Legal Complaints Commission is on the list of organisations recognised by the Scottish Prisons Service as eligible to send letters to prisoners under the “privileged correspondence” scheme.
- 2.6.3 All correspondence with prisoners must be treated as privileged and the actions set out below followed.
- 2.6.4 The Scottish Prisons Service and/or Governors must pass privileged correspondence unopened to prisoners. By writing to them in this way, the SLCC ensures as far as it can that complaint information is kept confidential between the SLCC, the practitioner and the complainer. It also ensures that the SLCC meets the requirements of Data Protection legislation to safeguard personal information.

2.6.5 Arrangements for sending “privileged correspondence”

2.6.6 Double enveloping

2.6.7 All correspondence to prisoner must be double enveloped by the member of staff sending the correspondence before it is placed in the posting tray.

2.6.8 First envelope

2.6.9 Inner envelope to contain correspondence to prisoner and to be clearly marked with the following details:

- prisoner’s full name
- name of prison and prisoner’s number (if known)
- sender’s reference number and point of contact

2.6.10 The inner envelope is sealed and placed in an outer A4 envelope.

2.6.11 No paper clips or staples should be used.

2.8.12 Second envelope

2.8.13 Second A4 envelope will include a covering letter addressed to the Governor of the Prison asking for the prisoner’s letter to be treated as “privileged correspondence” and to be passed to the prisoner unopened.

2.8.14 This should be addressed to Governor of the Prison and normal address. No other markings needed on outer envelope.

2.8.15 The outer envelope will be opened and the inner envelope passed unopened to prisoner except in exceptional circumstances.

2.8.16 Exceptional circumstances

2.8.17 Privileged correspondence may be opened and read by the prison where:

- It is thought that the letter/package contains a prohibited article;
- There is reasonable cause to believe the contents endanger prison security or the safety of any person or contain information about criminal activity.

2.8.18 In both these circumstances the letter should be opened only in the prisoner’s presence after an explanation is given of why the letter/package is being opened and/or read.

2.8.19 Where privileged correspondence is opened and/or read in error, the Governor is to ensure a full report is prepared and sent within 2 days of the incident to the Prisons Directorate.

2.8.20 Faxes

2.8.21 Correspondence should not normally be sent by fax given the difficulties of ensuring confidentiality. If the complainer wishes to receive faxed information discuss the case with your line manager.

2.8.22 If information is to be faxed, obtain confirmation in writing, ideally faxed to the SLCC, confirming the number of the fax machine and an agreed time to transmit the information.

2.8.23 The cover sheet must contain the SLCC's name, address, logo, your phone and fax numbers, confirm the number of pages and be marked clearly and prominently confidential. Mark it for the attention of the complainer but do not include details about the complaint or the practitioner on the cover sheet.

2.8.24 *Electronic communications*

2.8.25 There is no provision within the 2011 Rules which allows a prisoner to send or receive electronic communications.

2.8.26 *Breaches by the prison*

2.8.27 If anyone in the SLCC is concerned the system is not working appropriately or it is being breached it must be raised immediately with your line manager or the Head of Investigations.

2.8.28 Where the SLCC identifies a breach of this procedure there are two steps it can take:

- Complain to the Governor of the prison concerned
- If that does not have a satisfactory outcome, complain to the Scottish Prison Service Headquarters.

2.8.29 Complaints to the SPS must be made via the CEO.

3 Eligibility

3.01 This section sets out the SLCC policy and process for dealing with new complaints received and assessing whether or not complaints can be accepted for investigation.

3.1 Submitting a Complaint

3.1.1 A complaint can be submitted on a completed SLCC Complaint Form which must be signed. A complaint can also be submitted using the SLCC online Complaint Form.

3.2 Eligible person

3.2.1 Section 2(2) of the Act sets out what constitutes an eligible person to make a complaint to the SLCC as follows:

- i. as respects a conduct complaint, any person;
- ii. as respects a services complaint:
 - any person who appears to the Commission to have been directly affected by the suggested inadequate professional services
 - the Lord Advocate
 - the Advocate General for Scotland
 - any Judge (including a Sheriff)
 - the Auditor of the Court of Session
 - the Auditor of any Sheriff Court
 - the Scottish Legal Aid Board
 - any Relevant Professional Organisation

3.2.2 If the complainer is not covered by any of the above, the complaint should not be admitted to the complaints process. The complainer will be advised of this in writing.

3.2.3 *Person*

3.2.4 The term 'person' is not defined by the Act but it is commonly understood in a civil context to include natural persons (human beings) as well as judicial / juristic persons (i.e. an entity other than a human being created by law and recognised as a legal entity, having a distinct identity, duties and rights e.g. a company). As a legal entity can be a client and can receive a legal service, it follows it can be considered to be a person in terms of the Act.

3.2.5 *Complaints submitted on behalf of another person/organisation*

3.2.6 If the complaint is being made by another party on behalf of the complainer, the eligibility of the 'person affected' should be considered, not the person submitting the complaint.

3.2.7 If a party appears to be submitting a Complaint Form on behalf of another individual the SLCC will check that authority has been received from the person affected either by completion of Section 4 of the Complaint Form (if deemed necessary) or by contacting the person affected to obtain some other form of signed authority.

3.2.8 Where the complainer is another legal entity, the SLCC should obtain the name of the individual who is making the complaint on behalf of the legal entity so that the SLCC has someone to correspond with. The SLCC will require to check the individual

has the authority to make the complaint on behalf of the entity as follows:

- For a company or charity, this should be a director (or written authorisation should be obtained from a director for the individual to make the complaint on behalf of the company or charity).
- For a partnership, this should be a partner (or written authorisation should be obtained from a partner for the individual to make the complaint on behalf of the partnership).

3.2.9 A parent can make a complaint on behalf of a child under the age of 16 without written authority from the child, as 16 is considered to be the age of legal capacity under the Age of Legal Capacity (Scotland) Act 1991.

3.2.10 If there is any doubt about whether proper authority has been received, it must be referred to a manager for a decision.

3.2.11 If the SLCC is not satisfied that proper authority has been received for a complainer to pursue a complaint on behalf of the 'person affected' or a legal entity, the complainer can still make the complaint but it will be treated as a third party complaint.

3.2.12 Staff should ensure that all correspondence and internal documents name the individual making the complaint and the person who they are making the complaint on behalf of. For example, Complaint by Mr X on behalf of Mrs Y; or Complaint by Mr X, Managing Director, on behalf of Z Ltd.

3.2.13 Once the SLCC is satisfied that sufficient authority has been established, the SLCC will communicate only with the authorised representative. It remains the responsibility of the actual complainer to advise the SLCC directly if or when they are no longer being represented by that individual.

3.2.14 Complaints by a Guardian or Attorney

3.2.15 Where a complaint is purported to be made on behalf of someone by their Attorney or Guardian, the SLCC should obtain a copy of the Power of Attorney or Guardianship Order at the outset to check that it is sufficiently general to cover the making of a complaint (for example, it does not simply extend to the making of one decision).

3.2.16 If no Power of Attorney or Guardianship Order is received, the complainer can still make the complaint but it will be treated as a third party complaint.

3.2.15 Joint complaints

3.2.17 If a Complaint Form is only signed by one complainer but it appears that it is or might be a joint complaint, the SLCC will ask for confirmation of whether the complaint is being made jointly.

3.2.18 The SLCC should not assume that just because more than one individual instructed the practitioner that they both wish to make a complaint.

3.2.19 The SLCC will be alert to other potential parties to the complaint not named in the Complaint Form (for example, in a complaint about a joint property purchase where only one purchaser is named on the Complaint Form). If in doubt the SLCC will enquire as to whether the other party should also be included in the complaint and

clarify that compensation can only be awarded to those actually party to the complaint.

3.2.20 The SLCC will only add further names to the complaint if the complainer(s) confirm the SLCC should do so and all signatures are obtained. Where the complainers have separate contact details, the SLCC will also clarify if it should write to all or one of them.

3.2.21 *Complaints on behalf of someone who is deceased*

3.2.22 A 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.

3.2.23 If the party making the complaint cannot prove they have authority they can still make the complaint but it should be treated as a third party complaint.

3.2.24 Where a complainer dies after the SLCC receives the complaint, action should be taken in accordance with the relevant section of this manual (see Other Provisions).

3.2.25 A copy of the Complaint Form will be shared with the Client Relations Manager of the firm and/or any named practitioners. However, in some cases the SLCC may decide it is not appropriate to share the complaint form with the Client Relations Manager and/or the named practitioners. Examples of such cases might include:

- Where the complaint form is about a practitioner's conduct only and unrelated to their employment with any firm
- Where the SLCC is of the view that the complaint form contains either sensitive personal information about a practitioner

3.2.26 Where a CSO or CI considers it might not be appropriate to share the Complaint Form, they will discuss this with a manager before proceeding.

3.3 Prematurity

3.3.1 Sections 4(2), 4(4) and 9A of the Act and Rule 8 of the SLCC's Rules apply to premature complaints.

3.3.2 A complaint is premature if the substance of a complaint has not been made known to the practitioner and / or the practitioner has not been given a reasonable opportunity to respond to it.

3.3.3 In considering whether or not the complaint is premature, the SLCC must ascertain two things:

- Whether a complaint was made to the practitioner, either as a formal complaint or in such a way that the practitioner would have known the substance of the complaint; and
- Whether the practitioner has been given a reasonable opportunity to address the issues relating to the 'substance' of the complaint submitted to the SLCC (i.e. the main issue/issues). A reasonable opportunity is defined in Rule 8(4) as at least four weeks.

- 3.3.4 The SLCC has discretion to accept a premature complaint for investigation but the circumstances under which it may do so must be exceptional, or are such that the SLCC considers it to be in the public interest so to proceed.
- 3.3.5 There is no definition of exceptional; this is at the discretion of the SLCC. Examples are provided at 3.38 below.
- 3.3.6 Decisions to accept or reject complaints as premature must be robust. They must be explained clearly, give full reasons and, where possible, make reference to the relevant evidence.

3.3.7 *The substance of the complaint*

- 3.3.8 Ideally, the evidence to confirm that a complaint is not premature is a copy of the complainer's written complaint to the practitioner or firm setting out the substance of the complaint, together with the response. If the SLCC holds this information, the complaint is not premature.
- 3.3.9 The Act is clear in that the complainer must have communicated the substance of the complaint to the practitioner or the practitioner's employing firm. This infers that a complaint does not have to be in writing but could have been made by telephone or in person. The complaint would not necessarily have to contain such phrases as 'I wish to complain' and the SLCC will make a judgement about whether the complainer has made the practitioner aware of the substance of the complaint.
- 3.3.10 If the complainer has not provided the SLCC with a copy of a written complaint, the steps taken by the SLCC will depend on what the complainer has stated on their Complaint Form. It may be necessary to contact the practitioner to ascertain whether they are aware of the substance of the complaint, particularly if the complainer states that the complaint was made verbally.
- 3.3.11 If the practitioner disputes that they have been made aware of the complaint and the complainer cannot provide any evidence to demonstrate it was made, the complaint will be rejected as premature unless there are exceptional circumstances.

3.3.12 *Reasonable opportunity*

- 3.3.13 Once it is confirmed that the substance of the complaint has been communicated to the practitioner / practitioner's firm, the SLCC must decide if the opportunity provided to address it has been reasonable.
- 3.3.14 In terms of Rule 8(4), a practitioner will not be considered to have been given a reasonable opportunity to deal with a complaint unless at least four weeks have elapsed since the communication was made.
- 3.3.15 Other issues which require to be considered will include:
- Whether the practitioner actually received the complaint
 - Whether the complaint subject matter is very complex or serious and although it is taking longer than four weeks, there do not appear to have been significant delays or periods of inactivity.

3.3.16 *Rejecting a complaint as premature*

- 3.3.17 The rejection notice letter to the complainer should advise why the complaint is deemed premature.
- 3.3.18 If the complainer has not complained to the practitioner / practitioner's firm or has not made the substance of the complaint known to them, the complainer should be advised in the notice letter to write to the Client Relations Manager or practitioner advising that they have a complaint and to outline the substance of that complaint.
- 3.3.19 If the substance of the complaint has been communicated to the practitioner / practitioner's firm but a reasonable opportunity to deal with the complaint has not been allowed, the complainer should be advised in the notice letter to allow a period of four weeks for the practitioner/practitioner's firm to respond to the complaint.
- 3.3.20 In either scenario, the complainer should also be advised to write to the SLCC and ask for the SLCC's file on the complaint to be reopened if they are unhappy with the response they receive or if they do not receive a response within four weeks. They should be advised to explain the reasons why they are unhappy with any response received and enclose a copy of their letter of complaint and any response.
- 3.3.21 In addition, the SLCC decision maker will:
- Decide whether in the particular circumstances of the complaint, the Client Relations Manager / practitioner should be required to give an explanation of the steps being taken as set out in section 8(3) of the Act and if so, ensure the notice letter is amended to include this. A task should also be raised to check the position in 21 days.
- 3.3.22 Sign the finalised notice letters and ensure that the complaint file has been closed.

3.3.23 *Accepting a premature complaint*

- 3.3.24 The bar for accepting premature complaints is set high and the starting point is that they should be rejected. Reasons for accepting a premature complaint must be exceptional or such that the Commission considers it to be in the public interest to do so.
- 3.3.25 The reasons for accepting a premature complaint will be recorded in a file note.
- 3.3.26 Each complaint will be considered on its own merits. Factors that might be taken into consideration are set out below. This list is not exhaustive and is intended only to provide an indication of the types of issues that might be taken into account when considering whether exceptional reasons exist to accept a premature complaint:
- Serious Conduct / criminal allegations e.g. falsifying evidence, dishonesty / financial irregularities
 - Discrimination / Equality e.g. racially related comments/ refusing a reasonable adjustment or request / refusing to engage an interpreter/ any discrimination of a protected characteristic
 - Violence / Inappropriate conduct e.g. assault / turning up at the complainer's house uninvited / abusive or threatening actions or communications
 - Time critical complaints / Time critical complainer e.g. firm being wound up / complainer has a terminal illness/ an immigration matter where deportation may be imminent

- Close personal relationships or current / former work relationships e.g. ex-partner works for firm / is friends with solicitor / whistleblowing
- Complaints raised by the SLCC/RPO complaints / Crown Office / SLAB complaints/Complaints received from other regulatory bodies / Complaints raised by other practitioners (potentially likely to be regulatory, criminal or conduct matters).
- Ongoing Litigation - potentially between a firm and complainer causing a conflict

3.3.27 Reopening a closed premature complaint

3.3.28 If the complainer is not satisfied with the practitioner's response (or the practitioner has failed to respond) and some or all of their complaint remains unresolved, they may ask the SLCC to reopen their complaint. In deciding whether a complaint will be reopened, consideration will be given to the time that has elapsed between the practitioner responding to the complaint and the complainer's request to reopen the complaint. The SLCC is obliged to act fairly and impartially to all parties to a complaint and each request to reopen a closed premature complaint will be considered on its own merits. However, in the interests of fairness, the greater the period of time that has elapsed between the practitioner responding or, in the case of a failure to respond within four weeks following intimation of the complaint, and the request to reopen a complaint, the less likely it will be that the complaint will be reopened.

3.3.29 In general, the SLCC expects a request to reopen a complaint to be made within four weeks following the practitioner responding or, in the case of a failure to respond, within four weeks of that failure. Consideration will be given to any circumstances which may have delayed the complainer from contacting the SLCC within these timescales to ask that their complaint be reopened. It is at the SLCC's discretion whether or not to allow a premature complaint to be reopened. It should be remembered that the complainer is not required to provide a detailed commentary on the response provided by the practitioner - it is sufficient for the complainer to advise the SLCC that the response does not resolve their complaint.

3.3.30 When the SLCC decision maker considers that a complaint should be reopened, the complaint will be allocated to a CI / CSO to progress the complaint to the next stage.

3.3.31 Where the SLCC's decision is that the complaint should not be reopened, letters to the complainer and Client Relations Manager / practitioner will be prepared explaining why the complaint will not be reopened. These letters should be signed by the decision maker.

3.4 Assessing the Eligibility of Complaints

3.4.1 Initial steps

3.4.2 Where appropriate, the SLCC will consider whether there is potential to resolve the complaint between the parties without the need for the complaint to proceed through the formal complaint process.

3.4.3 Whilst the SLCC encourages early resolution of complaints, the SLCC will also consider whether it is in the public interest for the complaint or parts of it to proceed. The CI should discuss with the HSI if they consider there is a possible public interest reason to proceed with a complaint before facilitating resolution between the parties. The HSI will then advise on the process to follow.

3.4.4 The SLCC may also provide an initial view at the outset to assist the complainer in understanding the complaints process and what may or may not be achieved through this process.

3.4.5 Summary of Complaint

3.4.6 Where it is not possible or appropriate to resolve a complaint, a CI / CSO will draft a Summary of Complaint. If a Summary of Complaint is not to be prepared, this must be authorised by a member of the IMT.

3.4.7 The Summary of Complaint should be a succinct summary of the complainer's concerns to ensure the SLCC's understanding of the complaint is correct.

3.4.8 Particular care should be taken to ensure the complaint is directed against the correct firm or legal entity, for example, where a firm has ceased and a new firm created, a partnership has incorporated, where a firm has been taken over by another firm or where a local agent has been instructed. The CI/CSO should check which firm each issue relates to as the complainer may not appreciate the distinction. It may be necessary to open separate complaint files for each of the separate legal entities involved.

3.4.9 Each issue of complaint in the Summary of Complaint should name both the firm and the name of the relevant practitioner(s).

3.4.10 The CI/CSO will pass the Summary of Complaint to a CIM for review until they have had their work approved without changes on three consecutive occasions.

3.4.11 CIs/CSOs must work to ensure that that the Summary of Complaint is completed as quickly as possible. In doing so the following guidance should be followed:

- The complainer does not have to agree or sign the Summary of Complaint but must be given an opportunity to seek any additions or corrections.
- The practitioner and/or firm must also be provided with the opportunity to make any comments on the Summary of Complaint.
- Time should be managed efficiently, generally allowing no more than 7 days for responses but considering any requests for extensions.
- Telephone and email use should be maximised to minimise the time take to prepare the final Summary of Complaint and the amount of correspondence required to achieve this.

3.4.12 Once there is a finalised Summary of Complaint the CI/CSO will then amend the complaint issues on Newpro to anonymise any parties not party to the complaint or not attached to the complaint in a professional capacity. Where possible these individuals should be referred to as "the seller", "the pursuer", etc, or alternatively "Mrs X", "Mr Y" etc. The CI should not use identifiable initials (e.g. Mrs Henderson should be "Mrs X" NOT "Mrs H").

3.4.13 There is no requirement to anonymise the parties named in a complaint received from an RPO.

3.4.14 If the complaint is about a former firm this should be made detailed within the Summary of Complaint.

3.4.15 The Summary of Complaint will be shared with the firm and named practitioners. Generally the whole Summary of Complaint will be shared with the Client Relations Manager of the firm and all of the named practitioners. However, in some exceptional cases the SLCC may decide it is not appropriate to share all or some of the issues of complaint with the firm or all of the named practitioners. Examples of such cases might include:

- Where the complaint is about a practitioner's conduct only and unrelated to their employment with any firm
- Where the SLCC is of the view that the complaint contains sensitive personal information about a practitioner

Where a CI considers it might not be appropriate to share the Summary of Complaint with all named parties they will discuss this with a CIM before proceeding.

3.4.16 Once the eligibility assessment has been completed, the CI/CSO will update the issues of complaint on Newpro to include reference to whether each issue may be a breach of the Service Standards or Conduct Rules depending on how the issue is categorised.

3.4.17 *Additional issues raised at eligibility*

3.4.18 If an additional issue is raised by the complainer after the Summary of Complaint has been agreed, the CI/CSO should agree an amended Summary of Complaint with the complainer. There is no need for the complainer to complete a new Complaint Form where this issue is related to the current complaint. The CI/CSO should also consider whether or not the new issue may be premature. Decisions about prematurity must be made by the relevant decision maker.

3.4.19 The SLCC will apply the date of receipt of Complaint Form when assessing whether or not the additional issue has been received within the SLCC's time limits.

3.4.20 If the issue relates to a completely separate matter a new Complaint Form will need to be submitted and a separate complaint file opened.

3.4.21 *Complaints alleging criminal behaviour*

3.4.22 The SLCC can consider complaints in which the complainer alleges that the practitioner has committed a criminal offence. However, the issue(s) of complaint will be drafted as normal detailing the specific actions which are alleged to have breached the professional standards. The SLCC and RPOs are unable to consider an allegation of crime as such and reference to specific criminal behaviour can prevent the complaint being fully considered within the complaints process. Reference to criminal acts should not be included in the Summary of Complaint.

3.4.23 If a complainer insists on including reference to criminal activity within the issue(s) of complaint, the CSO/CI should attempt to ensure sufficient information is included to enable the issue to be understood in the context of the professional standards. The CSO/CI should also advise the complainer that such references can prevent the complaint being fully considered.

3.4.24 Complaints about deceased practitioners

3.4.25 The SLCC cannot consider a complaint about a practitioner who is deceased. In such complaints the practitioner should not be named in the Summary of Complaint and the position should be explained to the complainer.

3.4.26 The SLCC can still consider the complaint in relation to the firm and/or any other practitioners named.

3.4.27 If the complaint is about a sole practitioner who is now deceased, the SLCC will be unable to serve notice of the complaint and the complaint must be rejected. In these circumstances, it might be possible for the complainer to make a claim against the Master Policy if the practitioner's legal representatives (i.e. executor(s)) have given authority to the broker of the Master Policy to accept claims. If no authority has been given, any potential claim on the Master Policy would need to be directed to the legal representatives. The CSO/CI should contact the broker in the first instance to ascertain whether authority to accept claims has been given and can advise the complainer accordingly.

3.4.28 A similar situation can occur if the practitioner is unable to respond due to serious or terminal illness. It may be that someone holds Power of Attorney and a claim can be made against the Master Policy with their authorisation. Again the broker to the Master Policy should be contacted first to ascertain the position.

3.4.29 Potential compliance/recovery issues

3.4.30 CSOs will be alive to any potential compliance or recovery issues and raise these with the complainer as appropriate. For examples, in complaints about a firm that has ceased trading/liquidated/entered into administration or about a sole-practitioner who has been sequestered. It is important that we give clear and full information about the risk that the SLCC may not be able to recover the award from the practitioner even if their complaint is upheld and allow the complainer to make an informed decision about proceeding with the complaint.

3.5 Categorisation of issues

3.5.1 The SLCC has a duty to determine the nature of a complaint as either service, conduct or both. Section 2(1A) of the Act provides that the SLCC must determine:

- *whether the complaint constitutes a conduct complaint or a services complaint,*
- *whether (and if so to what extent) the complaint constitutes separate complaints falling within more than one of these categories and if so which of the categories.*

3.5.2 Definition of conduct complaints

3.5.3 S2(1)(a) of the Act defines a conduct complaint to be one suggesting:

- *professional misconduct or unsatisfactory professional conduct by a practitioner other than a firm of solicitors or an incorporated practice;*
- *that a conveyancing practitioner or an executry practitioner has been convicted of a criminal offence rendering the practitioner no longer a fit and proper person to provide conveyancing services as a conveyancing practitioner or, as the case may be, executry services as an executry practitioner.*

3.5.4 Conduct complaints concern the conduct of the individual practitioner. Put in simple terms, conduct complaints concern how the practitioner acted and whether that behaviour breached the professional standards as published by the RPO. Conduct may amount to unsatisfactory professional conduct or professional misconduct, depending on its severity (professional misconduct being the more serious).

3.5.5 The SLCC will consider the eligibility of conduct complaints and if accepted as eligible, will forward them onto the RPO for investigation.

3.5.6 *Unsatisfactory Professional Conduct and Professional Misconduct*

3.5.7 Section 46(1) defines unsatisfactory professional conduct (UPC), in respect of the following practitioners, as:

- an advocate, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable advocate;
- a conveyancing practitioner or an executry practitioner, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner or, as the case may be, a competent and reputable executry practitioner;
- a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of this Act, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable person exercising such a right;
- a solicitor, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor, but which does not amount to professional misconduct and which does not comprise merely inadequate professional services; and cognate expressions are to be construed accordingly.

3.5.8 UPC was created by the Act so any complaint about a practitioner's conduct where the conduct occurred before the establishment of the SLCC can only be one of professional misconduct.

3.5.9 There is no definition in the Act of professional misconduct. The accepted test was defined by Lord President Emslie in *Sharp v Council of the Law Society*, 1984 S.C. 129 as:

“A departure from the standards of conduct expected of competent and reputable solicitors which would be regarded by competent and reputable solicitors as serious and reprehensible.”

3.5.10 It is important to remember that conduct complaints cannot be made about firms of solicitors or incorporated practices so a named individual must be identified and specifically referred to in the complaint.

3.5.11 *Professional Standards of Conduct*

3.5.12 The LSS publishes standards of conduct for its members. The table below sets out the relevant Standards/Rules and their commencement date.

Title	Commencement date
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Code of Conduct for Scottish Solicitors 2002	June 2002
Code of Conduct for Criminal Work	June 2002
Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008	1 January 2009
Law Society of Scotland Practice Rules 2011*	1 November 2011
*Prior to 1 November 2011, in addition to the Code of Conduct and the Practice Rules, the Law Society issued other rules and guidance in relation to specific situations e.g. the Accounts Rules 2001, Guidelines on Mandates. The various rules and guidance were consolidated to form the 2011 Rules.	

3.5.13 The FOA publishes standards for its members:

Title	Commencement date
Guide to the Professional Conduct of Advocates , fifth edition	October 2008
Disciplinary Rules 2008	October 2008
Disciplinary Rules 2015	07 September 2015

3.5.14 Definition of service complaints

3.5.15 S2(1)(b) of the Act defines a service complaint to be one suggesting: "... professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate".

3.5.16 Service complaints concern the professional service provided by practitioners. Service which falls below the requisite standards is referred to as inadequate professional service. This type of complaint refers to the actual services instructed by a client and provided by a practitioner.

3.5.17 Inadequate professional services (IPS)

3.5.18 S46(1) of the Act, defines IPS, in respect of the following practitioners, as:

- an advocate, professional services which are in any respect not of the quality which could reasonably be expected of a competent advocate;
- a conveyancing practitioner or an executry practitioner, professional services which are in any respect not of the quality which could reasonably be expected of a competent conveyancing practitioner or, as the case may be, a competent executry practitioner;
- a firm of solicitors or an incorporated practice, professional services which are in any respect not of the quality which could reasonably be expected of a competent firm of solicitors or, as the case may be, a competent incorporated practice;
- a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, professional services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right;
- a solicitor, professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor.

3.5.19 IPS includes any element of negligence in respect of or in connection with the services, and cognate expressions are to be construed accordingly.

3.5.20 *Professional Standards of Service*

3.5.21 The LSS publishes standards of service for its members. The table below sets out the relevant standards and their commencement date.

Title	Commencement date
Solicitor (Scotland) (Standards of Service) 2008	1 January 2009
Service Standards contained in Section E, Division A of the Law Society of Scotland Practice Rules 2011	1 November 2011
Prior to 1 January 2009, no Service Standards had been published and the concept of IPS was originally introduced by the Solicitors (Scotland) Act 1980 (commencement date 1 August 1980) as amended by the Solicitors (Scotland) Act 1988 (which defined IPS at Section 5).	

3.5.22 The FOA does not publish standards of service for its members. It publishes the Guide to the Professional Conduct of Advocates. For the purposes of determining whether a complaint could amount to IPS for advocates the SLCC will have regard to the advocate's duties under this guidance.

3.5.23 *Complaints containing both service and conduct issues*

3.5.24 In accordance with Section 2(2B), where it appears that the complaint may constitute both a conduct complaint and a separate services complaint (that is it contains both conduct and service issues), the CIM will liaise with the RPO in writing and have regard to any views expressed by the organisation on the matter before making a determination on the categorisation of the complaint.

3.5.25 At the same time, the CIM will also agree with the RPO whether, if admitted to the process, the conduct or service aspects of the complaint will be investigated first. In reaching this decision the following factors will be taken into consideration:

- The seriousness of any conduct complaint
- If a complaint relates to financial matters
- Where the RPO is aware of ongoing investigations into the firm/practitioner
- The number of service or conduct issues contained within the complaint
- If there are linked complaints currently being investigated

3.5.26 *Third-party IPS complaints*

3.5.27 The SLCC's Board has determined that:

3.5.28 An eligible third-party IPS complaint is one where a complainer makes an allegation that the service provided by a third-party solicitor to their client is inadequate and as a consequence the complainer has been directly affected.

3.5.29 An example of this would be when a solicitor has caused undue delay in handling the sale of a property, providing an IPS to the seller (their own client) and causing loss to the buyer (the complainer).

3.5.30 The key point is that the service provided is by the solicitor to their client and does not recognise any direct obligation or duty to the complainer. It is only if it can be said that there has potentially been IPS to the client (which has directly affected the complainer), that the complaint can be deemed to be eligible.

3.5.31 There will be other third-party IPS complaints that do not fall strictly within this definition as the nature of the relationship between the practitioner and the client is slightly unusual. There may be instances where the practitioner/firm is considered to have provided a service to someone who is not their client. For example, where a solicitor has agreed to appear in court for both parties to an action on instructions from the other side's own solicitor, the appearing solicitor might be considered to have provided a service to the other solicitor's client. This will very much depend on the circumstances of each case and the CI should discuss any such cases with a member of IMT.

3.5.32 If the CI/CSO is in any doubt about whether a complaint is third party, they should seek guidance from a manager.

3.5.33 *Complaints against independent qualified conveyancing practitioners & executry practitioners*

3.5.34 The eligibility assessment will consider:

- The Independent Qualified Conveyancers (Scotland) Regulations 1997
- The Executry Practitioners (Scotland) Regulations 1997

3.5.35 Conduct complaints about independent qualified conveyancing practitioners and executry practitioners are referred to the LSS while service complaints are investigated by the SLCC.

3.6 Time Limits

3.6.1 Powers

3.6.2 Sections 4(1) and 4(3) of the Act state that where a complaint referred to in section 2(1) is not made timeously, the Commission is not to take the preliminary steps referred to in section 2(4) in relation to it, and is not to take any further action under any other provision of this Part (except this section), in relation to it.

3.6.3 For the purposes of subsection (1) or section 9A(3), a complaint is not made timeously where:

- rules made under section 32(1) fix time limits for the making of complaints;
- the complaint is made after the expiry of the time limit applicable to it;
- the Commission does not extend the time limit in accordance with the rules.

3.6.4 Paragraph 2 of Schedule 3 to the Act provides that the SLCC's Rules can fix time limits for making complaints against practitioners, make provisions for extending the time limit and set out the circumstances in which such extensions may be made by the SLCC.

3.6.5 *IPS that pre-dates January 1989*

3.6.6 Complaints about IPS cannot be accepted if the alleged IPS pre-dates January 1989. The Solicitors (Scotland) Act 1988 introduced the statutory concept of IPS. It did not have retrospective effect for complaints relating to events prior to its commencement.

3.6.7 There is no provision in the Act to enable the SLCC to extend the concept of IPS to before the commencement of the 1988 Act. There is a strong common law presumption that professional persons should not be subjected to disciplinary sanctions for actions which did not constitute a disciplinary offence at the time that they occurred. It would be necessary for the Act to make express provision to overcome this and there are no such express provisions in the Act.

3.6.8 *Time bar rules*

3.6.9 The particular Rules which should be applied to a complaint depend on the date the SLCC receives the Complaint Form.

3.6.10 Pre April 2017

- Complaints received before 3 June 2013 should be assessed under the SLCC's Rules 2009.
Complaints received from 3 June 2013 until 30 June 2014 should be assessed under the SLCC's Rules 2013.
- Complaints received from 1 July 2014 until 31 December 2014 should be assessed under the SLCC's Rules 2014.
- Complaints received from 1 January 2015 until 31 July 2015 should be assessed under the SLCC's Rules 2015.
- Complaints received from 1 August 2015 until 31 March 2017 should be assessed under the SLCC's Rules (amended August 2015)

3.6.11 From 1 April 2017

3.6.12 Complaints received on or after 1 April 2017 should be assessed under the SLCC's Rules 2016 (amended December 2016).

3.6.13 A complaint is made when it is submitted on a Commission Complaint Form 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.

3.6.14 Subject to the provisions in Rules 7(3) and 7(4), a complaint will only be accepted if made within the following timescales:

- a. a conduct complaint where the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of was prior to 1 April 2017 must be made within 1 year of the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of.
- b. a services complaint where any professional services in respect of that matter were first provided by the practitioner to the client prior to 1 April 2017 must be made within 1 year of 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 by a third party where the specific act or omission complained of as constituting inadequate professional services was prior to 1

April 2017 must be made within 1 year of the date of the specific act or omission complained of as constituting inadequate professional services.

- d. 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 must be made within 3 years of the date of the professional misconduct or unsatisfactory professional conduct or conviction complained of.
- e. a services complaint where any professional services in respect of that matter were first provided by the practitioner to the client on or after 1 April 2017 must be made within 3 years of the date on which any professional services in respect of that matter were last provided by the practitioner to the client.
- f. a services complaint by a third party where the specific act or omission complained of as constituting inadequate professional services was on or after 1 April 2017 must be made within 3 years of the date of the specific act or omission complained of as constituting inadequate professional services.

3.6.15 In determining whether the relevant period of time has elapsed, there is to be disregarded any time during which the complainer was, in the opinion of the Commission, excusably unaware of the alleged professional misconduct, unsatisfactory professional conduct or conviction or inadequate professional services (Rule 7(3)).

3.6.16 In terms of Rules 7(4), the Commission may proceed to take preliminary steps and further action as regards a complaint that has not been made within the Commission's time limits if there are, in the opinion of the Commission:

- exceptional reasons why the complaint was not made sooner, or;
- exceptional circumstances relating to the nature of the complaint, or;
- the circumstances are such that the Commission considers it to be in the public interest so to proceed.

3.6.17 *The time bar test*

3.6.18 The test can be applied at the eligibility stage and where the SLCC is investigating a services complaint and becomes aware of new information which demonstrates that the complaint was not made timeously.

3.6.19 The test for whether a complaint should be rejected / accepted is two-stage:

- Was the complaint made outside the time limits?
- Are there exceptional reasons why the complaint was not made sooner, are there exceptional circumstances relating to the nature of the complaint or are the circumstances such that the SLCC considers it in the public interest to proceed despite it having been made outwith the time limit?

3.6.20 *Applying the time bar test*

3.6.21 The date that professional services were last provided is the last date that the practitioner provided services in which he / she was instructed by their client and which is the subject of the complaint. For example, if the issues of complaint only concern a family matter but the practitioner later acted for the client in respect of an employment matter, the date the services were last provided in respect of the family matter is the key date. The following are not counted as the last date on which services were provided:

- The date of chasing the complainer for payment of an unpaid fee note
- The date a complaint about conduct / service was dealt with by a practitioner

3.6.22 The relevant date will depend on the categorisation of the complaint and the following will apply:

- If the complaint is about conduct, the relevant date is when the conduct occurred.
- If the complaint is about a conviction, the relevant date is when the practitioner was convicted.
- If a third party complaint contains issues that could be categorised as service, the relevant date will be the date of the act or omission complained of occurring.

3.6.23 The actions to be taken by the SLCC to establish the time limits are as follows:

- When was the service last provided? The type of evidence that might be taken into account is what the complainer has said, letters from the practitioner, fee notes, when a mandate from another firm was received.
- When did the conduct incident occur? The type of evidence that might be taken into account is what the complainer has said, letters from the practitioner and statements from people who witnessed the event.
- When did the complainer become aware of the alleged IPS/UPC or PM? The primary source of information is what the complainer tells the SLCC. The CI / CSO should ask for supporting information such as a letter from a third-party who may have brought the matter to the complainer's attention.
- The SLCC will consider whether the complainer was excusably unaware of the matter. The SLCC will consider whether the complainer could have become aware of it at an earlier stage or have taken steps to discover the issues they are complaining about at an earlier stage.
- If the complaint was not made within time limits and the SLCC considers that the complainer should reasonably have been aware of it at the relevant time, an earlier date, the SLCC will consider why they did not make a complaint to the SLCC sooner.

3.6.24 The SLCC may view part of a complaint as time barred. An example of this is where some of the issues of complaint relate to an entirely separate business matter and the service in respect of that matter concluded more than one year before the Complaint Form was received.

3.6.25 If a complaint is initially rejected by the SLCC as premature and subsequently reopened, the date the Complaint Form was originally received is used to assess whether the complaint was made within time limits and not the date the complaint was reopened.

3.6.26 *Exceptional reasons, exceptional circumstances and public interest*

3.6.27 Exceptional reasons

3.6.28 There is no specific definition of exceptional and ultimately, what is exceptional is a matter of judgement for the SLCC.

3.6.29 Exceptional reasons for not making complaint sooner might include:

- A medical condition or time in hospital. For example, if someone had been receiving regular treatment for a serious condition for much of the one year period concerned, and can prove it.
- A serious medical condition of a close relative for whom the complainer was a main carer and could provide reasons/evidence for why it prevented them from complaining sooner.
- Personal circumstances that made complaining difficult to the point that to reject the complaint would be unfair. For example someone serving in the armed forces in a war zone.

3.6.30 Exceptional reasons would not normally include:

- Not knowing about the SLCC
- Illness that affected only a small part of the time. For example, if someone was in hospital for six weeks after a serious break to their leg.
- A prolonged illness that would not have prevented a complaint being made. For example, recuperation after a relatively minor operation.
- Being too busy to make the complaint because of pressures of work / other circumstances.

3.6.31 Claims of exceptional reasons should normally be supported by appropriate evidence to support them. The SLCC will invite explanations and may seek supporting information. For example, if a complainer says they were in hospital for six out of the last 12 months, they should provide a doctor's letter (or confirmation from the hospital). The SLCC will not normally write to the doctor or hospital on the complainer's behalf (subject to any specific needs or difficulties a particular complainer may have).

3.6.32 Exceptional circumstances

3.6.33 Exceptional circumstances relating to the nature of a complaint might include issues of such seriousness that in the SLCC's view they should be investigated.

3.6.34 Public interest

3.6.35 The SLCC may consider that it is in the public interest for the complaint to be investigated, for example where there are allegations of financial transgression

3.6.36 *Time bar comments*

3.6.37 If the SLCC's initial view is that the complaint / part of the complaint has not been made within time limits, letters should be sent to the parties advising them that the SLCC's initial view is that some / all of the complaint is time barred.

3.6.38 Both parties to the complaint will be given an opportunity to comment on the question of whether some / all of the complaint is time barred. The complainer will be invited to comment on whether they consider there to be anything exceptional about the circumstances of the complaint or public interest reason as to why it should be accepted even though it was made late and / or whether there are exceptional reasons that prevented them from submitting the complaint earlier.

3.6.39 The SLCC may ask either or both parties for further information and / or evidence before making its decision.

- 3.6.40 It is not necessary for the CSO / CI to cross copy comments received on the question of time bar unless they contain some new and material information. The CSO / CI should be mindful of potential issues of confidentiality in cross copying (especially in third party complaints and also in cases where a complainer has supplied medical information).
- 3.6.41 If the SLCC accepts a complaint outwith the time limit under exceptional reasons/circumstances, it will advise the parties and provide them with further opportunity to comment on the merits of the complaint before going on to undertake any further steps under s2(4) of the Act.

3.7 Frivolous, Vexatious and Totally Without Merit

- 3.7.1 A complaint may be determined to be FVTWM. Deciding whether a complaint is FVTWM is part of the process of considering whether the complaint is eligible.
- 3.7.2 Having the discretion to reject complaints as FVTWM confers a responsibility to ensure that only those complaints that should be investigated are accepted and that in doing so, resources are used effectively to gain the greatest value out of complaint handling.

3.7.3 Focus on the complaint

- 3.7.4 The Act is explicit – it is the complaint that must be considered. While the actions of the complainer might form part of the decision-making process the focus must be on the complaint itself.
- 3.7.5 There may be occasions when the current or past conduct of a complainer will be relevant to the decision making process. For example if the complainer habitually makes complaints about the same issues, is believed to intend trouble or annoyance to the practitioner or refuses to accept documented evidence and/or decisions. These types of issues should be taken into account but care must be taken to focus on the complaint.
- 3.7.6 What the SLCC should not do is reject a complaint simply because the complainer (as opposed to the complaint) is vexatious. While the complainer may be challenging to deal with, their complaint may have merit. In such circumstances the complaint should be investigated but the relationship would need to be managed according to the Unacceptable Actions Policy.

3.7.7 Totally Without Merit complaints

- 3.7.8 Totally Without Merit complaints are just that – the issue of complaint when considered as a whole is totally without merit and not worthy of investigation.
- 3.7.9 Complaints which are Totally Without Merit may have one, some or all of the following characteristics:
- insupportable in law
 - the parties have agreed a settlement and the complainer is simply seeking to have the complaint looked at again with no likelihood of a different outcome
 - the issues being complained about, if investigated and proved, could not potentially amount to IPS or PM/UPC
 - if the complaint is a service complaint and the complaint is about the practitioner acting in a non-legal capacity

- the allegation has no substance to it
- there is insufficient evidence to support the complaint and no likelihood of obtaining any (e.g. issues are from a long time in the past or records are destroyed and statements alone would not provide sufficient evidence) and as a result an investigation would be futile.

3.7.10 Applying the FVTWM test

3.7.11 The bar for accepting complaints is low. This was highlighted by the Court of Session in the appeal case *The Council of the Law Society of Scotland v Scottish Legal Complaints Commission* ([2011] CSIH 79, XA 183/09) and reiterated in *McSparran McCormick v SLCC* ([2016] CSIH 7, XA168/14).

3.7.12 The test must be applied to decide whether any issues of complaint meet the criteria to be defined as FVTWM. Applying the test is a matter of balance and judgement. Each case must be considered on its own merit and each decision must be based on a balanced consideration of the complaint and the evidence. Decisions must be robust. They must be explained clearly with full reasoning. They should be evidence based and make explicit reference to that evidence.

3.7.13 The test must be applied consistently, the aim being to ensure that a complainer will receive the same service and quality of decision regardless of which staff member deals with the complaint or makes the decision.

3.7.14 Where there is doubt, the complaint will be accepted as eligible.

3.7.15 The SLCC must demonstrate that:

- It has made reasoned decisions
- The decision is proportionate to the allegation made
- The decision is based on clear and relevant evidence
- Professional judgement has been applied rationally
- The reasons for the decision are clearly stated

3.7.16 Frivolous complaints

3.7.17 In addition to the characteristics of Totally Without Merit complaints, Frivolous complaints may contain one, some or all of the following:

- trifling, absurd or characterised by lack of seriousness or sense of little or no weight
- the complainer refuses to provide evidence to support the complaint and there are no reasonable grounds for the complaint
- out of proportion to its significance and the resources it would take to deal with it. To investigate would be an abuse of process
- be so poorly stated (even after attempts to clarify it) that it is unclear what the complaint is
- is the same as a previous complaint but worded slightly differently and containing nothing new of any substance
- the complaint has been made solely for collateral or financial gain and not for the purpose of resolving the complaint

3.7.18 Vexatious complaints

3.7.19 Vexatious complaints may have broadly the same characteristics as Totally Without Merit and Frivolous complaints but may contain characteristics of:

- intention to cause trouble or annoyance or harassment of the practitioner
- be made in bad faith, out of malice or for an ulterior motive
- be petty, repetitive or about the same practitioner
- display unreasonable demands on the legal profession or the SLCC
- is an abuse of process
- is from one practitioner against another and is simply a tit-for-tat complaint.

3.8 The Eligibility Assessment

3.8.1 Potential compliance/recovery issues

3.8.2 The CI/CSO will be alive to any potential compliance or recovery issues and raise these with the complainer as appropriate. For example, in complaints about a firm that has ceased trading/liquidated/entered into administration or about a sole-practitioner who has been sequestered. It is important that we give clear and full information about the risk that the SLCC may not be able to recover the award from the practitioner even if their complaint is upheld and allow the complainer to make an informed decision about proceeding with the complaint.

3.8.3 The CI/CSO will prepare a draft Section 2 and 4 Determination setting out the SLCC's determination of the complaint under sections 2 and 4 of the Act. This will set out the SLCC's decisions in relation to prematurity, the categorisation of issues, time limits and FVTWM.

3.8.4 In preparing the section of the Determination relating to time bar, the CSO / CI should make reference to the time bar comments received from the parties and what evidence or information was taken into account. The draft Determination should confirm that:

- The comments received did not alter their original view and the relevant issues of complaint are considered to be time barred; or
- The comments received did alter their original view and it is no longer considered that the issues of complaint are time barred; or
- The comments received did not alter their original view that the issues of complaint were made out with the time limits but the comments, or other information available, demonstrates that either:
 - a. there are exceptional circumstances relating to the nature of the complaint; or
 - b. there is a public interest reason as to why the complaint should be accepted; or
 - c. exceptional reasons exist which prevented the issues of complaint from being submitted earlier.

3.8.5 In preparing the draft Determination relating to FVTWM, the CSO / CI should provide reasons which are evidence based and make explicit reference to that evidence. In assessing whether the complaint is eligible the CSO/CI should consider:

- whether the complaint, if proved, could potentially amount to a breach of the professional standards, and
- is there evidence available (or does the potential exist to obtain evidence) to support the complaint or is the complaint entirely disproved by the evidence already provided?

3.8.6 The Determination is not an investigation and the CSO/CI should not weigh up evidence or prefer one party's account over another.

3.8.7 The Determination should only include information relevant to the issues of complaint and the CSO/CI should consider whether any confidential or sensitive information should be removed or redacted from the Determination issued to each of the parties.

3.8.8 In the case of Third Party complaints the CSO/CI will usually prepare a separate version of the Determination for the complainer and redact any information which is confidential to the practitioner's own client.

3.8.9 Once the Determination is finalised, a decision will then be made by the relevant person as per the Scheme of Delegation.

3.9 Issuing the decision

3.9.1 The SLCC's Determination of eligibility along with a covering notice letter, will be sent to all relevant parties to the complaint. The relevant parties will always include the complainer(s) / complainer(s) representative, the RPO and any individual practitioners named in the complaint. In the case of former firms it will be issued to all former partners who were partners at the relevant time.

3.9.2 If the complaint has been categorised as containing service issues about a firm of solicitors, the Client Relations Manager of the firm will be sent a copy of the SLCC's Determination.

3.9.3 The parties' right to appeal the Determination will be detailed in the notice letters.

3.9.4 All parties to the complaint will be notified of the Determination on the same date.

4 Mediation

- 4.1.1 Mediation will be offered at this stage in all service only complaints unless the relevant manager decides this would be inappropriate.
- 4.1.2 The SLCC will not offer mediation where the complaint has been determined as containing both service and conduct issues. However, the SLCC may offer mediation where the conduct aspect of the complaint has been investigated by the RPO and the service aspects of the complaint have been remitted back to the SLCC for investigation.
- 4.1.3 Details of the mediation process can be found at the mediation section of the SLCC website <https://www.scottishlegalcomplaints.org.uk/making-a-complaint/complaints-process/mediation.aspx>

5 Investigation

5.0.1 When the complaint is passed from the RPO, Mediation or Eligibility, the firm will be asked to and provide their response to the complaint and their file(s). Complainers may also be asked for some information. The file will be allocated to a CI once the firm has responded, or to send a Section 17 in the event of no response from the firm.

5.1 Investigation Plan

5.1.1 A CI must prepare an Investigation Plan for each complaint during initial training, when under performance management or any other occasion indicated by the DOR/CIM. In these circumstances, the Investigation Plan must be approved, signed and dated by the DOR/CIM for each case prior to a CI contacting any parties in regard to the complaint.

5.1.2 Where a CI is fully trained and not subject to the restrictions detailed above, it is at the CI's discretion whether to prepare an Investigation Plan and if so, whether to have the DOR/CIM approve the Investigation Plan.

5.1.3 The template for an Investigation Plan on Newpro should be used.

5.1.4 *Potential compliance/recovery issues*

5.1.5 The CI will be alive to any potential compliance or recovery issues and raise these with the complainer as appropriate. For example, in complaints about a firm that has ceased trading/liquidated/entered into administration or about a sole-practitioner who has been sequestrated. It is important that we give clear and full information about the risk that the SLCC may not be able to recover the award from the practitioner even if their complaint is upheld and allow the complainer to make an informed decision about proceeding with the complaint.

5.2 Initial View Letter and Initial Investigation Letter

5.2.1 In most cases it will be appropriate to send the parties an Initial View Letter, setting out the CI's initial thoughts on the complaint, inviting the parties to consider this and make proposals for resolution. The same information must be provided to both parties.

5.2.2 It will be a matter for the CI to decide whether to send a CI Introduction Letter or to proceed with an Initial View Letter.

5.3 The Investigation Report/Letter

5.3.1 If it is not possible to resolve the complaint by way of an Initial View Letter, the CI will carry out an investigation and produce an Investigation Report or Letter setting out their recommendations and a proposed settlement.

5.3.2 A CI should first consider whether the investigation recommendation can be issued in a letter format. If the letter extends to more than 4 pages, an Investigation Report is usually more appropriate. The choice of using an Investigation Report/Letter is at the CI's discretion.

5.3.3 There is a prescribed format for Investigation Reports and Investigation Letters and the templates on Newpro must always be used.

5.3.4 A fully trained CI may pass the complaint to a Reporter to complete a draft Investigation Report/Letter.

5.3.5 Third Party Investigation Report/Letter

5.3.6 The Investigation Report/Letter to the practitioner should be prepared in the usual way.

5.3.7 The CI must then consider if there are any confidential matters within the Investigation Report/Letter which the complainer should not see, for example, where there are matters confidential to the practitioner's own client. The CI should liaise with the practitioner as, if they have no objection, a full copy of the Investigation Report/Letter can be issued. If there are matters of confidentiality then either a redacted copy of the Investigation Report/Letter or a summary letter should be issued to the complainer. It should be made clear within the Investigation Report/Letter what the CI has decided to do and why.

5.4 Quality assurance

5.4.1 CIs must adhere to their CI QA status level as at the date of the QA (in accordance with the table below) and a peer review is undertaken in accordance with this status.

Level	QA
1	Full discretion
2	Peer, Manager or both (part discretion but must have QA)
3	Peer and then Manager
4	Manager only

5.4.2 All Investigation Report/Letters prepared by CIs and Reporters, whether or not they have been passed for QA or review, must be entered once in the QA Rota. The CI will follow the same process for QA in accordance with the table above.

5.4.3 A reviewing CI should complete a QA review within two days from when the draft IR was allocated to them. If this is not possible, they should immediately advise their colleague so a decision can be taken to wait or to ask another CI.

5.4.4 The CI carrying out the QA should produce an Investigation QA Review and insert any substantial comments onto this. Minor comments or suggestions should be noted on the draft IR.

5.4.5 The CI should consider the comments, insert any further comments they wish to make onto the Investigation QA Review and make any amendments they wish.

5.5 Sending out the Investigation Report/Letter

5.5.1 The Investigation Report should be issued to the parties with the cover letter template or the Investigation Letter on its own.

5.5.2 Care must be taken to issue to all of the relevant parties, any named practitioners and parties' representatives.

- 5.5.3 The parties have 21 days to respond under the Act. If a request for additional time is sought the CI must consider if this is reasonable and if in doubt discuss with a manager.

5.6 Response from Parties at Investigation

- 5.6.1 If both parties accept the investigation recommendations the complaint is closed at this stage.
- 5.6.2 It is open to either party to make an offer after the investigation recommendations have been issued. These will be put to the other party. If agreement after this further negotiation does not occur the case will be passed to the DC.
- 5.6.3 If either or both parties do not respond to the investigation recommendations, the CI should contact the non-responsive party/parties to confirm their position. This can be done by telephone and should be recorded in the file.
- 5.6.4 If the firm/practitioner have agreed with the recommendation and the complainer has not responded, the SLCC will follow the policy on non-cooperation set out below.
- 5.6.5 As soon as one party states that they do not accept the recommendations, and they have made no counter offer, the case should be passed to the DC immediately and both parties advised of this.
- 5.6.6 If the firm/practitioner have not responded when the file is being passed to the Clerk, they should be advised in the final letter from the CI that failure to do so could have implications in regard to the amount of levy the DC determines should be paid.
- 5.6.7 The Passing Investigation File to Clerking checklist (which can be found on Newpro) should be followed when passing a file to the DC.
- 5.6.8 Where a response is received from Parties after the file has been passed to the clerks, the Clerk will follow the process set out in the Determination section below.

5.7 Remedies (e.g. compensation, fee reduction)

- 5.7.1 Section 9 of the Act places an obligation on the SLCC to recommend a settlement following investigation. Section 9(3) places a specific requirement also to make settlement proposals to the employing firm.
- 5.7.2 Generally, the recommendation made at the Investigation stage follow the guidance laid out in Section 10(2) for Determinations.
- 5.7.3 Settlements recommended or awarded must be based on the remedies available under section 10 of the Act and the SLCC's rules.
- 5.7.4 Section 10(2) of the act outlines what settlements may include. Settlements should give consideration to:
- reducing fees and outlays;
 - rectification at the practitioner's own expense of any error, omission or other deficiency arising in connection with the services provided;
 - the practitioner taking such other action in the interests of the complainer, at their own expense, as the SLCC may specify;

- directing the practitioner to pay compensation to the complainer or party otherwise instructed by the complainer, not exceeding £20,000 for loss, inconvenience or distress resulting from the IPS, and
- whether the IPS should be reported to the appropriate professional body.

5.7.5 Aim

- 5.7.6 The aim of any settlement is to put the complainer back in the position they would have been in but for the effect of the IPS provided. Settlements should not result in complainers gaining advantage or making a profit. There must be a clear causal link between the IPS and the consequences of it.
- 5.7.7 Where it is not possible to put a complainer back in the position they would have but for the effect of the IPS, financial compensation may be the only available settlement.
- 5.7.8 Each complaint should be considered on its own merits in order that recommended settlements are proportionate to the effects of the IPS. The SLCC should base settlements on appropriate evidence which quantifies the complainer's loss and/or supports other effects such as distress, illness or inconvenience.
- 5.7.9 If the effect of the IPS does not result in loss, inconvenience or distress, the settlement should reflect this. For example, where a practitioner has carried out a transaction correctly but with undue delay, the effect of the delay will depend on the type and urgency of the transaction.
- 5.7.10 Instances/findings of IPS with broadly similar impact should result in consistent and broadly comparable settlements.
- 5.7.11 The SLCC must explain why a settlement is being recommended and how the substance of such a settlement was arrived at.

5.7.12 Joint Complaints

- 5.7.13 Where there is more than one complainer the SLCC will ensure it treats all parties as individuals and ensure any remedy is fair to each of the individuals named within the complaint.
- 5.7.14 Examples of complaints considered at Investigation stage and the outcomes can be found on the SLCC website <https://www.scottishlegalcomplaints.org.uk/making-a-complaint/complaint-examples/investigation-examples.aspx>

5.7.15 Addressing the effect of IPS

- 5.7.16 The effect of IPS may differ depending on the circumstances of the complaint. This means in practice that the same IPS may result in different settlements. For example, delay in responding to correspondence in one conveyancing case may result in loss of a house sale for one complainer, but the same level and type of delay may simply result in inconvenience for another.
- 5.7.17 Not all IPS will result in loss, inconvenience or distress to the complainer but may still require a settlement that includes recommending the practitioner take action or receive training.
- 5.7.18 Where the evidence shows that the IPS has resulted in loss, inconvenience or distress that is what the proposed settlement should address.

5.7.19 The SLCC must explain why a settlement is being recommended and how the substance of such a settlement was arrived at.

5.7.20 Promote good complaint handling

5.7.21 In proposing a settlement the SLCC should also consider its wider duties to promote good complaint handling and improve service standards. The substance of settlements should take into account the need to promote the SLCC's wider duties. Settlements should both provide redress for the complainer and, where possible, seek to address the causes of the IPS by directing the practitioner to take action to rectify the situation.

5.7.22 The SLCC should also consider the competency of the practitioner and whether referral to the appropriate professional body is warranted.

5.7.23 Lessons learned from individual complaints should be monitored in the context of good complaint handling by the profession and guidance issued to the professional bodies and/or practitioners.

5.7.24 Fees

5.7.25 Reducing fees should not be seen as another form of compensation. Any reduction recommended should relate directly to the IPS. If a complaint is not upheld or concerns solely the level of fees without an allegation of IPS, the complainer should normally be advised that the appropriate course of action would be to take the matter to taxation by the auditor of court.

5.7.26 There is no formula for the amount by which fees should be reduced as this will be a judgement based on the merits and facts of the individual case. In reaching a view the CI should give consideration to the following types of issues:

- Was the complainer charged for a service that should not have been provided had the practitioner acted appropriately?
- Was any of the service carried out to such a poor standard that it should not be paid for in part or in full?
- Was the complainer charged for something that was not done or only partially completed?

5.7.27 Before making a recommendation to refund fees, the SLCC should hold documentary evidence of the fees charged and where appropriate, actually paid.

5.7.28 Legal aid

5.7.29 If the complainer was legally aided and fees are to be abated or refunded the practitioner should be directed to refund fees directly to the Scottish Legal Aid Board (SLAB). The SLCC will also inform SLAB of its decision so that they may make any adjustments in respect of the complainer or take any other action it considers necessary.

5.7.30 Third-party complaints

5.7.31 The SLCC will not normally direct a refund of fees where the complainer was a third-party complainer (i.e. complaining about a practitioner who was not instructed by them). However, the particular merits and circumstances of a complaint should be

taken into consideration, e.g. whether the complainer paid them on behalf of the client, where fees were paid by the estate of a deceased person and so on.

5.7.32 Outlays

5.7.33 A finding of IPS does not automatically mean a complainer should be refunded the costs of outlays (or the fees reduced by this amount if not yet paid by the complainer). Refunding outlays should not be seen as a form of compensation but should be directly related to the IPS found.

5.7.34 The types of circumstances in which outlays would normally be refunded include:

- if the IPS was such that the outlay was not needed in the first place;
- if it can be demonstrated that the amount paid for the outlay was excessive, in which case a partial refund might be recommended; and/or
- if the IPS resulted in the cost of the outlay (or associated costs) being higher than it needed to be. For example if delay in producing and lodging a document resulted in it having to be couriered and this cost was passed on to the complainer.

5.7.35 Before refunding, removing or reducing all or any costs in relation to outlays, the SLCC should satisfy itself that the costs were actually incurred.

5.7.36 Section 10(3) of the Act makes specific provision in respect of to whom the proposed settlement in respect of fees and outlays should be directed.

5.7.37 The outlays that might be refunded could include the following. This is not an exhaustive list but provides examples of types of outlay.

- Search fees
- Stamp duty
- Land Registry fees
- Notary Public fees
- Court fees
- Courier costs
- Sheriff Officer costs
- Counsel fees/Agent fees
- Any agent fees such as translation fees, medical reports, expert reports, transcripts fees, surveyors' fees
- Council fees e.g. planning department etc.
- Mileage

5.7.38 Rectification

5.7.39 Rectification is action the firm/practitioner is asked to take to put something right they did wrong or that they omitted to do in the first place.

5.7.40 The action recommended will depend on the case and any action already taken/omitted by the firm/practitioner.

5.7.41 Where the firm/practitioner has failed to take action or the IPS is such that an action in relation to the service needs to be re-taken, the firm/practitioner should be recommended to do this at their own expense.

5.7.42 The SLCC must ensure that the action is both necessary and give reasons why it is so.

5.7.43 The SLCC should recommend as appropriate who should (or should not) take the action. For example:

- if the settlement also includes a recommendation about the competency of the practitioner, the decision-maker may direct that a different practitioner be instructed to carry out the work; or
- if the practitioner is no longer practising the SLCC may recommend that an alternative practitioner is instructed by the complainer; or
- if the relationship between the practitioner and complainer has deteriorated to the point that the decision-maker feels it inappropriate for the practitioner to carry out the work, they might recommend a different practitioner be instructed.

5.7.44 The recommended settlement in respect of rectification should include the timescales within which the action is required and what evidence is needed from the practitioner to demonstrate it has been taken and is effective.

5.7.45 Section 10(3) of the Act makes specific provision in respect of to whom the proposed settlement in respect of rectification should be directed.

5.7.46 Other Action

5.7.47 Other action is action the SLCC considers necessary in the interests of the complainer. Other action the SLCC might recommend/direct includes:

- apologising for the consequences of the IPS;
- reviewing and revising policies and procedures; or
- revising the way in which the practitioner deals with complaints.

5.7.48 The action recommended/directed will depend on the case and any action already taken/omitted by the practitioner.

5.7.49 Where the practitioner has failed to take action, has acted inappropriately or the IPS is such that an action needs to be re-taken, the practitioner should be asked to do this at their own expense.

5.7.50 The SLCC must ensure that the action is necessary and give reasons why it is so.

5.7.51 The SLCC should also recommend as appropriate who should (or should not) take the action taking into account the type of action recommended and the particular details of the case.

5.7.52 The settlement in respect of other action should include the timescales within which the action is required and what evidence is needed to demonstrate it has been taken and is effective.

5.7.53 Compensation

5.7.54 Compensation should cover loss, inconvenience or distress. This covers both quantifiable loss and non-quantifiable loss (i.e. compensation for distress and inconvenience). In explaining the amount of compensation, the SLCC should

distinguish between the amount for quantified loss and the compensation element based on the tariff.

5.7.55 The total amount of compensation must not exceed £20,000 per complainer.

5.7.56 Compensation is awarded per complainer, not per complaint.

5.7.57 Quantifiable loss

5.7.58 This includes compensation for quantifiable expenses incurred by a complainer. The general principles are that:

- the SLCC must be satisfied that the expenses were the direct consequence of IPS and would not have been incurred but for the IPS;
- where the complainer claims to have already paid the expenses the SLCC will normally require documentary evidence (such as a receipt) to confirm they were paid and the amount;
- where the expenses have not been paid the SLCC must be satisfied as to the amount claimed, ideally with supporting documentary evidence (eg a bill or invoice);
- the rationale for the amount of quantifiable loss should be included in the reasons for the recommended settlement; and
- the amount of compensation in relation to quantifiable loss should normally be based on actual expense not estimates.

5.7.59 The evidence required to support the loss claimed will vary depending on the circumstances of the case but could include: receipts, invoices, credit/debit card slips, pay slips, tickets and/or letters from traders/professionals.

5.7.60 The SLCC does not seek to place an unnecessary burden on complainers but recognises there is a responsibility on complainers to support the claims they are making; both the amount of the expense and the need to have incurred it in the first place. Where an expert opinion is required to support the level of quantifiable loss (e.g. a medical report) the complainer should bear the cost. If the complaint is later upheld, this cost will be taken into account.

5.7.61 If the SLCC requires expert advice, such as legal advice about the complaint to support its decision-making, this will be paid for by the SLCC.

5.7.62 A complainer may suffer quantifiable loss that is not a direct expense but the financial impact of delay or loss of opportunity. Such instances might include:

- something a complainer owns might lose value. For example if there was delay in the conveyancing for a house sale which then fell through, the house in the current market may have lost value. Another example could be where the practitioner is instructed to sell investments and delays in doing so and sells when the market price has fallen;
- a loss of a legal right, for example by the practitioner's failure to raise a court action to pursue and assert a claim, or failure to take necessary steps which results in loss of a right or status;
- losing out on interest on capital; or
- losing out on rental payments.

- 5.7.63 For loss of opportunity the complainer does not have to prove that they would have been successful but for the IPS, although the complainer would have to have asserted a claim which appears valid and which it appears would on the balance of probabilities have been successful to some degree.
- 5.7.64 Any recommendation or award for loss of opportunity may be reduced proportionately to the extent that the complainer is responsible for all or part of the loss.
- 5.7.65 Where the value of loss of opportunity is readily determinable, for example from an investment index, and to the extent that such value or a fair proportion of it is directly linked to the IPS then the compensation for it may be that value or a fair proportion.
- 5.7.66 Where loss of opportunity is found to be established but the value of that loss is not readily determinable the SLCC may reflect such loss of opportunity by means of an award under non-quantifiable loss as inconvenience and distress.
- 5.7.67 If loss is ongoing, the settlement should be calculated on the basis of the complainer's position 21 days from the date of the recommended settlement.
- 5.7.68 Where there is more than one complainer, actual loss will generally be awarded on a joint and several basis unless there are clear reasons not to. If the SLCC decides to take a different approach, it must be clear what each party is to receive and this must be stated clearly in the recommendation or determination.
- 5.7.69 The SLCC will ensure it treats all parties as individuals and ensure any remedy is fair to each of the individuals named within the complaint.

5.7.70 Non- quantifiable loss

- 5.7.71 Section 10(d) of the Act provides that in addition to loss the SLCC may compensate for inconvenience and distress. The SLCC will normally base compensation on the tariff system as set out below. This tariff is a guideline but the SLCC recognises that there may be exceptional circumstances where it is not appropriate.
- 5.7.72 Inconvenience is the time and effort spent by the complainer in relation to poor service and in having to pursue a complaint about that poor service.
- 5.7.73 Distress includes the worry, concern, anxiety, anger, disappointment or embarrassment a complainer may experience as a result of poor service. Distress can also include loss of confidence in a practitioner and reluctance to engage further with the profession. Distress can vary from mild irritation to anxiety that requires medical treatment.
- 5.7.74 The SLCC may also compensate for any inconvenience and distress attributable to loss of opportunity.
- 5.7.75 In considering which level of the tariff to apply, the SLCC should consider such issues as:
- How much of the 'inconvenience' would have been experienced anyway and how much could have been avoided – for example it may have been inconvenient for the complainer to attend court but if they would have been required to attend anyway, the SLCC should not compensate for this.

- To what extent was the distress the consequence of the practitioner’s actions or poor service? Often the reasons for consulting a legal practitioner in the first place are stressful in themselves – for example divorce, death of a loved one, crime or moving house.
- How did the practitioner handle the complaint – for example, did they simply dismiss it or did they make reasonable and appropriate efforts to put things right?

5.7.76 The SLCC should also consider what information it needs in applying the different levels of the tariff. This will vary from complaint to complaint and should be based on the merits and consequences of the individual situation. A balance has to be struck between asking a complainer for information which would support the consequences claimed and demanding information which might add to the distress already caused. However, the SLCC also has to be mindful of the need to give clear and supportable reasons for the level of compensation recommended.

5.7.77 The Tariff

Factors/Consequence of the poor service to consider/might include		Range of compensation
Band A	limited effect and duration caused minimal inconvenience on a single occasion resulted in irritation and/or minor annoyance the practitioner put the matter right	Up to £150
Band B	limited effect and duration caused minor inconvenience on a number of occasions caused some worry and concern effect was short-term practitioner took reasonable steps to put matters right	Over £150 – up to £750
Band C	more serious effect over a period of time but not a lasting effect caused significant inconvenience on several occasions caused worry, concern, some anxiety and upset practitioner failed to take reasonable steps to put matters right	Over £750 – up to £1,500
Band D	serious effect probably over a long period of time, possibly affecting the complainer’s well-being over a long period of time significant inconvenience over a long period of time or on many occasions quality of life of complainer (and/or family) considerably and noticeably disrupted complainer or family member suffered particular difficulties caused significant distress and upset practitioner failed to take reasonable steps to put matters right	Over £1,500 up to £5,000

5.7.78 Set-Off

5.7.79 The SLCC has a general policy of not allowing the set-off of settlement payments against unpaid fees owed to the firm/practitioner.

5.7.80 The SLCC may, however, on a discretionary basis, allow set-off in certain circumstances where it can be evidenced that the fees have actually been or will be reduced. Set-off should not form part of the proposed settlement, but can be considered as a method for achieving settlement if requested by one of the parties. Such circumstances may include for example, when a practitioner can provide evidence that fees have been taxed and that the amount being compensated has been deducted and reflected in the amount pursued.

5.7.81 The practitioner must provide evidence which demonstrates this to the satisfaction of the SLCC. Suitable evidence would include a copy of a taxed account in respect of the services the practitioner has rendered and a revised fee note or if being pursued through the courts appropriate court documents. A statement or letter, unsupported by suitable documentation is not sufficient.

5.7.82 The decision to allow set-off must be approved by a member of the IMT.

5.7.83 Proposing the settlement

5.7.84 Section 10(3) sets out the parties to whom a settlement must be proposed.

5.7.85 Where the practitioner was an employee of an employing practitioner at the time the inadequate service was provided:

- a recommendation under 10(2)(a), (b) or (c), i.e. in relation to reduction or refund of fees or outlays or rectification, must be sent to the employing practitioner not the employee practitioner
- a recommendation under 10(2)(d), ie in relation to compensation, may be either
 - a. to the employing practitioner or the employee practitioner to pay all of the compensation directed; or
 - b. to the employee practitioner to pay a specified amount of the compensation and to the employing practitioner to pay the remainder of the total amount
- a copy of any report to the professional body under 10(2)(e), that is in relation to competence, must be sent to the employing practitioner.

5.7.86 The Investigation Report/Letter must make it clear which part of the settlements apply to which party and send a copy of the proposed settlement to each.

5.7.87 Settlement payments should normally be paid directly by the practitioner to the complainer or the person/party the complainer instructs. Exceptionally, the SLCC will receive the payment from the practitioner and forward it on to the complainer.

5.7.88 Exceptional circumstances might include for example, the complainer for valid reasons does not want to divulge their address. Where alternative payment arrangements are suggested at investigation stage, they must be agreed by the CIM.

5.7.89 Monitoring and enforcement

5.7.90 The SLCC will monitor compliance with all settlements, agreed at investigation stage.

- 5.7.91 If a settlement is not implemented at investigation stage the complaint will be referred to DC for Determination. Oversight should be advised of the non-compliance for monitoring purposes.
- 5.7.92 Responsibility for monitoring compliance lies with the CI responsible for making or communicating the terms of the settlement.

5.8 New Issues raised at Investigation Stage

- 5.8.1 This section sets out the SLCC policy and process where additional issues of complaint are identified after the eligibility Determination has been made and the complaint has reached the investigation stage.
- 5.8.2 The CI should consider if the new issue is really a new issue or could reasonably be considered to fall within an existing issue of complaint. If the CI is uncertain, they should discuss this with the CIM/DOR.
- 5.8.3 If the manager agrees that the potential new issue should be brought to the complainer's attention, the CI should write to the complainer and ask if they wish to add the potential new issue to the existing complaint. If the complainer agrees, action should be taken in accordance with the process outlined below.
- 5.8.4 If the complainer does not wish to add the new issue, the CI should discuss this with the relevant manager who will decide if the new issue is a matter which the SLCC should pursue separately in its own name due to public interest.
- 5.8.5 If the new issue relates to a failure by the practitioner to respond to the SLCC's requests/demands for documentation or explanations (and the complainer does not wish to add a new issue), the complaint should proceed in the SLCC's name in accordance with the process below.
- 5.8.6 Where the issue is considered to be new, the process to be followed is set out in each of the following potential scenarios.
- a. Issues identified by the complainer, SLCC, or RPO, which are not included in the Summary of Complaint but which the complainer had intended/understood were being considered and, on review, are clearly alluded to in the original complaint.
 - If the complaint is with RPO, the matter will be referred back to the SLCC with full details of the additional issue to be added.
 - The issue/s will be added to the Summary of Complaint and practitioner/s provided with 14 days to make comments.
 - No prematurity or new time bar issues arise in this situation as the issues are considered part of the original complaint.
 - A supplementary eligibility Determination will be prepared and the usual processes followed thereafter.
 - Investigation will then resume.
 - b. Issues which are identified by the CI at either the SLCC or RPO, which the complainer wishes to be added to the complaint. These may be issues which were not identified during the initial eligibility assessment and are not covered by scenario (a) above, or may have occurred since the issuing of the eligibility Determination.

- If the complaint is with RPO, the matter will be referred back to the SLCC with full details of the additional issue to be added.
 - The SLCC will complete an “Additional Issues Complaint Form” for the approval and signature of the complainer. No new complaint reference number is created.
 - The requirement for the complainer to have communicated the complaint to the practitioner/firm is always waived, but the practitioner/firm will be notified and provided with 14 days in which to make any comments.
 - The assessment of time bar will be based on the date of receipt of the signed Additional Issues Complaint Form.
 - A supplementary eligibility Determination will be prepared and usual process followed thereafter.
 - Investigation will then resume.
- c. Issues which are identified by the CI at either the SLCC or RPO, which the complainer does not wish to be added to the complaint and which the SLCC/RPO wishes to raise ex proprio motu. These may be issues which were not identified during the initial eligibility assessment, or may have occurred since the issuing of the eligibility Determination.
- A brand new standard Complaint Form will be completed by RPO or SLCC (for complaints by the SLCC the Complaint Form will be signed by the CEO on behalf of the SLCC).
 - The usual complaints process will then be followed.
- d. Issues raised by the complainer in respect of the same transaction as the existing complaint, but which are brand new and are were not raised in the original complaint.
- If the complaint is with RPO, the matter will be referred back to the SLCC with full details of the additional issue to be added.
 - The CI should firstly consider if the new issue is likely to be time-barred or FVTWM and fully discuss this with the complainer with a view to managing their expectations and avoiding delay in the process.
 - The SLCC will complete an “Additional Issues Complaint Form” for the approval and signature of the complainer. No new complaint reference number is created.
 - The requirement for the complainer to have communicated the complaint to the practitioner/firm is always waived, but the practitioner/firm will be notified and provided with 14 days in which to make any comments.
 - The assessment of time bar will be based on the date of receipt of the signed Additional Issues Complaint Form.
 - A supplementary eligibility Determination will be prepared and usual process followed thereafter.
 - Investigation will then resume.
- e. Issues raised by the complainer against the same practitioner/firm as the existing complaint, but in respect of a completely different transaction than the transaction considered in the original eligibility assessment.
- A brand new standard Complaint Form will be completed by the complainer.
 - The usual complaints process will then be followed.

- 5.8.7 In all scenarios the CI will liaise with the CIM as to who will assess the eligibility of the new issue and prepare the supplementary eligibility Determination.
- 5.8.8 If a new issue contains a conduct element, the CSO will notify the Oversight Team of the details of the new issue.

6 Determination

6.1 Response from Parties after the file has been passed to the clerks

- 6.1.1 The Clerk will acknowledge/reply to all correspondence received once the complaint has been passed to them by the CI. Correspondence will only be passed to the CI if it requires a comprehensive response from them.
- 6.1.2 If the Clerk considers substantive correspondence requires comments from the CI, the Clerk should discuss the correspondence with the CI to ascertain whether the CI agrees. If the issue is not resolved between them, the Clerk should raise the matter with the Clerking Manager.
- 6.1.3 It is a matter for a CI to decide how much or how little to comment on any correspondence. However, the CI should make sure their reasons are clear, and where appropriate, detailed, as otherwise, further explanation may be sought by the DC. If saying "I am not minded to alter my view", for example, the CI should explain why.
- 6.1.4 If the case settles or there appears to be a possibility of it settling after it has been passed to the Clerk, it should be passed back to the CI to action and close the case if settlement is reached.

6.2 Scheduling

- 6.2.1 Once the case has been received from the CI, the CS will discuss the scheduling of a DC for consideration of the complaint with the team. Cases will generally be allocated to the next available DC slot, subject to clearing any conflict checks as below. However, consideration will also be given to the nature, complexity and size of the cases to be allocated to each DC. Some complex cases or cases which otherwise are likely to be challenging for any other reason may require to be considered on their own.
- 6.2.2 Before cases are allocated to any DC meeting schedule the CS will check that neither the members nor the allocated Clerk have any pre-advised conflicts with the parties to the complaint. In addition, 3 weeks before the DC meeting CS will email the DC members with a full case listing for the DC. Members will advise promptly if they are aware of any additional conflicts. Where any doubt arises about a conflict this should be discussed with the Clerk and managed in accordance with the SLCC's policy on conflicts as outlined in the SLCC's Members Code of Conduct. Where any conflict arises, the case will be allocated to a new date, or an alternative member will be asked to consider that case.
- 6.2.3 ***Potential compliance/recovery issues***
- 6.2.4 The Clerk will be alive to any potential compliance or recovery issues and raise these with the complainer as appropriate. For example, in complaints about a firm that has ceased trading/liquidated/entered into administration or about a sole-practitioner who has been sequestrated. It is important that we give clear and full information about the risk that the SLCC may not be able to recover the award from the practitioner even if their complaint is upheld and allow the complainer to make an informed decision about proceeding with the complaint.

6.3 Additional Submissions and Oral hearings

- 6.3.1 The parties are not required to make any additional submissions to the DC although they may do so at their discretion. Any additional submissions should ideally be received in time to be circulated with the papers to members. A DC may refuse to consider submissions if they are received in insufficient time before the meeting.
- 6.3.2 An oral hearing may be allowed either by a DC at its own instance; or on the written request, supported by reasons, of any of the parties to a complaint. The Policy and Procedure of the SLCC applicable to such a request or where the DC decides at its own instance to allow an oral hearing and also applicable to the conduct of any oral hearing to be held is as set out in the SLCC's Oral Hearings Policy and Procedure, which must be followed. However, as a general guide the following will apply.
- 6.3.3 Where a request for an oral hearing is received from one of the parties, the Clerk will write to both parties asking for written views on whether an oral hearing is necessary and on the scope of that hearing.
- 6.3.4 The DC will consider the reasons given for the request and the submissions received and decide whether a hearing will be allowed. The DC will consider:
- whether there are any issues or disputes of fact which require to be resolved before the complaint can be determined and which cannot be resolved by any other means;
 - whether it would assist the DC to hear witness evidence in order to allow it to determine the complaint; and
 - whether there are any exceptional circumstances which would justify the need for an oral hearing.
- 6.3.5 The DC in deciding whether to hold an oral hearing will always apply the principle of fairness and will act in accordance with the terms of the SLCC's Oral Hearings Policy.
- 6.3.6 The DC will give reasons for its decision and these will be incorporated into the terms of the final DR.
- 6.3.7 Where a DC declines to grant an oral hearing it may go on to consider the merits of the complaint at the same meeting. Where a DC decides that an oral hearing should take place, it will issue directions as to the scope of the hearing in accordance with the policy above.
- 6.3.8 The principles outlined above relating to decisions on whether to hold an oral hearing and the conduct of such a hearing provide a general indication only of the SLCC's oral hearings policy and procedure, and are indicative and not authoritative on such matters. The detailed and authoritative principles governing such matters are as contained in the SLCC's Oral Hearings Policy.

6.4 Notice to Parties, Papers and Case Management meetings

- 6.4.1 An initial sift of papers will be prepared with the assistance of the SLCC administration team. This will be passed to the Clerk for the DC who will check and add any additional papers from the SLCC or the parties' files. The DC will have access to all files and papers held by the SLCC in considering the complaint.

- 6.4.2 No less than two weeks before the DC, Clerks will send the parties notice of the DC meeting, with an explanation of the DC process and information on the next steps. Copy letters will be sent to any named practitioners in the complaint and any other interested parties (for example if a firm has ceased to trade and an administrator or judicial factor has been appointed). Clerks should take care to establish if any of the parties are represented, and whether any named practitioners are still at the named firm and ensure all correspondence is addressed appropriately...
- 6.4.3 No less than two weeks before the meeting the Clerk will email the DC members with the links to the remote papers for the meeting and post a hard copy of the Investigation Reports to members. Any additional papers arriving after this time will be added to the remote papers and circulated by email.
- 6.4.4 One week before the DC meeting, the Clerk will meet with the Chair of the DC to discuss the papers. The Clerk will check that the DC Chair is content with the papers and that no further items are required in order for the DC to a) make decisions on whether the issues of complaint should be upheld and b) make directions as to appropriate sanctions and redress. Where the DC Chair wishes to obtain any additional information the Clerk will, wherever practicable, provide this in advance of the DC meeting.
- 6.4.5 Whenever practicable the DC should be provided with sufficient information to allow it to reach a decision at the initial meeting. On occasions, a DC will reach a view that further information or advice is required before it can reach a decision. When this occurs the Clerk will seek to reconvene the same members to resume consideration of the case as soon as practicable once the information is received.

6.5 DC Meetings

- 6.5.1 Before discussing the cases listed for the meeting members will be asked to declare any interests. This will be recorded by the Clerk.
- 6.5.2 Members will proceed to discuss each case. The DC will consider all the papers associated with the complaint and consider afresh whether each eligible service issue of complaint should be upheld, partly upheld or not upheld. Members will also consider afresh the recommended sanctions and disposal in respect of the complaint contained in the IR. Members may reach a different view from that recommended in the IR.
- 6.5.3 Where a complaint is partly upheld or upheld the DC may adjust the proposed sanctions and disposals, for example by increasing or decreasing compensation for actual loss and inconvenience and distress or by making additional directions in relation to fees or other relevant matters.
- 6.5.4 In reaching decisions, the DC will be guided by the matters set out above in the Remedies section. Settlements recommended or awarded must be based on the remedies available under section 10 of the Act and the SLCC's rules. The DC may ask the Clerk for guidance on these matters.
- 6.5.5 Examples of complaints considered at Determination stage and the outcomes can be found on the SLCC website <https://www.scottishlegalcomplaints.org.uk/making-a-complaint/complaint-examples/determination-examples.aspx>
- 6.5.6 At the DC the Clerk shall make a detailed note of the proceedings. At the end of each DC meeting the Clerk shall record any feedback given in terms of the feedback policy

and ask the DC to identify any learning points arising from the meeting along with any suggestions the DC might have for case review/member development, etc.

- 6.5.7 Following the meeting the Clerk will prepare a draft Minute recording the decisions of the Committee. If the DC makes a decision on the complaint then the Clerk shall prepare a draft DR and issue it to the members for approval or correction and approval. Clerks will aim to provide these drafts to members within 5 working days of the DC meeting. Members in turn should provide approval or comments within 5 working days of the Clerk sending the drafts to them.

6.6 Complaint Levy

- 6.6.1 Where a DC upholds or partly upholds a service complaint it may, in accordance with S28 of the Act, impose a complaints levy. When deciding the amount of the levy the DC will also direct to whom the levy should be charged – a firm or an individual. Any decision to impose a levy should be taken in accordance with the SLCC's Complaints Levy Policy.

- 6.6.2 From 1 October 2018, where a complaint is upheld or partly upheld at Determination the Full Complaints Levy of £3,500.00 falls to be applied. However, where, in the DC's judgement, the practitioner has complied completely or substantially with good practice in complaints handling and in its dealings with the SLCC, a Reduced Complaints Levy of £1500.00 can be applied. Further, where the DC considers any IPS to be very minor, and the practitioner would otherwise qualify for the Reduced Complaints Levy, a Nominal Complaints Levy of £500.00 can be applied. The DC may, if it decides that there are exceptional circumstances waive all or a proportion of the Full, Reduced or Nominal Complaints Levy.

- In forming a view on such compliance the DC will take into account the following:-
- Whether the practitioner followed its own complaints handling policy/procedures and timescales and adhered to accepted best practice including the SLCC best practice guide;
- Timescales more generally and the thoroughness, promptness and completeness of the investigation and response by the practitioner both in their internal handling of the complaint and in dealings with the SLCC;
- Whether the practitioner made the complainer aware that if they remained dissatisfied with their internal handling of the complaint, contact could be made with the SLCC;
- Whether the practitioner openly accepted any failure in their service and offered a reasonable settlement;
- Whether new issues or justifications were raised by the practitioner only at the stage of the complaint being with the SLCC, which could reasonably have been provided to the complainer at an earlier point;
- Any other failings the Committee identified in the internal handling of the complaint and in dealings with the SLCC.

- 6.6.3 In fixing the complaints levy the DC may have regard to any complaints made against the practitioner which were upheld by the DC in the previous two years and may, having done so, fix the Complaints Levy at either the Reduced Complaints Levy or the Full Complaints Levy. Also where the IPS is, in the judgement of the DC, substantial and/or the awards and/or directions made by the DC under Section 10(2) of the Act are high or substantial, the DC may impose the Full Complaints Levy regardless of whether or not the practitioner might otherwise have qualified for the Reduced Complaints Levy.
- 6.6.4 Where a DC agrees to impose a levy, the reasons for this will be recorded by the Clerk in the Minutes and will be notified to the firm in the letter accompanying the DR. The Clerk will request a levy invoice from Finance and Corporate Services and this will be issued to the Client Relations Manager of the firm along with the DR and decision letter. For complaints received before 1 January 2015, the levy must be paid within 21 days of the DR being issued. For complaints received on or after 1 January 2015 the levy must be paid within 28 days of the DR being issued. The Act provides that any failure or delay in payment may be treated as professional misconduct or unsatisfactory professional conduct.

6.7 Determination Reports

- 6.7.1 Once approved by all the DC members, the DR shall be issued to the parties either as a Draft DR or as a Final DR depending on the Rules of the SLCC applicable, i.e. whether the complaint was registered before or on or after 1 July 2014.
- 6.7.2 Even when the complaint was registered on or after 1 July 2014, the DC has discretion in appropriate circumstances to issue a DR as a Provisional DR. Where a Draft DR or Provisional DR is issued to the parties then the parties shall be given a minimum of 21 days to submit comments on it.
- 6.7.3 The Clerk shall ensure that any comments received from the parties on a Draft DR or Provisional DR are circulated in advance to the DC and if appropriate shall arrange a meeting of the DC to discuss the comments and agree any necessary amendments to the Draft DR or Provisional DR.
- 6.7.4 The Clerk shall amend the Draft DR or Provisional DR in accordance with the directions given by the DC. Once the Draft DR or Provisional DR has been approved by all DC members the Clerk shall ensure that the Final DR is issued to the parties.
- 6.7.5 Clerks will aim to issue all DRs to the parties within 3 working days of approval by members. As with Notice Letters, copies should be sent to any named practitioners and relevant representatives. The parties will also receive letters outlining the decision of the DC, the timetable for compliance with any directions made by the DC and the right of appeal if they are unhappy with the decision. Any appeal must be lodged with the Court of Session within 28 days of the date of these decision letters.

6.8 Referral of Conduct Issues to the RPO

- 6.8.1 The decision letters accompanying any Final DR will clearly set out whether the complaint is closed or whether any eligible conduct issues are to be referred to the RPO for consideration. The RPO and the SLCC Oversight team will be notified of the DC decision.
- 6.8.2 Where conduct issues are to be referred then the files are to be sent to the RPO as soon as practicable.

6.9 Legal Aid

- 6.9.1 Where a complainer was legally aided and a DC recommends a refund or rebate of fees paid by Legal Aid then the arrangements outlined above in the Remedies section will apply.

7 Other provisions

7.1 Re-categorisation of Complaints and Section 15 of the Act

7.1.1 This section sets out the SLCC's policy and process where it appears during the course of investigation that it is reasonably likely that the complaint may in whole, or in part, fall within a different categorisation.

7.1.2 It will not always be a straightforward decision that an issue is a conduct issue. The Act refers to a situation where the SLCC considers that it is "reasonably likely" that the complaint (or any element of it) may instead constitute a conduct complaint.

7.1.3 There is no definition of "reasonably likely" in the Act, but the SLCC should be confident that the issue raised could potentially amount to UPC or PM when applied against the appropriate conduct rules/standards.

7.1.4 Where it appears during the course of the SLCC's investigation that an existing issue categorised as service at the outset is reasonably likely to be conduct instead, the SLCC will take action to refer those issues to the RPO under sections 15(1), 15(2), 15(4) and 15(5) of the Act.

7.1.5 The SLCC will, in summary:

- Hold off issuing an investigation report proposing a settlement and/or making a final determination on the service elements of a complaint until other actions under s15 have been carried out; and
- The CI will prepare:
 - the initial s15 letters for the relevant manager to issue to the complainer and practitioner detailing the SLCC's intended action; what the SLCC considers the conduct issue/s to be, what steps are being taken, timescales; and why the steps are being taken.
 - the initial s15 letter to issue to the RPO along with the accompanying documents required to be sent under s15(2)(b) and (c). The letter should outline the grounds on which it is considered that the complaint should be considered to be a conduct complaint, and seek the RPO's views on the matter within 28 days.

7.1.6 The CI should ensure that the case is monitored and reminders and updates are issued as appropriate.

7.1.7 The CI/manager will consider the comments received from the RPO.

7.1.8 If the issues are straightforward and there is no doubt about the decision the manager should either:

- confirm the original determination as per s15(3)(a), issuing a s15 response letter giving written notice to the parties as per s15(4)(a), advising parties of their right to appeal to the Court of Session as set out in s21 of the Act; or
- determine that the complaint/issue should be reclassified (s15(3)(b) and (5) apply). The manager should also confirm the order of investigation and advise the parties of their right to appeal to the Court of Session as set out in s21 of the Act.

7.1.9 Where an RPO, in investigating a conduct complaint, has identified that the complaint, or an element of the complaint, appears to be a service complaint, the

RPO will refer the matter, with reasons, to the SLCC. The RPO will have written to all parties advising of this action.

7.1.10 The relevant manager must either:

- confirm the original determination as per s15(3)(a), issuing a s15 response letter giving written notice to the parties as per s15(4)(a), advising parties of their right to appeal to the Court of Session as set out in s21 of the Act; or
- determine that the complaint/issue should be reclassified (s15(3)(b) and (6) apply) and confirm the order of investigation and advise the parties of their right to appeal to the Court of Session as set out in s21 of the Act.

7.2 Suspending Complaints

7.2.1 The SLCC may suspend a case in certain circumstances. Unless the case falls into a category of automatic suspension, the process followed will depend on the stage that the complaint has reached.

7.2.2 *Automatic suspension*

7.2.3 Cases will be automatically suspended:

- where an appeal has been intimated; and
- in conduct first cases passed to the RPO for investigation.

7.2.4 *Eligibility & Mediation*

7.2.5 A situation may arise where the CI or MC considers it is necessary to suspend a case at eligibility or mediation, for example, if the parties enter into negotiations out with the complaints process or one of the parties is undergoing medical treatment. The CI or MC must seek the authority of the relevant manager to suspend the case.

7.2.6 The manager should record their decision on the case and action the suspension on Newpro. The CI or MC should also set a task to review the suspension at the end of the agreed suspension period.

7.2.7 It is the responsibility of the CI/MC to ensure the parties are kept updated and to ensure the suspension is reviewed appropriately.

7.2.8 *Investigation*

7.2.9 It will be at the discretion of the CI whether they wish to suspend a case or not, but this should only be done in exceptional circumstances. Instances where the CI may wish to consider suspension will be where the CI is unable to carry out work for a considerable period of time and considers that it would be appropriate to suspend the case, for example where the parties are negotiating and have asked for a lengthy period of time to do this or in cases of on-going litigation where the parties are involved.

7.2.10 The CI will create a file note detailing why they have decided to suspend the file and for how long. The CI will set a task (no longer than 6 months) to review the suspension. The CI will then ask the relevant manager to action the suspension. The manager will discuss any suspensions that may seem unreasonable or unnecessary.

7.3 Withdrawing and Reinstating complaints

- 7.3.1 For the purposes of this section “complaint” includes the whole complaint or any specific issue(s) within the complaint.
- 7.3.2 A complaint may be closed where settlement is reached. This is not a request to withdraw and the following process does not apply in those circumstances. Withdrawal of a complaint is when the complainer simply requests to withdraw the complaint with no other explanation about a settlement which has been agreed between the parties. Where there has been a failure by the complainer to cooperate in the complaint process, the SLCC may also treat the complaint as withdrawn.
- 7.3.3 The SLCC will generally accept requests from complainers to withdraw a complaint at any stage of the complaints process. The SLCC may raise the complaint in its own name if it considers that it is in the public interest to do so. The CI should discuss with the HSI if they consider there is a public interest reason to proceed.
- 7.3.4 Even if the SLCC withdraws the service aspect of the complaint, the eligible conduct issues must be passed to the RPO for consideration. The RPO will be advised of a complainer's request to withdraw a conduct issue of a complaint but the final decision rests with the RPO.

7.3.5 Process – Request to Withdraw

- 7.3.6 Requests for withdrawal of a complaint do not need to be in writing/email. If it is made by telephone the CI must ensure that there is a file note or note of a telephone call on the file recording that the complainer wishes to withdraw their complaint.
- 7.3.7 In joint complaints, the CI must be satisfied that both complainers want to withdraw the complaint. They should be satisfied that there is no public interest in continuing and that the information on file supports withdrawing.
- 7.3.8 The CI must write to:
- both parties confirming the decision.
 - the RPO, if the complaint also contains conduct issues, advising that the service aspect has been withdrawn and enclosing a copy of the SLCC's file for their consideration.

7.3.9 Process – Non-cooperation

- 7.3.10 The SLCC sets timescales for parties to respond to correspondence. Where a complainer fails to reply within the timescales or provide information requested, the SLCC may treat the complaint as withdrawn after following the steps set out below.
- 7.3.11 The CI should also consider the individual circumstances of each party and whether any reasonable adjustments need to be made when setting timescales and requesting information.
- 7.3.12 Where a complainer has failed to reply to a request for information within a set timeframe, the CI should consider whether it may be appropriate to issue a potential withdrawn letter.

7.3.13 In considering the appropriateness of such action, the CI will consider a number of factors including:

- the seriousness of the complaint
- the likelihood of the complaint being upheld
- the complainer's history of response as evidenced from prior communications

7.3.14 The CI will write to the complainer advising that unless a response is received to the initial request within 7 days, it will be assumed that the complainer no longer wishes their complaint to be considered and that, accordingly, it may be treated as having been withdrawn.

7.3.15 The CI will allow a period of 5 days in excess of the extended time period stipulated in the letter. On the expiry of this timescale, if no response has been received, the CI will write to:

- both parties confirming the decision.
- the RPO, if the complaint contains conduct issues, confirming that the SLCC has treated the service aspect of the complaint as withdrawn due to non-cooperation and enclosing the SLCC's file for their consideration of the conduct issues.

7.3.16 Reinstatement

7.3.17 The SLCC will consider all requests from complainers that a previously withdrawn complaint be reinstated but the final decision will be at the discretion of the SLCC.

7.3.18 Where a request to reopen a complaint is received the following steps should be taken.

7.3.19 Requests for reinstating a previously withdrawn complaint do not need to be in writing/email. If by telephone the CI must ensure that there is a file note recording why the complainer wishes their complaint reinstated and any explanation for the failure to co-operate.

7.3.20 The CI must consider:

- the reasonableness of the request
- the length of lapsed time
- any exceptional or unusual circumstances
- whether requested information which was the subject of previous contact has now been provided
- the number of previous potential withdraw letters sent

7.3.21 If the decision is taken not to reinstate the complaint, the CI will write to the complainer explaining why the decision has been taken not to reinstate the complaint.

7.3.22 If the decision is taken to reinstate the complaint, the CI must write to both parties confirming the decision and re-open the complaint.

7.4 Requesting information and documentation

7.4.1 The SLCC may request or demand documentation and explanations from practitioners and complainers, and documentation and information from third parties.

7.4.2 Practitioner

- 7.4.3 When issuing a Notice (where no mediation will be offered) or after mediation (if not successful or only partly successful) the SLCC will make a request under S17 for information required for the investigation of the complaint. This letter will confirm a conduct complaint can arise against the Practitioner/ Client Relations Manager for not responding to this request.
- 7.4.4 If the information requested is not produced then a 7 day reminder will be sent. This letter will reiterate that a conduct complaint can arise against the Practitioner/Client Relations Manager for not responding to the previous request and this reminder.
- 7.4.5 If no response is received to the above two requests within the requested timeframe the CI will immediately proceed to issue a S17 Notice. At the same time the CI will immediately proceed to ask the Complainer if they wish to add a conduct issue against the Practitioner/ Client Relations Manager about this failure/delay unless there are specific reasons not to.
- 7.4.6 If the complainer does wish to raise a conduct complaint the CI will follow the process to add a new issue. If the complainer does not wish to raise a conduct complaint the SLCC will consider if it will raise a conduct complaint.
- 7.4.7 The CI will be alive to the difference and challenges in seeking information from third party complaints; however a complete failure to respond to 7.4.3 and 7.4.4 should result in the same action under 7.4.5.
- 7.4.8 The S17 work must proceed simultaneously to any conduct issue being added. If no response is received after the 21 days allowed in the S17 Notice the CI will discuss the matter with DOR f/w CIM(consulting with CEO in absence of DOR) about raising a court action to recover the information needed.
- 7.4.9 If court action is to be taken, the CI will issue a letter to the parties advising that the SLCC's agents will now be instructed to try to recover the necessary information to progress the investigation of the complaint and that CI will be in touch within the next 3 months. The CI will advise the DOR when this is done and the DOR will instruct agents. The CI will take action to suspend and diary the case.

7.4.10 Complainer

- 7.4.11 Where the SLCC has written to a complainer requesting documentation or an explanation and he / she fails to respond, the SLCC will follow the procedure for non-cooperation set out in this manual.
- 7.4.12 Where it is considered necessary, the SLCC may raise proceedings to obtain documentation from the complainer. It is envisaged that court proceedings for the production of documentation will only be pursued against a complainer in exceptional circumstances and the CI should discuss any such case with DOR f/w CIM before taking any action.

7.4.13 Section 19 – third parties

- 7.4.14 The SLCC is entitled to request documents or information from third parties who are not party to the complaint itself. Where the third party does not reply, the SLCC may proceed in the absence of the documentation or information.

7.4.15 Where it is considered necessary, the SLCC may proceed to apply to the Court of Session for a court order to obtain documentation or information where there has been a failure or a refusal to deliver the same.

7.4.16 It is envisaged that court proceedings to obtain documentation will only be pursued against a third party in exceptional circumstances and the CI should discuss any such case with DOR f/w CIM before taking any action.

7.5 When a complainer dies

7.5.1 There may be occasions where a person making a complaint dies after their complaint has been received by the SLCC. The SLCC understands that a family member or friend may wish to continue with the complaint. However, this is only possible in certain circumstances which are set out in this section.

7.5.2 A complaint will be considered as having been made when the SLCC has received a signed Complaint Form from the complainer during their lifetime.

7.5.3 The SLCC will only continue to investigate the complaint on behalf of an Executor where it has received Confirmation. If no Confirmation is to be obtained then the SLCC must receive one of the following:

- a certified copy of the deceased's Will identifying the Executor concerned;
- where there is no valid Will, evidence of the person's appointment as Executor-Dative.

7.5.4 In the absence of any of the documentation detailed above the SLCC will be unable to process the complaint as there is no party with any evidence of authority to deal with the complaint on behalf of the deceased. The party seeking to continue with the complaint will be advised, however, of the option to make a third party complaint in their own name.

7.5.5 If there is more than one Executor, these Executors must agree and nominate one person for the SLCC to contact in regard to the complaint. If the Executors are unable to do this the SLCC may not be able to progress the complaint.

7.5.6 If the complaint is upheld, any award made will be payable to the deceased complainer's estate so that it in effect falls to the residuary beneficiaries of the deceased. An award should not be made directly to the Executor.

7.5.7 As soon as a CI is aware that the complainer has died no action should be taken to further progress the complaint until the CI is certain that there is an Executor who can progress the complaint in place of the deceased.

7.5.8 Once a CI has been notified that the complainer has died a letter should be written to the person(s) who notified the CI of the death confirming that no action will be taken on the complaint unless the information detailed above is provided.

7.5.9 Where there is an Executor available the CI should always clarify if the Executor wishes to progress with the complaint and who the SLCC should correspond with if the complaint were to proceed. Any difficulties or issues with the complaint should be clearly explained to the Executor to allow him/her to make an informed decision.

- 7.5.10 Where no Executor can be found or vouched as detailed above, the CI should follow the procedure for treating a complaint as withdrawn (unless the SLCC wishes to proceed with the complaint in its own name).
- 7.5.11 If there are conduct issues the conduct aspect of the complaint should be passed to the RPO if appropriate.

8 Unacceptable action from service users

- 8.01 The SLCC aims to ensure that consumers, irrespective of background or circumstance, know we are there to help and will respect their concerns. We are mindful of the needs of our diverse service users. We also expect our staff to be treated courteously and with respect.
- 8.02 This section sets out the approach of the SLCC to the relatively few occasions we consider people's actions to be unacceptable
- 8.03 Throughout, we refer to service users. By this we mean anyone who uses our services including those who bring complaints to us and also people who are the subject of complaints. However, the approach applies equally to our dealings with any other person.

8.1 Aims

8.1.1 We aim in all our dealings to:

- make it clear to complainers both at initial contact and throughout their dealings with our office, what the SLCC can or cannot do in relation to their complaint or enquiry;
- be open and not raise expectations that we cannot meet;
- deal fairly, honestly, consistently and appropriately with all service users, even those whose actions we consider unacceptable. We believe that all service users have the right to be heard, understood and respected. We also believe that the SLCC's staff have the same rights;
- provide a service that is accessible to all. However, we retain the right, where we consider a service user's actions to be unacceptable, to restrict or change access to our service; and
- ensure that other service users and the SLCC's staff do not suffer any disadvantage from service users who act in an unacceptable manner.

8.2 What is unacceptable?

- 8.2.1 There are rare occasions when complainers pursue their complaints in a way that can impede their investigation or have significant impact on the SLCC. The SLCC understands that people may act out of character in times of trouble or distress. Often complainers have experienced upsetting or distressing circumstances leading to a complaint being submitted to us. Equally, we understand that being the subject of a complaint can be upsetting or distressing.
- 8.2.2 We do not view actions as unacceptable simply because a service user is forceful or determined. However, the actions of service users who are angry, demanding or persistent may result in unreasonable demands on our office or unacceptable behaviour towards our staff. It is these actions that we consider unacceptable and that we aim to manage under this policy.
- 8.2.3 The SLCC has grouped these actions under three broad headings; aggressive or abusive behaviour, unreasonable demands and unreasonable persistence.

8.3 Aggressive or abusive behaviour

- 8.3.1 Aggression and abuse are not restricted to acts which cause physical harm. They also include behaviour or language – whether oral or written – that may cause staff to feel afraid, threatened or abused. Examples of such behaviour include threats, physical violence, personal verbal abuse, derogatory remarks, inflammatory statements and unsubstantiated allegations.
- 8.3.2 We expect our staff to be treated courteously and with respect. Violence or abuse is unacceptable. Our staff understands the difference between aggression and anger and that the anger felt and expressed by many complainers is linked to their complaint. However, it is not acceptable that such anger escalates into aggression directed towards the SLCC’s staff.

8.4 Unreasonable demands

- 8.4.1 Service users might make what we consider unreasonable demands on our office through the amount of information they seek, the level and scope of the service they expect or the amount of contact they have with us. What amounts to unreasonable demands will depend on the circumstances surrounding the actions.
- 8.4.2 Examples of such actions include demanding responses within an unreasonable timescale, insisting on speaking to a particular member of staff, continual telephone calls, letters or emails, repeatedly changing the substance of the complaint or continually raising unrelated concerns.
- 8.4.3 We consider such demands as unacceptable and unreasonable if they start to impact substantially on the work of the office, for example by taking up too much staff time to the disadvantage of other service users or functions.

8.5 Unreasonable persistence

- 8.5.1 We recognise that some service users will not or cannot accept that the SLCC is unable to provide a level of service other than the one provided already or that we are unable to assist them further. There are rare occasions where service users persist in disagreeing with the action or decision taken in relation to their complaint or contact us persistently about the same issue.
- 8.5.2 Examples of such actions include the persistent refusal to accept the SLCC’s actions in relation to a complaint, the persistent refusal to accept explanations given by the SLCC’s staff about what we can or cannot do and continuing to pursue a complaint without providing new information. We accept that the manner in which these service users approach us may be reasonable, but it is the persistent actions in continuing to do so that is not.
- 8.5.3 The actions of persistent service users are unacceptable when they take up what the SLCC considers to be a disproportionate amount of time or resources.

8.6 Managing Unacceptable Actions

- 8.6.1 It is rare for us to consider the actions of service users as unacceptable. How we aim to manage these actions depends on their nature and extent. If a service user’s actions adversely affect our ability to do our work and provide a service to others, we may need to restrict the service user’s contact with us in order to manage the

unacceptable action. We aim to do this in a way that wherever possible, it allows a complaint to progress to completion through our complaints process. We may restrict contact in person, by telephone, fax, letter or electronically or by any combination of these. We try to maintain at least one form of contact. In extreme situations, we tell the service user in writing that their name is on a 'no personal contact' list. This means that they must restrict contact with our office to either written communication or through a third party.

- 8.6.2 The threat or use of physical violence, verbal abuse or harassment towards the SLCC's staff is not tolerated and is likely to result in the SLCC ending all direct contact with the service user. Incidents may be reported to the police. This will always be the case if physical violence is used or threatened (on occasion even if only implicitly threatened).
- 8.6.3 We do not deal with correspondence (letter, fax or electronic) that is abusive to staff or is offensive. When this happens we explain why we consider the language to be abusive or offensive. We ask the person to stop using such language and we state that we will not respond to their correspondence if they do not stop. We may require future contact to be through a third party.
- 8.6.4 The SLCC's staff will end telephone calls if the caller is considered aggressive, abusive or offensive. The staff member taking the call has the right to make this decision. All the SLCC's staff has the authority tell a caller that their actions are unacceptable and end the call if this does not stop. The member of staff will record a detailed file note of the telephone call and the actions they considered to be unacceptable.
- 8.6.5 Where a service user repeatedly telephones, visits the office, sends irrelevant documents or raises the same issues, we may decide to:
- only take telephone calls from the service user at set times on set days or put an arrangement in place for only one member of staff to deal with calls or correspondence from the service user in the future;
 - require the service user to make an appointment to see a named member of staff before visiting the office or advise the service user to contact the office in writing only;
 - return the documents to the complainer or in extreme cases, advise the service user that further irrelevant documents will be destroyed; or
 - take any other action that we consider appropriate.
- 8.6.6 If we decide to restrict a service user's contact with the SLCC, we will always tell the service user what action we are taking and why.
- 8.6.7 Where a service user continues to correspond on a wide range of issues, and this action is considered excessive, the service user is told that only a certain number of issues will be considered in a given period and they will be asked to limit or focus their requests accordingly.
- 8.6.8 If a service user's actions are considered to be unreasonably persistent, the service user may be told that no future telephone calls will be accepted or meetings granted concerning their complaint, or that future contact must be in writing. They may also be told that future correspondence will be read and filed, but only acknowledged or responded to if the service user provides significant new information relating to the complaint.

8.7 Deciding to Restrict a Service User's Contact

- 8.7.1 Any SLCC staff that experience aggressive or abusive behaviour directly from a service user have the authority to deal immediately with that behaviour in a manner they consider appropriate to the situation and in line with this Policy.
- 8.7.2 With the exception of such immediate decisions taken at the time of an incident, decisions to restrict contact with the SLCC are only taken after careful consideration of the situation by the line manager.
- 8.7.3 Wherever possible, the SLCC gives a service user the opportunity to modify their behaviour or their actions before a decision is taken by issuing an initial warning letter advising the user of the terms of this policy and the fact it may be invoked.
- 8.7.4 Service users are told in writing why a decision has been made to restrict future contact, the restricted contact arrangements and, if relevant, the length of time that these restrictions will be in place.

8.8 Appealing a Decision to Restrict Contact

- 8.8.1 A service user can appeal a decision to restrict contact. A manager who was not involved in the original decision will consider the appeal. They will advise the service user in writing if the restricted contact arrangements still apply or whether a different course of action has been decided

8.9 Recording and Reviewing a Decision to Restrict Contact

- 8.9.1 We record all incidents of unacceptable actions by service users. Where it is decided to restrict a service user's contact, an entry noting this is made in the relevant file. It is also recorded in the SLCC's Unacceptable Actions Register.
- 8.9.2 A decision to restrict a service user's contact may be reconsidered if the service user demonstrates a more acceptable approach.
- 8.9.3 The SLCC reviews the status of all service users with restricted contact arrangements on a regular basis.