

# SLCC update report on the Law Society of Scotland's response to our recommendations

## Introduction

The Scottish Legal Complaints Commission's (**SLCC**) oversight function forms a core part of the regulatory system for legal services in Scotland. We provide independent oversight of the complaints and redress system of the Law Society of Scotland (**LSS**).

Our aim is to ensure the LSS runs a well functioning conduct complaint handling process. By analysing trends in complaint handling we aim to drive improvement and ultimately to promote public confidence in the regulation of legal services.

Under Section 36 of the 2007 Act, if we identify trends in conduct complaint handling, we can give guidance to the LSS on the timescales within which it should complete its conduct complaint investigations. We can also make recommendations about its procedures for, and methods of dealing with conduct complaints.

## Identification of trends across handling complaints

Both the person who makes a complaint and the solicitor complained about can make a handling complaint about how the LSS dealt with the conduct complaint investigation. As part of our handling investigation we review the time taken by the LSS to complete its investigation.

The LSS's published target timescale for completing conduct complaint investigations changed to "about 12 months" in February 2020. Between 2020 and 2022 we identified that LSS conduct investigations were routinely taking longer than "about 12 months".

## Analysis of conduct complaint investigation timescales

To understand if the trends identified in handling investigations were representative of conduct complaint investigations overall, we analysed 295 conduct complaint investigations open at 31 March 2022. To supplement our analysis of open conduct complaint investigations, we then analysed data on 497 conduct complaint investigations closed between 1 July 2020 and 30 June 2022, the SLCC's last two operating years. We shared reports with the LSS in June 2022 and February 2023.

Based on our analysis of the data, we concluded that the trend we have seen across handling complaints is broadly reflective of the timescale of conduct investigations overall. This is of concern due to the multiple risks associated with delay in the investigation of conduct complaints. For example;

- public protection issues associated with solicitors continuing to practice whilst under investigation
- complainers conclude their complaint is not being taken seriously, which may impact public confidence in the complaints process
- a negative impact on the effectiveness of administration and decision making
- a negative impact on the confidence of the legal profession that disciplinary matters are dealt with effectively and swiftly.

The LSS provided an interim response to our analysis of its open conduct complaint investigation timescales in August 2022, pending approval of its plans and budget. The LSS recognised the impact delays can have on the parties involved and confirmed its commitment to reduce the time taken to report on complaints.

In a more detailed response, dated 23 November 2022, the LSS recognised there have been longstanding issues in relation to investigation timescales. The LSS notified us of approval for increased resourcing for the department of regulation. Improvements already made to the number of live cases and timescales at distinct stages of the complaints process were highlighted. We welcomed this improvement as a positive step forward. The LSS acknowledged that most delay occurs at the recommendation stage of the process and as a result committed to focus its improvement work on specific areas.

In March 2023 we published our [final report](#), including our finding that the majority of complaint investigations take longer than the LSS's published average timescale of about 12 months to complete. We made three statutory recommendations to mitigate the risks associated with delay in the investigation of conduct complaints. The LSS responded to each of these recommendations in a letter dated 28 April 2023.

## Statutory recommendations

### **Set a realistic and achievable target timescale for the completion of conduct investigations as a key performance indicator (KPI)**

The LSS consider it already has a measure in place to meet this recommendation. Its target for 2022-23 is that the median age of complaints will be under 380 days, which correlates with its current published target timescale of about 12 months. This tells us that half of complaints will be completed in under 380 days. The LSS believe this a realistic and achievable target based on its internal data.

We found that 30% of closed complaints were dealt with in 12 months or less, and the median time for the completion of investigations was 14.4 months. However, in 25% of complaints the investigations took longer than 20 months to complete.

The LSS have reported they were close to achieving their target in quarter 1 of this operational year, which is reassuring. The LSS informed us measures are reviewed annually and new measures set for the next operational year from May/June. We believe the LSS should aim to set a more ambitious target for the coming operational year, to ensure the majority of complaints are completed within its published target timescale of about 12 months. With the commitment of additional resource and the planned improvements, we expect a further reduction in the KPI will be possible.

### **Improve the transparency of communications with both complainers and solicitors on the timescales for the completion of investigations and on the progress of investigations**

Whilst carrying out handling investigations, and as a result of complainers contacting the SLCC, we identified complainers are not always given realistic timescales at the start of an investigation, and updates are not always proactively or regularly provided. We highlighted the need to improve the transparency of these communications and to better manage the expectations of both parties.

In its response to our final report, the LSS explained parties now receive a routine update at least every 8 weeks during the investigation stage of the process. When a complaint reaches the recommendation stage (report writing), reporters notify parties and confirm they will provide an update in 12 weeks if they are not able to complete the report within that time frame. The template for subsequent updates encourages the reporter to set a realistic indicative timescale from that point.

The LSS confirmed it will review the information it provides about timescales on its website and in its initial letter to parties. We welcome the improvements already made by the LSS to communications about timescales and the progress of investigations. We anticipate that as timescales improve this will be reflected in a reduction in the number of weeks between updates, in the timescales given in the initial letter to parties, and published on the LSS's website.

Going forward, we expect to see updates provided at the agreed time, parties routinely kept up to date on what will happen next, and when they should next expect to hear from the LSS. Where changes have been necessary, for example to the date

of the committee considering a complaint, we expect to see this communicated to both parties timeously.

The LSS's commitment to review the information provided on its website will ensure the information published reflects its internal KPI, is transparent, and understandable by the public.

### **Create a plan of action to achieve the new key performance indicator detailing how and when the improvements outlined in the LSS's response to our reports will be achieved**

In its response to our final report, the LSS shared an action plan with indicative timescales which reflects the proposed areas for improvement set out in its letter of 23 November 2022.

We welcome the plan provided and note the timescales set, which all fall within the LSS's current operating year (Nov 22-Oct 23). It is vital these improvements are prioritised and resourced in order to set a more ambitious KPI and ensure the action plan delivers an improvement to investigation timescales.

### **Next steps**

We will monitor the progress of the LSS against the statutory recommendations at our quarterly meetings and when undertaking handling complaint investigations.

In March 2024, and each subsequent year until the recommendations are fully met, we would plan to publish update reports on the progress LSS has made. To engage and support LSS we will in November 2023 (and each subsequent November) seek a formal written update on progress, initially against its action plan for 2022-23 and then against subsequent action plans, as part of an annual cycle of assurance.

With each update we will ask for evidence of work undertaken, any challenges with resources or competing priorities, and when the LSS predict the recommendations will be fully met. We will ask for evidence of the oversight applied by the Regulatory Committee to this work.

If there is no evidence of substantial progress, we may consider making further recommendations to assist the LSS and ensure the risks associated with delay, as set out above, are minimised.

### **Regulation of Legal Services (Scotland) Bill**

In its response, the LSS highlight the challenge of conducting its work effectively under the current framework and note a lack of reform in relation to complaints remitted to them for investigation, in the current Bill.

The LSS maintain that efficient and effective complaints handling is a priority, but some of the improvements planned for this year may need to be revised as resources are invested in contributing to and improving the Bill.

In the interests of improving the whole complaints system we would welcome improvements to the Bill in relation to the investigation of conduct complaints. However, these are not currently included in the Bill as drafted and there is a risk that meaningful amendments may not be achieved.

There is an opportunity in the meantime to improve the timescale of investigations over the next two years, to the benefit of both the public who make complaints and the solicitors complained about. Whatever the outcome of the Bill this will leave the LSS, the public and profession, in a stronger position moving forward.