CH037 COMPLAINTS LEVY POLICY FROM 01 JULY 2019

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1 Introduction

1.1 The Scottish Legal Complaints Commission (“the SLCC”) has the power to impose complaints levies on upheld complaints under Section 28 of the Legal Profession and legal Aid (Scotland) Act 2007 (“the 2007 Act”).

1.2 The SLCC has the power to make rules under Section 32 of the 2007 Act as to its practice and procedure, and the SLCC has made such rules, “the Rules of the Scottish Legal Complaints Commission” (otherwise “the Rules”) which include provisions on the Complaints Levy.

1.3 The SLCC has made this Complaints Levy Policy to which the 2007 Act and the Rules apply.

1.4 This Policy applies to the fixing of complaints levies by the Determination Committee on upholding or partly upholding a complaint to the SLCC under Section 9(1) of the 2007 Act.

1.5 This Policy applies to complaints upheld, in terms of paragraph 1.4 above, on and after 1 July 2019. The tariff below applies regardless of when the complaint was received by the SLCC.

2 Charging the Complaints Levy

1.1 In deciding the amount of the Complaints Levy (otherwise “the levy”) the Committee should also direct to whom the levy should be charged – a firm or an individual.

1.2 The due date for payment of the levy is set out in the Rules. For complaints received by the SLCC on or after 1 January 2015 the levy must be paid within 28 days after the sum is demanded. For complaints received by the Commission prior to 1 January 2015 the levy must be paid within 21 days after the sum is demanded.

1.3 When the levy is paid a receipt must be issued.

1.4 If the levy is not paid by the due date, interest may become payable. The rate of interest is 4% above Bank of England base rate on the working day following the due date.

1.5 The amount of interest is calculated on the following basis:

\[ I = P \times R \times \left( \frac{N}{365} \right) \]

where:
- I is amount of interest
- P is the amount of the levy
- R is the annual rate of interest
- N is the number of whole or part days from the day following the due date, to the day cleared funds are received by the SLCC.

3 The Complaints Levy Tariff and Guidance

3.1 The following tariff and guidance applicable to it shall apply to the application of the complaints levy, or to any waiver of all or part of that levy, by the Determination Committee for complaints made to the SLCC which have been upheld or partly upheld.

3.2 It is intended that the guidance applicable to the tariff below will be clear and maintain consistency in decision making when waiving part of the levy, subject to the discretion under the 2007 Act, the Rules and the Policy which is accorded to the Determination Committee.
<table>
<thead>
<tr>
<th>The Complaints Levy</th>
<th>Guidance for fixing the Complaints Levy</th>
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<tbody>
<tr>
<td>£5,000 (the “Full Complaints Levy”)</td>
<td>This applies when a complaint is upheld or partly upheld by the Determination Committee.</td>
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<tr>
<td>£3,000 (the “Reduced Complaints Levy”)</td>
<td>The Determination Committee may reduce the Full Complaints Levy to the amount of the Reduced Complaints Levy when, in the Committee’s judgement the practitioner has complied completely or substantially (a matter to be decided at the sole discretion of the Committee) with good practice in complaint handling and in its dealings with the SLCC. In forming a view on such compliance the Committee will take into account the following:-</td>
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<td>(i) Whether the practitioner followed its own complaints handling policy/procedures and timescales and adhered to accepted best practice including the SLCC best practice guide;</td>
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<td></td>
<td>(ii) 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:</td>
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<td>(iii) 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;</td>
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<td>(iv) Whether the practitioner openly accepted any failure in their service and offered a reasonable settlement;</td>
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<td>(v) 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:</td>
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<td>(vi) Any other failings the Committee identified in the internal handling of the complaint and in dealings with the SLCC:</td>
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<tr>
<td>£1,000 (the “Nominal Complaints Levy”)</td>
<td>Where the Inadequate Professional Service is considered by the Committee to be very minor, as reflected by the awards or directions made under Section 10(2) of the 2007 Act the Committee may reduce the Full Complaints Levy to the Nominal Complaints Levy if the Committee is satisfied that the practitioner would otherwise qualify for the Reduced Complaints Levy.</td>
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Further Guidance applicable to the fixing of complaints levies

3.3 Where the Inadequate Professional Service is, in the judgement of the Committee, substantial and/or the awards and/or directions made by the Committee under Section 10(2) of the 2007 Act are high or substantial, the Committee may decide to impose the Full Complaints Levy regardless of whether or not the practitioner might otherwise have qualified for the Reduced Complaints Levy in terms of the foregoing criteria.

3.4 In deciding whether to fix the Reduced Complaints Levy or the Nominal Complaints Levy the Committee may have regard to any complaints made against the practitioner which were upheld by the Committee in the previous two years and may, having done so, fix the Complaints levy at one of the above two higher rates within the tariff.

3.5 The Committee may decide not to take the past record of a practitioner into account under the foregoing provision where the practitioner’s business has been taken over or merged with another
entity for example where a failing practice has been bought over/rescued by another practice, but any such decision shall be at the discretion of the Committee.

3.6 Although normally the Committee should, in fixing the Complaints Levy follow the terms of the tariff and guidance provided above, the Committee may, if it decides that there are exceptional circumstances waive all or a proportion of the Full, Reduced or Nominal Complaints Levy.

4 Previous SLCC Complaints Policy

4.1 The previous CH037 Complaints Levy Policy is revoked from 1 July 2019, from and after which this Complaints Levy Policy shall apply.

5 Appeals

5.1 If there is an appeal against the Section 9(1) Determination made by the Determination Committee then no interest is payable on the Complaints Levy until the outcome of the appeal is decided by the Court.

5.2 If the appeal is not upheld by the Court, then interest is payable from the original date the levy was due.