

CH037 COMPLAINTS LEVY POLICY FROM 01 DECEMBER 2023

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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 (“the 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 December 2023. The tariff below applies regardless of when the complaint was received by the SLCC.

2 Charging the Complaints Levy

- 2.1 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.
- 2.2 The due date for payment of the levy is set out in the Rules.
- 2.3 When the levy is paid a receipt must be issued.
- 2.4 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.
- 2.5 The amount of interest is calculated on the following basis:

$I = P \times R \times (N/365)$ where:

I is the 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 Committee for complaints made to the SLCC which have been upheld or partly upheld.
- 3.2 The complaints levy is £7000. This was set under Section 28 of 2007 Act from 01 July 2023.
- 3.3 The Act states the complaints levy must be paid by the practitioner when a complaint is upheld or partly upheld. The purpose of the complaints levy is for the practitioner that generated the complaint to contribute to the cost of the SLCC handling the complaint (a ‘polluter pays’ approach), so the full cost does not fall on the profession at large.

- 3.4 Recognising the impact of the full complaints levy on a single practitioner versus the cost being shared across the profession, the Committee may decide to waive part of the complaints levy charged to the practitioner. This rewards positive behaviours that reduce the cost of complaints for the whole sector (and conversely penalises practitioners that add to the total cost of complaints).
- 3.5 In waiving part of the complaints levy charged to the practitioner, the Committee is taking a decision which passes a greater part of the cost of complaints onto the profession in general.
- 3.6 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 Committee.

Tariff and levy charged	Complaint circumstances	Waiver applied
Full, non-compliance rate (£7000)	The practitioner has not complied with a request for information from the SLCC made under section 17 of the 2007 Act.	None
Compliance rate (£5000)	The practitioner has complied with any request for information from the SLCC made under section 17 of 2007 Act (i.e. has submitted the required information by the deadline set out in the request or, where applicable, by any further deadline agreed with the SLCC).	£2000 waiver for compliance with request for information
Good complaint handling rate (£3000)	In addition to the above waiver for compliance with requests for information, the Committee considers that the practitioner has complied completely or substantially with good practice in complaint handling and in its dealings with the SLCC.	£2000 waiver for good complaint handling
Minor IPS rate (£1000)	In addition to the above waivers for compliance with requests for information and with good practice in complaint handling and in its dealings with the SLCC, the Committee considers the Inadequate Professional Service (IPS) to be very minor, as reflected by the awards or directions made under Section 10(2) of the 2007 Act.	£2000 waiver for minor IPS

- 3.7 In forming a view on whether a practitioner has complied completely or substantially with good practice in complaint handling and in its dealings with the SLCC, the Committee will take into account the following:
- (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
 - (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, including the timely delivery of requested files
 - (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

- (iv) Whether the practitioner openly accepted any failure in their service and offered a reasonable and timely settlement
- (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
- (vi) Any other failings the Committee identified in the internal handling of the complaint and in dealings with the SLCC.

3.8 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 Complaints Levy at its discretion.

4 Updates to the SLCC Complaints Levy Policy

4.1 The CH037 Complaints Levy Policy was last reviewed and updated by the SLCC Board in July 2023. This current version 03.00 is effective from 01 December 2023. This policy is next due for review in December 2026.

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.