

scottish legal complaints commission slcc

SLCC COMPLAINTS PROCESS

policy & procedure manual

DISCLAIMER

See inside for disclaimer and information about how this document is used.

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The following represents our general processes.

From time to time we will test ways to improve the service which may lead to variations.

Always speak to SLCC staff for information specific to your complaint.

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:

ACA – Association of Commercial Attorneys
The Act - the Legal Profession and Legal Aid (Scotland) Act 2007
Board – the SLCC Board of Members
CI – Case Investigator
CIM – Case Investigations Manager
CM – Clerking Manager
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
Conduct element – an aspect of the complaint, event or incident that, if upheld, could amount to UPC or PM
CRM – Client Relations Manager
CS – Clerking Secretariat
CSO – Case Support Officer
DCM – Determination Committee Meeting
DOR – Director of Resolution
DPO – Data Protection Officer
DPP – Director of Public Policy
FA – Faculty of Advocates
FVTWM – Frivolous, Vexatious, Totally Without Merit
IMT – Investigation Management Team
I**nvestigation** – 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
IPS – inadequate professional service
IR – Investigation Report
ISM – Investigation Support Manager
LSS – the Law Society of Scotland
Newpro – the SLCC's document and case management system

PM – professional misconduct
QA – Quality Assurance
RDC – Remote Determination Committee
RPO – Relevant Professional Organisation
SAR – Subject Access Request
Service element – an aspect of the complaint that if upheld, could amount to IPS
SMT – Senior Management Team
Third party complaint – a complaint made by a party who was not a client of the firm or practitioner complained about
UPC – unsatisfactory professional conduct

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 can be found via the following link:

Scheme of Delegation | Scottish Legal Complaints Commission

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 Corresponding 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 5 working days.

2.3.3 The SLCC will send written correspondence to parties by email only, unless that party has stated that they do not wish to receive communication by email.

2.3.4 When sending letters or emails the SLCC will always provide a timescale in which the parties can expect to hear further from us. We will also set a timescale for when we expect to hear back from parties.

2.3.5 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. The criteria for considering extension requests are set out under section 3.4 of this manual.

2.3.6 When responding to emails received from parties, the SLCC will send a new email through Newpro instead of replying to the email directly in Outlook. This is done for data protection and confidentiality reasons. It also ensures that the Newpro case file is kept up-to-date and only one copy of each email is retained on the file (instead of multiple copies in an email chain). This also enables our staff, managers and Board Members to more easily locate correspondence on Newpro and reduces unnecessary duplication when files are prepared for transfer to an RPO or reviewed as part of an SAR or FOI request.

2.3.7 When writing to parties to the complaint or speaking to them the SLCC will address individuals formally i.e. Mr, Mrs, Ms, Dr etc.

2.3.8 When writing to other stakeholders, the SLCC will address individuals formally. However, the SLCC may also use first names where that person is known to us and it is appropriate to do so.

2.3.9 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.

2.3.10 The SLCC will provide translation or interpreting where needed. This can be provided where requested by the service user or offered by the SLCC where we consider it would be helpful. We can provide translated copies of our Complaint Form, decision documents and correspondence. We can also provide interpretation services when talking to service users.

2.3.11 Requests for these services should be discussed with the IMT accessibility lead (f/w a manager) in the first instance and a quote for services obtained from our current provider before proceeding.

2.3.12 Our 'How to make a complaint about a lawyer' leaflet is available in other languages and published on the Accessibility section of our website. If other versions are obtained they should be passed to the IMT accessibility lead to be added to the website.

2.4 Extension requests

2.4.1 Where a request is received from a service user for additional time to respond to the SLCC, the following criteria should **always** be considered:

- Are reasonable adjustments required for his service user?
  For example, if we are aware of a disability which would mean the service user should be allowed more time to provide information this should be given careful consideration.

- Have previous requests been made or is this the first request?
  If an extension has already been provided, we should carefully consider whether it is fair to the other party to continue to provide extensions. We should be aware of the cumulative delay caused by a small number of extensions.

- It is reasonable to expect that if firms have to contact practitioners who are no longer at the firm, or retrieve files or information from some time ago (i.e. if the instruction is not ongoing), this will require some time. We should however remember that the firm will likely have been aware of the complaint at first tier already.

- For solicitors and firms, compliance with our requested timescales is a general regulatory expectation. It should be an exception that they require additional time to respond to a request for information.

2.4.2 When granting extensions, we should make clear the reason for that and that we then expect this will be complied with.

2.4.3 Other considerations when considering an extension request from a service user:

- General 'pressure of work' (upcoming Court dates for example) would not in itself be considered a reason to allow an extension, nor would foreseeable things such as staff holidays. These are part of day-to-day business and firms should have processes in place to cover these. We can however take into account the circumstance relating to the particular firm. If they are a sole practitioner then, whilst they should have cover arrangements in place it may be reasonable to still allow more latitude in terms of time if they explain the impact on their business.

- Consideration should be given to how onerous it would be to comply with our request. For example, providing a full response to a lengthy complaint may reasonably require more than the standard 21 days. Providing a file or specific document in relation to an ongoing complaint should not usually require additional time.

2.4.4 If the relevant criteria set out in section 2.4.1 are satisfied, then an initial 7-day extension can be allowed to a service user to provide the requested information or response to the SLCC. In order to grant more than 7 days, or a second extension, this must be signed off by the Area Lead and specific reasons should be provided by the service user making the request.

2.5 Authority to deal with complaints

2.5.1 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 (such as a representative) to discuss the complaint with the SLCC or deal with the matter on their behalf.

2.5.2 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.

2.5.3 Once the SLCC is satisfied that sufficient authority has been established, the SLCC will determine whether the representative is making the complaint on behalf of the complainer (effectively becoming the complainer as set out under section 3.2.5 of this manual) or whether they are acting only as their representative in corresponding with the SLCC.

2.5.4 Where the representative is deemed to be making the complaint on behalf of the complainer, the SLCC will communicate only with the representative. This means the SLCC will send all correspondence, including Notices, to only the representative.

2.5.5 Where the named person is deemed to be acting only as the complainer's representative in corresponding with the SLCC (not becoming a party to the complaint themselves), the SLCC will communicate primarily with the representative. However, the complainer may also be either copied into correspondence or contacted separately, where deemed appropriate by the SLCC. It will be the responsibility of the complainer to advise the SLCC directly if and when they are no longer being represented by that individual.

2.5.6 Similarly, where a practitioner has instructed someone else to deal with the complaint on their behalf, the SLCC will communicate primarily with their named representative. However, the practitioner may also be either copied into correspondence or contacted separately, where deemed appropriate by the SLCC. It remains the practitioner's responsibility to advise the SLCC directly if and when they are no longer being represented.

2.6 Correspondence from MPs and MSPs

2.6.1 In accordance with section 10 and Schedule 1, Part 2, paragraph 23 of the Data Protection Act 2018, 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).

2.6.2 There may be occasions when we receive a letter from an MP or MSP where we would still wish to obtain written permission from the data subject, 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.

2.6.3 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.

2.6.4 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).

2.7 Correspondence with prisoners

2.7.1 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.

2.7.2 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.

2.7.3 All correspondence with prisoners must be treated as privileged and the actions set out below followed.

2.7.4 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.

2.7.5 All correspondence must be double-enveloped by the member of staff sending the correspondence before it is posted. The inner envelope should contain the correspondence to the prisoner, and 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

2.7.6 The inner envelope is sealed and placed in an outer A4 envelope. No paper clips or staples should be used. The 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. This should be addressed to Governor of the Prison and normal address. No other markings needed on outer envelope.

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

2.7.8 Exceptional circumstances

2.7.9 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.

2.7.10 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.

2.7.11 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.

2.7.12 **Email to prisoners**: There is no provision within the 2011 Rules which allows a prisoner to send or receive electronic communications.

2.7.13 **Breaches by the prison**: 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 Director of Resolution. Where the SLCC identifies a beach 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 (SPS) Headquarters. Complaints to the SPS must be made via the CEO.

2.8 Correspondence with patients in state hospital, Carstairs

2.8.1 Persons detained in the State Hospital are patients and not considered prisoners. The only exception to this is for prisoners transferred from prisons to the State Hospital for treatment who are referred to as prisoners.

2.8.2 Mail from the SLCC to patients in the State Hospital can be addressed and posted to them directly. Accordingly, the special processes set out above concerning mail sent by the SLCC to prisoners do not apply and should not be followed.

2.8.3 The word “patient” should follow the name of the recipient on the address part of the envelope. The SLCC’s stamp should be marked on the envelope which should also be marked “private and confidential”.

2.8.4 The State Hospital has informed the SLCC that staff there may as an exception open mail if they hold legitimate concerns and, for patients who are considered ‘restricted’ a psychiatrist may open the patient’s mail. However, if the SLCC marking is shown on the face of the envelope as above specified, this will be taken into account by the State Hospital in the exercise of any such process.

2.8.5 The address of the State Hospital is as follows:

The State Hospital,
Lampits Road
Carstairs,
Lanark,
ML11 8RP

2.9 Jurisdiction – extent of SLCC’s jurisdiction

2.9.1 Conduct complaints

2.9.2 The SLCC has jurisdiction to deal with conduct complaints against ‘practitioners’ (as defined in section 46 of the 2007 Act) other than a firm of

solicitors or an incorporated practice. This includes 'registered foreign lawyers' who are on the register of foreign lawyers kept by the LSS. Such registered foreign lawyers include those entitled to practice in any jurisdiction out with Scotland.

2.9.3 The conduct complained of can have taken place anywhere in the world.

2.9.4 If the conduct complained of concerns a registered foreign lawyer in Scotland but relates, for example, to a property transaction in England, some different considerations may apply.

2.9.5 CIs should seek advice from a CIM should they receive a complaint regarding a registered foreign lawyer.

2.9.6 Services complaints

2.9.7 In deciding whether the SLCC has jurisdiction in respect of a services complaint, the starting point is to consider (1) whether the subject of the complaint is a 'practitioner' as defined in section 46 of the 2007 Act and (2) whether the complaint suggests that the professional services provided by the practitioner were inadequate (section 2(1)(b) of the 2007 Act).

2.9.8 In respect of part (1) above, and in the case of multi-national practices, the SLCC is entitled to consider complaints relating to firms which have at least one solicitor falling under the definition of 'practitioner' who is providing professional services that such a practitioner would provide when acting in that capacity.

2.9.9 This means that provided the professional services are those provided in the course of practising as a solicitor, the SLCC can look at service complaints even where the legal work relates to matters outside Scotland. However, the SLCC's jurisdiction is limited to the extent that, in England and Wales for example, there are reserved legal activities which may only lawfully be carried out by solicitors admitted to practice in that jurisdiction (and also not by foreign lawyers, whether registered or not).

2.9.10 For England and Wales, the reserved areas of law are as set out in the Legal Services Act 2007. Section 12 provides the meaning of "reserved legal activity" as:

(a) the exercise of a right of audience;
(b) the conduct of litigation;
(c) reserved instrument activities;
(d) probate activities;
(e) notarial activities;
(f) the administration of oaths.

2.9.11 Schedule 2 of the Act makes provision about what constitutes each of those activities. A link to Schedule 2 is found here:

https://www.legislation.gov.uk/ukpga/2007/29/schedule/2

2.9.12 “Reserved instrument activities” includes preparing a contract for the disposition of land, making an application or lodging a document for registration under the Land Registration Act 2002 and “preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales” (although this excludes Wills and Powers of Attorney).

2.9.13 “Probate activities” include obtaining a grant of probate.

2.9.14 The SLCC would therefore be entitled to decline jurisdiction in respect of a services complaint concerning reserved legal activities carried out in England and Wales. This is on the basis that it does not concern professional services provided in the course of practising as a ‘solicitor’ or registered foreign lawyer, and is not therefore a services complaint in terms of section 2 of the 2007 Act.

2.9.15 Direction of complaint to complaints bodies in other jurisdictions

2.9.16 In some circumstances, even where the SLCC has jurisdiction, if a complaints body in another jurisdiction also has jurisdiction to deal with it, it may be a more appropriate body to handle the complaint. In these circumstances, the CI should discuss the matter with a CIM to decide on the best approach.

2.10 Conflict of interest within complaints

2.10.1 The SLCC recognises the importance of identifying, as early as possible, a situation in which there may be the potential for a conflict of interest. It is possible complaints will be submitted about SLCC employees or former employees; current or past members of the SLCC board; members of the SLCC legal panel; or relating to other relationships the SLCC or its employees may have with one of the complaint parties.

2.10.2 A conflict of interests should be considered as being present where it is thought the relationship concerned with the complaint party could impact their judgement, decisions or actions in relation to the complaint. For example, where a board member or SLCC legal panel firm is named as the party being complained about.

2.10.3 All SLCC employees and board members are required to act in accordance with the law and the public trust placed in them. They have a duty to act in the interests of the SLCC and in accordance with the SLCC's core functions. Members must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest. SLCC employees are also expected to declare any interest that may conflict with their duties and are required to complete an annual conflicts disclosure declaration.

2.10.4 The SLCC is the sole point of contact for all complaints against lawyers in Scotland. On this basis the SLCC is required to decide all complaints which are submitted to it. The legislation does not allow for delegation to any other

organisation or decision maker. On this basis, the parliament has decided the SLCC is never conflicted in such a way as to prohibit it being required by law to make a decision on matters submitted.

2.10.5 Therefore, should a conflict of interests be identified by the SLCC with a complaint received, the SLCC must still consider this complaint. However, the SLCC should in these cases, as far as possible, put in place arrangements to minimise the potential perception of a conflict. Such arrangements may include:

- The selection of specific employees or SLCC board members to undertake work and decisions on the basis of the least possible perception of bias. Specifically:
  - upon identification of a potential conflict with an existing SLCC board member, a clear alert should be placed on the complaint file stating this matter should not be referred to that board member for any decision during the process;
  - upon identification of a potential conflict with a legal panel firm, this firm should not be selected should any legal advice in relation to the complaint be required;
  - upon identification of a potential conflict with an SLCC employee and/or an SLCC employee's personal interests/relationships, this employee should not have any involvement in the process for that complaint where this can be avoided.
- Having senior employees providing additional oversight or quality assurance of work throughout the complaints process where deemed appropriate.
- Additional legal advice being procured by the executive or member to support legal reasoning where deemed appropriate.
- The seeking of additional viewpoints to inform the decision of the decision maker where this is felt to be required to ensure impartiality.
- The provision of training to all SLCC staff to increase awareness around potential conflicts of interest and how to recognise these.

2.10.6 In the interests of full transparency, if a potential conflict with an SLCC board member or SLCC legal panel firm is identified, this must always be notified to the complainer via the eligibility allocation letter. The firm/practitioner being complained about should also be notified in a situation where the complainer was a legal panel firm or an SLCC board member. The eligibility allocation letter templates prompt these checks to be carried out by the CI and provide the relevant wording to be used.

2.11 Artificial Intelligence (AI)

2.11.1 The SLCC recognise that the use of artificial intelligence (AI tools) is becoming increasingly common. When used thoughtfully, AI can improve efficiency and

enhance clarity. We therefore have a positive approach to the responsible use of AI and recognise it can be a valuable resource for service users.

2.11.2 Transparency is important to the SLCC and if the use of AI is suspected we may ask for clarification or request that its use be acknowledged. This is not to discourage the use of AI, but to allow us to ensure accuracy, and provide us with a clear understanding of what has happened.

2.11.3 The SLCC does not use AI for decision making purposes and if this changes we would need to advise all parties. We have a separate policy which can support you around AI.

3 Eligibility

3.0 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 must be submitted in writing. The SLCC will ask for complaints to be submitted on a completed SLCC online, emailed or paper Complaint Form.

3.2 Eligible persons

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 on behalf of another individual, the SLCC may check that authority has been received from the person affected, 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, so long as said parent has parental rights and responsibilities in respect of the child.

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.

3.2.17 Joint complaints

3.2.18 If a complaint is submitted 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.

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

3.2.20 The SLCC will be alert to other potential parties to the complaint not named in it (for example, in a complaint about a joint property purchase where only one purchaser is named). 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.

3.2.21 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.

3.2.22 Complaints on behalf of someone who is deceased

3.2.23 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.

3.2.24 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.

3.2.25 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).

3.2.26 A copy of the Complaint / 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 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

3.2.27 Where a CSO or CI considers it might not be appropriate to share the complaint details 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 9 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 or firm, either as a formal complaint or in such a way that the practitioner or firmwould have known the substance of the complaint; and
- Whether the practitioner or firm has been given a reasonable opportunity to address the 'substance' of the complaint submitted to the SLCC . A reasonable opportunity is defined in Rule 9(2) as at least four weeks.

3.3.4 The SLCC may accept a complaint which is premature where it appears that due to the matters complained about, resolution is either unlikely or it would be inappropriate for the complaint to be resolved.

3.3.5 The substance of the complaint

3.3.6 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.

3.3.7 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.

3.3.8 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. 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.

3.3.9 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.

3.3.10 Reasonable opportunity

3.3.11 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.

3.3.12 In terms of Rule 9(1)(b), 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.

3.3.13 Other issues which require to be considered will include:

- Whether the practitioner or firm 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.

3.3.14 Rejecting a complaint as premature

3.3.15 The rejection notice letter to the complainer should advise why the complaint is deemed premature.

3.3.16 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.

3.3.17 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.

3.3.18 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.

3.3.19 In addition, the SLCC decision maker may:

- 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.

- Send the finalised notice letters and ensure that the complaint file has been closed.

3.3.20 Accepting a premature complaint

3.3.21 The reasons for accepting a premature complaint will be recorded in a file note.

3.3.22 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 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.
- 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
- No realistic prospect of resolution.
- Matters complained about are not appropriate for resolution.

3.3.23 Reopening a closed premature complaint

3.3.24 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.

3.3.25 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.

3.3.26 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.

3.3.27 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 issued by the decision maker.

3.4 Assessing the eligibility of complaints

3.4.1 Initial steps

3.4.2 Prior to allocation to a CI, a complaint may be assessed as part of a triage process by the ISM in order to identify complaints which are clearly frivolous, vexatious or totally without merit, or which are clearly time barred. Complaints identified through this process as being clearly ineligible for investigation are presented to a Board Member with a recommendation that the complaint is rejected in order for the Board Member to make a decision on this. Where the decision is taken that a complaint is to be rejected, a determination will be issued to all parties providing the reasons for this determination.

3.4.3 Any complaints where a Board Member does not agree that a complaint is to be rejected following the process in 3.4.2 above, will then be allocated to a CI.

3.4.4 Prior to allocation to a CI, where a complaint relates to a firm which is no longer trading (for example due to having gone into administration), the SLCC may triage such complaints to establish whether the eligibility process can be progressed more quickly. This would include, in consultation with an appropriate representative of the former firm, such as the former Client Relations Manager allowing for the eligibility determination to be made without sharing the details of the issues of complaint with a representative of the former firm. If adopting this process, the SLCC will still produce a full Eligibility Decision Letterwhich will be sent to the appropriate representative of the former firm.

3.4.5 The initial assessment of the complaint will include a check to ensure that any named practitioners are correctly identified. Where necessary, up-to-date contact details for each named practitioner or CRM should be obtained from LSS. Where it is necessary to seek this information (for instance, where the

practitioner is no longer on the roll or their details do not appear on the LSS's "find a solicitor" page), the CSO / CI will need to advise the LSS Registrar team by email to registrar@lawscot.org.uk:

- Confirming the SLCC has received a formal complaint in relation to the individual with the case reference number;
- Confirming that they cannot locate the individual on "find a solicitor"; and
- Uniquely identifying the solicitor by providing as many of the following identifiers as the SLCC have:

    - Full name including any previous names if applicable
    - Date of birth
    - Last known employer
    - Role at last known employer
    - Any other relevant information

3.4.6 Once satisfied that they can uniquely identify the individual, the Registrar team will respond to the SLCC by email to:

- Share the work contact details including postal address, business email address and business telephone number if they have them.
- Only if they do not have the above, share the home contact details including postal address and personal email address but not personal home/mobile number even if they have it.
- If they have neither of the above, confirm that they have no current contact details.

3.4.7 The information obtained from LSS may only be used for the purpose of enabling the SLCC to communicate in relation to the complaint and for no other purpose.

3.4.8 In the event the LSS have been unable to provide contact details for a practitioner, the CI should speak to the Eligibility area lead to discuss how to proceed.

3.4.9 Sharing of the Complaint

3.4.10 When a new complaint has been accepted by the SLCC a copy of the complaint will be sent to the Client Relations Manager of the firm, and any named practitioners by email.

3.4.11 This email will also briefly explain our eligibility process and offer them the opportunity to provide information in response to the complaint if they wish to do so.

3.4.12 Allocation of Complaint to a CI

3.4.13 Initial checks

3.4.14 The CI should check the complaint is directed against the correct practitioner(s) and firm or legal entity. Examples of situations where this can be an issue include: where a firm has ceased trading or has been taken over by another firm; where a partnership has incorporated; where a local agent has been instructed; and where there are more than one firm or practitioner with a very similar name. The CI should check which firm and practitioner the complaint 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 or practitioners involved.

3.4.15 If the complaint is about a former firm that has ceased trading this should be detailed in the Eligibility Decision Letter.

3.4.16 Potential for resolution

3.4.17 Upon being allocated a new complaint, a CI will consider the most appropriate way in which to progress the complaint.

3.4.18 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.

3.4.19 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. If the CI considers there is a possible public interest reason to proceed with a complaint this should be discussed with the DPP before facilitating resolution between the parties.

3.4.20 Initial views

3.4.21 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.

3.4.22 Preliminary Decision Letters (PDL)

3.4.23 Where the CI identifies that it is clear from the information provided that the complaint appears to be eligible for investigation, the CI may intimate to the practitioner/firm complained of a Preliminary Decision Letter (PDL).

3.4.24 A PDL should indicate why the CI has reached the view that the complaint is likely to be accepted as eligible for investigation. The PDL should provide the practitioner/firm with an opportunity to either attempt to resolve the complaint, or to provide information which could alter the view that the complaint is eligible for investigation.

3.4.25 If no response to a PDL is received, the CI will issue an Eligibility Decision Report confirming that the complaint is to be investigated and advising the parties of the fact they can appeal this decision.

3.5 Eligibility Assessment

3.5.1 Consideration of the Complaint

3.5.2 The CI should consider the whole complaint from the documents available, which will usually be the Complaint Form, any supporting documents, the complaint made to the firm, and their response. There may also be additional comments/information provided by the firm in response to the initial email/letter issued to them by CSOs.

3.5.3 Clarification of the Complaint

3.5.4 The CI should decide if they need to contact the parties for further clarification of the complaint or to manage the expectations of a complainer if our complaints process cannot provide what they have stated they are seeking. If this is needed it should be done in the most appropriate and efficient manner.

3.5.5 Eligibility is a quick sift and complaints that are not premature, time barred, vexatious, or totally without merit should proceed to investigation. Cases that require further information will proceed to investigation.

3.5.6 Relevant practitioners

3.5.7 If conduct elements are identified the relevant practitioner(s) should be named in each individual aspect. Should any additional practitioner be identified at this stage against which a conduct complaint has been raised, a copy of the complaint and an opportunity to provide a response should be provided to them.

3.5.8 In circumstances where a complaint/elements of a complaint relate to the actions/inaction of an unqualified member of staff, consideration should be given to whether:

(1) the allegation concerns the overall service provided by the firm, in which case only the firm should be named; OR

(2) the allegation is of such seriousness, it should be directed against both the solicitor with responsibility for the supervision of the matter/member of staff and the firm.

3.5.9 In (2) above, the complaint should refer to the practitioner, in their capacity as supervising solicitor and/or [the firm].

3.5.10 A general allegation of failure to supervise an unqualified member of staff should be treated separately and raised against the relevant practitioner.

Reference should be made to the specific aspects of the complaint which highlight the alleged failure.

3.5.11 Additional complaints raised at eligibility

3.5.12 If a complainer wishes to add additional points to an existing complaint prior to the Eligibility Decision Letter being issued, there is no need for the complainer to complete a new Complaint Form if it relates to the same matter.

3.5.13 The CI should also consider whether or not the new issue may be premature. Decisions about prematurity must be made by the relevant decision maker.

3.5.14 The SLCC will apply the date of receipt of the new element(s) of complaint when assessing whether or not it has been received within the SLCC's time limits.

3.5.15 If the points raised relate to a completely separate matter a new Complaint Form will be requested to be completed and a separate complaint file opened.

3.5.16 Complaints alleging criminal behaviour

3.5.17 The SLCC can consider complaints in which the complainer alleges that the practitioner has committed a criminal offence. However, the Eligibility Decision Letter will be drafted as normal detailing the 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 Eligibility Decision Letter.

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

3.5.19 Complaints about deceased practitioners

3.5.20 The SLCC cannot consider a complaint about a practitioner who is deceased. In such complaints the practitioner should not be named in the Eligibility Decision Letter and the position should be explained to the complainer.

3.5.21 The SLCC can still consider a service complaint in relation to the firm and/or any other practitioners named. This includes complaints against an incorporated practice where it has been wound up (see section 46(1)(e) of the Act).

3.5.22 If the complaint is a service complaint about a firm that was a sole practitioner who is now deceased, the SLCC will be unable to serve notice of the complaint and the complaint must also be rejected.

3.5.23 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.

3.5.24 Potential compliance/recovery issues

3.5.25 CSOs/CIs will be alive to any potential compliance or recovery issues and raise these with the complainer as appropriate. Examples include complaints about a firm that has ceased trading, entered into administration or been liquidated, and complaints 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 or firm even if their complaint is upheld. This is to allow the complainer to make an informed decision about proceeding with the complaint.

3.6 Categorisation

3.6.1 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.*

3.6.2 Definition of conduct complaints

3.6.3 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.*

3.6.4 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).

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

3.6.6 Unsatisfactory Professional Conduct and Professional Misconduct

3.6.7 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.

3.6.8 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.

3.6.9 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."*

3.6.10 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.

3.6.11 Professional Standards of Conduct

3.6.12 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
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.	

3.6.13 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
Guide to the Professional Conduct of Advocates, sixth edition	July 2018
Guide to the Professional Conduct of Advocates, seventh edition	October 2019

3.6.14 Definition of service complaints

3.6.15 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".

3.6.16 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.

3.6.17 Inadequate professional services (IPS)

3.6.18 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.

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

3.6.20 Professional Standards of Service

3.6.21 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).	

3.6.22 The FOA published Service Standards for Advocates for the first time in August 2019. For the purposes of determining whether a complaint could amount to IPS for advocates the SLCC will have regard to these Service Standards.

3.6.23 Complaints concerning both service and conduct issues

3.6.24 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.

3.6.25 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

3.6.26 Third-party IPS complaints

3.6.27 The SLCC's Board has determined that:

3.6.28 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.

3.6.29 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).

3.6.30 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.

3.6.31 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.

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

3.6.33 Complaints against independent qualified conveyancing practitioners and executry practitioners

3.6.34 The eligibility assessment will consider:

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

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

3.7 Time limits

3.7.1 Powers

3.7.2 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.

3.7.3 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.

3.7.4 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.

3.7.5 IPS that pre-dates January 1989

3.7.6 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.

3.7.7 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.

3.7.8 Time bar rules

3.7.9 The particular rules which should be applied to a complaint depend on the date the SLCC receives the complaint.

- 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 2015 (amended August 2015).
- Complaints received from 1 April 2017 until 31 March 2023 should be assessed under the SLCC's Rules 2016 (amended December 2016).
- Complaints received from 1 April 2023 should be assessed under the SLCC's Rules 2023.

3.7.10 <u>From 1 April 2023</u>

3.7.11 A complaint is made when it is submitted in writing and registered as received by the Commission.

3.7.12 A complaint will only be accepted if made within the following timescales:

- A conduct complaint will not be accepted if, in the opinion of the Commission, the complaint is made more than 3 years after the date of the conduct or conviction complained of.
- A services complaint (other than a complaint made by a third party complainer) will not be accepted if, in the opinion of the Commission, the complaint is made more than 3 years after the date on which the services ended.
- A services complaint made by a third party complainer will not be accepted if, in the opinion of the Commission, the complaint is made more than 3 years after the date of the specific act or omission complained of.

3.7.13 In determining whether the period of 3 years has elapsed, the Commission will disregard any time during which the complainer was, in the opinion of the Commission, excusably unaware:

- in the case of a conduct complaint, of the conduct or conviction complained about;
- in the case of a services complaint, of the inadequacy of the professional services complained about.

3.7.14 The Commission may accept a complaint that has not been made within the time limits specified above if, in the opinion of the Commission:

- there are exceptional reasons why the complaint was not made sooner; or
- the matters complained about, or the circumstances in which it is made, are exceptional.

3.7.15 A complaint will not be accepted where, in the opinion of the Commission, the substance of the complaint has been the subject of a prior complaint which has been rejected by the Commission on the basis that it is time barred.

3.7.16 The time bar test

3.7.17 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.

3.7.18 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, or are there exceptional circumstances relating to the nature of the complaint?

3.7.19 Applying the time bar test

3.7.20 For the purposes of the test, the date on which the services ended is the last date, in the opinion of the Commission, on which the practitioner or firm undertook work (whether paid or unpaid) for the client on the matter or transaction in connection with which the services complained about were provided. For example, if the complaint only concerns 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

3.7.21 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.

3.7.22 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.

3.7.23 The SLCC may view part of a complaint as time barred. An example of this is where some of the complaint relates to an entirely separate business matter and the service in respect of that matter concluded more than three years before the complaint was received.

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

3.7.25 Any complaints in which a CI is recommending any part of that complaint is time barred must be referred to a Commissioner for a member decision.

3.7.26 Exceptional reasons and exceptional circumstances

3.7.27 <u>Exceptional reasons</u>

3.7.28 There is no specific definition of exceptional. What is exceptional is a matter of judgement for the SLCC.

3.7.29 Exceptional reasons for not making the 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 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.

3.7.30 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.
- 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, 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).

3.7.31 <u>Exceptional circumstances</u>

3.7.32 Exceptional circumstances relating to the matters complained about or the circumstances in which it is made might include concerns of such seriousness that in the SLCC's view they should be investigated. This might also include situations where it is in the public interest for the complaint to be investigated even though it has not been made within the time limit, for example where there are allegations of serious financial transgression.

3.7.33 Time bar comments

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

3.7.35 The complainer 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 and / or whether there are exceptional reasons that prevented them from submitting the complaint earlier.

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

3.7.37 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).

3.8 Frivolous, vexatious and totally without merit

3.8.1 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.

3.8.2 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.

3.8.3 Although CIs should consider the service aspects of a complaint as a whole it is still possible to identify elements of the complaint which are accepted for investigation and elements which are not.

3.8.4 Focus on the complaint

3.8.5 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.

3.8.6 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 raising the same concerns, 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.

3.8.7 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.

3.8.8 Totally Without Merit complaints

3.8.9 Totally Without Merit complaints are just that – the concern raised when considered as a whole is totally without merit and not worthy of investigation.

3.8.10 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
- if investigated and proved, the complaint 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. concerns raised 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.

3.8.11 Applying the FVTWM test

3.8.12 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).

3.8.13 The test must be applied to decide whether any aspect of the complaint meets 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.

3.8.14 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.

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

3.8.16 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.

3.8.17 Any complaints in which a CI is recommending any part of that complaint is totally without merit must be referred to a Commissioner for a member decision.

3.8.18 Frivolous complaints

3.8.19 Frivolous complaints may have broadly the same characteristics as Totally Without Merit complaints, but in addition, 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

3.8.20 Any complaints in which a CI is recommending any part of that complaint is frivolous must be referred to a Commissioner for a member decision.

3.8.21 Vexatious complaints

3.8.22 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.

3.8.23 Any complaints in which a CI is recommending any part of that complaint is vexatious must be referred to a Commissioner for a member decision.

3.9 Preparing the eligibility decision

3.9.1 The CI will prepare a draft Eligibility Decision Letter setting out the SLCC's determination of the eligibility 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 the complaint, time limits and whether the complaint is FVTWM.

3.9.2 In preparing the section relating to time bar, the CI should make reference to any time bar comments received and what evidence or information was taken into account. The draft decision should confirm that:

- The comments received did not alter their original view and the relevant aspects of the complaint are considered to be time barred; or
- The comments received did alter their original view and it is no longer considered that aspects of the complaint are time barred; or
- The comments received did not alter their original view that aspects of the complaint were made outside 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 are exceptional reasons which prevented the complaint from being submitted earlier.

3.9.3 In considering the complaint, in line with the wholeistic approach, it should only be split into a service complaint and a conduct complaint if there are elements of both, rather than into individual aspects or concerns.

3.9.4 The CI should identify a few examples of what may represent breaches of the Service Standards and/or Conduct Rules.

3.9.5 If part of the complaint is to be rejected as frivolous, vexatious or totally without merit, this should be detailed separately in the appendix, after the details of the eligible complaint. This should set out the part(s) of the complaint which are not eligible and the reasons they are frivolous, vexatious or totally without merit.

3.10 Quality Assurance

3.10.1 CIs must ensure they have QA of their Eligibility Decision Letter completed as per the QA process and their assigned QA level.

3.10.2 Issuing the Eligibility Decision Letter (EDL)

3.10.3 **Service only complaints** – EDLs and a copy of the complaint should be issued to the complainer and CRM.

3.10.4 **Conduct only complaint** – EDLs and a copy of the complaint should be issued to the complainer, named practitioner(s) and a copy to the CRM. A copy should then be sent to the RPO, together with a copy of the complaint (including any enclosures provided by the complainer) and any further correspondence/SLCC call notes required to clarify the complaint.

3.10.5 **Mixed service and conduct complaints** – Following liaison with the RPO, EDLs and a copy of the complaint should be sent to the complainer, CRM and any named practitioner(s).

3.10.6 Once the eligibility assessment has been completed the CI should update Newpro with the examples of any potential breaches of the Service Standards/Conduct Rules identified.

4 Mediation

4.1.1 Mediation will be offered at this stage for all complaints against solicitor firms unless the CI who undertook the eligibility assessment decides this would be inappropriate. However, mediation can only address and settle the service issues of complaints and conduct issues will have been remitted to the Relevant Professional Organisation (RPO) for investigation.

4.1.2 Mediation will not be offered for hybrid complaints relating to advocates where the RPO is the Faculty of Advocates.

4.1.3 Mediation may also be offered at the Investigation stage or at any time.

4.1.4 Mediation offers will be made to both parties. While we offer the parties the choice of mediation by video call (using Zoom), or by telephone, as the most convenient methods, we can also arrange a mediation in person if that is preferred by both parties. These options are made clear in the mediation offers.

4.1.5 Since mediation is voluntary, if either party declines the offer, or we do not hear from one or both of the parties by the deadline for a response, mediation will not take place and the complaint will be moved to the next stage of the process (investigation).

4.1.6 Further details of the mediation process can be found at the mediation section of the SLCC website:
Mediation | Scottish Legal Complaints Commission

5 Investigation

5.1.1 The SLCC investigation of a services complaint commences when the complaint is passed to Investigation from Eligibility, Mediation or the RPO. The first step is to request from the firm complained about their response to the complaint and their file(s). The SLCC may request this is provided in a specific format (e.g. in digital format). Complainers may also be asked for further information at this stage. The complaint will be allocated to a CI once the firm has responded, or any matters arising from the request for information or files are dealt with (see further section 7.9below).

5.1 Investigation planning upon allocation

5.1.2 Once allocate, the CI will decide on the most appropriate approach to use in investigating the complaint, depending on the nature and detail of the case. This will be either:

a) To send parties an Initial View Letter setting out the CIs initial thoughts on the complaint
b) To proceed with an Investigation Report setting out formal recommendations.

5.1.3 Potential compliance/recovery issues

5.1.4 CIs will be alive to any potential compliance or recovery issues and raise these with the complainer as appropriate. Examples include complaints about a firm that has ceased trading, entered into administration or been liquidated, and complaints 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 or firm even if their complaint is upheld. This is to allow the complainer to make an informed decision about proceeding with the complaint.

5.2 Initial view 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 AllocationLetter or to proceed with an Initial View Letter.

5.3 The investigation report

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 setting out their recommendations and a proposed settlement.

5.3.2 CIs should be guided by the information provided in the Eligibility Decision Letter (EDL) as to what the service complaint contains. This should not be considered exhaustive though as the whole complaint can be found in the information contained in the complaint form and accompanying documentation.

5.3.3 CIs should avoid dividing the complaint out into specific issues. Where necessary for clarity, the CI may, at the beginning of the investigation, identify the different matters being considered as part of the complaint. These should be kept relatively wide to ensure the whole complaint can be considered.

5.3.4 When writing the Investigation Report, CIs should address the concerns raised by the complainer in considering whether the service in relation to these areas represents IPS. It is not necessary for CIs to address every aspect of the complaint in detail and consider if specific aspects are 'upheld' or 'not upheld'. The focus should be on the overall service in terms of the concerns of the complainer and whether it represents IPS.

5.3.5 The final Investigation Report should state whether there are any aspects of the complaint which represent the firm having provided an IPS to the client (and in relation to third party complaints whether that third party is directly affected by any IPS). If this is the case CIs should then set out what redress is appropriate to resolve the complaint.

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

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

5.3.8 Third Party Investigation Report

5.3.9 The Investigation Report to be sent to the firm should be prepared in the usual way.

5.3.10 The CI must then consider if there are any confidential matters within the Investigation Report which the complainer should not see, for example, where there are matters confidential to the practitioner's own client. If there are matters of confidentiality then either a redacted copy of the Investigation Report should be issued to the complainer. It should be made clear within the Investigation Report what the CI has decided to do and why.

5.4 Quality Assurance

5.4.1 CIs must ensure they have QA of their Investigation Report completed as per the QA process and their assigned QA level.

5.5 Sending out the investigation report

5.5.1 The Investigation Report should be issued to the parties with the cover letter template.

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

5.5.3 The CI will provide the timescale for a response to parties. 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 there is no prospect of a resolution being agreed, 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 to DCchecklist (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.
Case studies | Scottish Legal Complaints Commission

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. However, in as much as possible, a recommendation to reduce fees should be accompanied by a rationale or logical basis which provides an explanation for the proposed reduction in the fees. 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:

5.7.59 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.

5.7.60 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.

5.7.61 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.

5.7.62 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.

5.7.63 A complainer may suffer quantifiable loss that is not a direct expense. 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;
- losing out on interest on capital; or

- losing out on rental payments.

5.7.64 In seeking to assess the amount of such quantifiable loss, the SLCC must be satisfied that there is evidence available sufficient to support the loss. Where the evidence supports quantifiable loss within a range, but it is not possible for the SLCC to calculate a precise amount of quantifiable loss arising from the IPS, it may still be appropriate for the SLCC to select what in its judgement is the most appropriate and reasonable amount of compensation capable of being supported by the available evidence, rather than consider that the loss is not quantifiable.

5.7.65 Where the SLCC considers that there is insufficient evidence to support an award of quantifiable loss, then it should not make such an award.

5.7.66 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.

5.7.67 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.

5.7.68 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.

5.7.69 Loss of opportunity

5.7.70 A complainer may suffer quantifiable loss that is not a direct expense but the financial impact of loss of opportunity. Loss of opportunity although part of quantifiable loss is distinct from it, and when it arises is assessed and calculated differently. The SLCC must still be satisfied that the loss of opportunity was the direct consequence of IPS and would not have been incurred but for the IPS.

5.7.71 Loss of opportunity may only be said to arise in one of the following two situations:

i. Where the IPS has caused the complainer to lose a right e.g. the right to raise or pursue a court action, a property right (ownership/tenancy), or a legal status, or some other right; or
ii. Where lack of information to the complainer is due to a failure of advice (IPS) by the practitioner which deprives the complainer of information they might have used to secure an economic benefit.

5.7.72 For loss of opportunity to arise:

i. It should be established on the 'balance of probabilities' that the complainer would have taken action to obtain the benefit or avoid the loss;
ii. Where the right to raise or pursue a claim against another party is due to the IPS, there is no obligation to show that the complainer would have actually succeeded in that claim;

iii. It requires to be established that the lost right or economic benefit had an ascertainable, measurable, and non-negligible value.

5.7.73 The assessment of value of the loss of opportunity will differ in relation to either loss of a right under sub paragraph (i) of paragraph 5.7.71 above or in relation to failure of advice under sub paragraph (ii) of that paragraph. In either case where loss of opportunity does arise the SLCC should assess the value of the loss based on the available evidence and give consideration to applying a percentage to the value of the lost right or economic benefit provided that value is ascertainable, measurable and non-negligible.

5.7.74 Where the lost right relates to the right to raise or pursue a court action the SLCC should assess the value of the claim in respect of the right, the hypothetical prospects of success in the litigation which cannot now be raised or pursued due to the IPS including the lost possibilities of a compromise settlement with the third party. For example, if such value is established at £30,000 and the hypothetical prospects of success or lost possibility of a compromise agreement is 40% (both to be assessed by the SLCC) then the value of the loss of opportunity would be £30,000 x 40% = £12,000. Other lost rights would be assessed in the same way.

5.7.75 The assessment of the loss of economic benefit due to failure of advice depends on the hypothetical action of a third party, that is, what would the chance be that such other party would have agreed to the value established under sub paragraph (iii) of 5.7.72 above. Using the same example, if such value was established at £30,000 and the assessed hypothetical chance of the other party having agreed to this is 40% (both to be assessed by the SLCC) then the value of the loss of opportunity would be £30,000 x 40% = £12,000. The hypothetical chance requires to be a real and substantive chance as opposed to a merely speculative one.

5.7.76 Any SLCC recommendation or decision about loss of opportunity requires to be based upon the available evidence.

5.7.77 If the above criteria for loss of opportunity are not met then any quantifiable loss will be assessed only on the basis of the criteria applicable to quantifiable loss.

5.7.78 Non-quantifiable loss

5.7.79 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.

5.7.80 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.

5.7.81 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.

5.7.82 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?

5.7.83 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.

5.7.84 The SLCC should avoid making an award of non-quantifiable loss simply because there is insufficient evidence available to support an award of quantifiable loss.

5.7.85 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	£0 - £250
Band B	limited effect and duration	£250 - £1,200

	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	
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	£1,200 - £2,500
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	£2,500 - £5,000

5.7.86 Set-Off

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

5.7.88 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.

5.7.89 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.

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

5.7.91 Proposing the settlement

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

5.7.93 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.

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

5.7.95 Settlement payments should normally be paid directly by the practitioner to the complainer or the person/party the complainer instructs. Solicitors should be informed that payment should be made within 14 days. The complainer should be informed that if they have not received payment within 28 days they should advise the SLCC. Exceptionally, the SLCC will receive the payment from the practitioner and forward it on to the complainer. If such a request is received this should be discussed with the CIM in charge of the relevant work area, failing which CIM line manager.

5.7.96 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.

5.7.97 Monitoring and enforcement

5.7.98 The SLCC will monitor compliance with all settlements, agreed at investigation stage. Responsibility for monitoring compliance lies with the CI responsible for making or communicating the terms of the settlement.

5.7.99 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.

5.8 New concerns raised at investigation stage

5.8.1 This section sets out the SLCC policy and process where additional aspects of complaint are identified after the eligibility decision has been made and the complaint has reached the investigation stage.

5.8.2 The CI should consider if the new concern could reasonably be considered to fall within the remit of the existing complaint.

5.8.3 If the CI is uncertain, they should discuss this with their line manager or a CIM.

5.8.4 If the concern does not appear to fall within the remit of the original complaint clarification should be sought from the complainer to establish if they wish to pursue this aspect.

5.8.5 Service concerns

5.8.6 **Pre-report** - If a new service concern is raised or identified at the investigation stage, and could reasonably be encompassed under the existing complaint, it can be considered in the Investigation Report. The CI is only required to notify the firm if they consider the firm have not previously been notified and offered the opportunity to respond to the point raised.

5.8.7 If a new service concern is raised or identified, which does not fall within the remit of the original complaint, the firm should be notified of the additional concern and allowed an appropriate amount of time to respond.

5.8.8 Once the firm have provided a response, or the timescale allocated for response has elapsed, the CI can continue with the investigation process as normal.

5.8.9 **Post-report but prior to Determination Committee** – If a new concern is identified or raised after the Investigation Report has been issued, but it could reasonably be encompassed under the existing complaint, the firm should be offered an opportunity to respond to any points raised. A supplementary report should then be prepared.

5.8.10 Conduct concerns (excluding concerns categorised as B1.17 Duty to co-operate with the SLCC)

5.8.11 If a new conduct concern is raised or identified the complainer should be directed to raise a new complaint if they wish to pursue this. Prematurity must be satisfied, and the complainer should raise their concerns directly with the firm in the first instance if this has not previously been done.

5.8.12 The complaint should be suspended on Newpro whilst the eligibility process is completed.

5.8.13 If the new complaint is determined during the eligibility process to not be eligible for investigation, or is determined to be a conduct complaint only, the investigation of the original complaint can then proceed.

5.8.14 Conduct concerns (concerns categorised as B1.17 Duty to co-operate with the SLCC)

5.8.15 Generally, if aspects of the complaint are identified which will be categorised as B1.17 (such as a failure to provide the file at S17, or a failure to pay the agreed settlement), a new complaint is not required to be raised for these concerns.

5.8.16 Instead the complaint should be passed back to eligibility and a new EDL will be produced on the same complaint which specifically relates to these aspects.

5.9 If a time bar issue arises

5.9.1 If, during the investigation the CI becomes aware that the complaint may be time barred, this should be considered in line with the provisions of Section 9A of the Legal Profession and Legal Aid (Scotland) Act 2007. The CI should indicate to the parties that they consider the complaint may now be time barred, and invite comments from the parties, within 7 days, including whether they are of the view that there are any exceptional reasons or circumstances in the complaint proceeding if it has not been made in time.

5.9.2 Once parties have had the opportunity to make comments, the SLCC will make a decision in relation to whether the complaint is time barred. This will include the CI making a recommendation to a Board Member where appropriate in accordance with the Scheme of Delegation.

6 Determination

6.1 Transferring the complaint to a Determination Committee (DC)

6.1.1 Upon receipt of confirmation from either or both parties to a complaint that the settlement proposed at Investigation is not accepted, the CI will:

- Write to both parties to advise that the complaint is to be considered by a DC in no less than 21 days and invite any further comments from the parties.

- Refer the complaint to be considered by a DC.

6.2 Consideration by a Determination Committee

6.2.1 Case papers will be made available by the CI for the DC to access remotely.

6.2.2 DC members will each make and advise their decisions on each complaint to the Clerking Manager.

6.2.3 If any DC member wishes to discuss any aspect of the complaint and/or the decisions to be taken, a conference call of the DC members will be organised. Any decisions taken will be recorded by the manager present. Alternatively, any DC member may instruct that a Determination Committee Meeting (DCM) take place.

6.2.4 If the CI considers that the complaint should be considered by a DCM the CI will, instead of making the case papers available for the DC in terms of 6.2.1 above, inform the Clerking Manager who will arrange for the complaint to be considered by a DCM.

6.2.5 The DCM will be supported by a Committee Clerk.

6.2.6 The Clerk shall prepare the case papers for the DCM, attend its meeting, and record the decisions made by it.

6.2.7 DC Members will consider all relevant papers associated with the complaint and consider afresh whether or not there has been any IPS. Members will also consider afresh the sanctions and disposal in respect of the complaint contained in the recommendation. Members may reach a different view from that in the recommendation.

6.2.8 Where IPS is identifiedthe DC may adjust the proposed sanctions and disposal, for example by increasing or decreasing the compensation for actual loss and/or for inconvenience and distress or by making additional directions in relation to fees or other relevant matters.

6.2.9 In reaching decisions, the DC will be guided by the matters set out above in the Remedies section. Settlements awarded must be based on the remedies available under section 10 of the Act and the SLCC's rules.

6.2.10 Once a decision is reached by the DC on the complaint, the terms of the decision will be communicated to the parties within 14 days of the decision being reached.

6.2.11 If, before the DC makes its decision on the complaint, the CI is informed that parties are willing to settle the complaint, it shall be passed back to the CI to action and to close the case if settlement is reached.

6.3 Oral hearings

6.3.1 A decision on whether an oral hearing is to be held, following a request for such a hearing made by either or both parties to a complaint, shall be taken at a DCM.

6.3.2 Following such a request, the procedure to be followed shall be that set out in the Oral Hearings Policy and Procedure.

6.3.3 The DC will give its reasons for its decision to hold or not to hold an oral hearing, either in a separate decision notice or in the notice of its decision on the complaint.

6.3.4 Where a DC declines to grant an oral hearing it may go on to consider the merits of and make its decision on 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 Oral Hearings Policy and Procedure.

6.4 Complaints levy

6.4.1 Where a DCconsiders there has been IPS, 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.

6.5 Referral of conduct issues to the RPO

6.5.1 The letters accompanying any decision on the complaint will clearly set out whether the complaint is closed or whether any eligible conduct complaintsare to be referred to the RPO for consideration. The RPO and the SLCC Oversight team will be notified of the DC decision.

6.5.2 Where conduct issues are to be referred then the files are to be sent to the RPO as soon as practicable.

6.6 Legal aid

6.6.1 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 a concerncategorised as service at the outset is reasonably likely to be conduct instead, the SLCC will take action to refer those aspectsto 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 aspectsto 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 concerns raised by the complainer arestraightforward 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 relevant aspect(s) of complaint 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/aspects of the complaint 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 Cases will be automatically suspended:

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

7.3 Eligibility & Mediation

7.3.1 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.

7.3.2 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.

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

7.4 Investigation

7.4.1 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.

7.4.2 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.

7.5 Withdrawing and reinstating complaints

7.5.1 For the purposes of this section “complaint” includes the whole complaint or any specific aspect ofthe complaint.

7.5.2 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.

7.5.3 The SLCC will generally accept requests from complainers to withdraw a complaint at any stage of the complaints process.

7.5.4 If the complainer wishes to withdraw a complaint that contains eligible conduct complaints, the conduct elementsmust still be passed to the RPO for consideration. The RPO will be advised of a complainer's request to withdraw a conduct complaint, but the final decision rests with the RPO.

7.6 Process – Request to withdraw

7.6.1 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.

7.6.2 In joint complaints, the CI must be satisfied that both complainers want to withdraw the complaint. They should be satisfied that the information on file supports withdrawing.

7.6.3 The CI must write to:

- both parties confirming the decision.
- the RPO, if the complaint also contains conductelements, advising that the service aspect has been withdrawn and enclosing a copy of the SLCC's file for their consideration.

7.7 Process – Non-cooperation

7.7.1 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 discontinued after following the steps set out below.

7.7.2 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.

7.7.3 The CI should have made attempts to contact the complainer via at least two different methods if such details are available. For example attempting contact by both email and by telephone, or by both email and by post.

7.7.4 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 discontinued letter.

7.7.5 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

7.7.6 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 being discontinued.

7.7.7 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 conductelements, confirming that the SLCC has treated the service aspect of the complaint as discontinued due to non-cooperation and enclosing the SLCC's file for their consideration of the conductcomplaint(s).

7.8 Reinstatement

7.8.1 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.

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

7.8.3 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.

7.8.4 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

7.8.5 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.

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

7.9 Requesting information and documentation

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

7.9.2 Practitioner

7.9.3 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 of the Act for information required for the investigation of the complaint to be provided within a period of 21 days. The SLCC may request this information be provided in a specific format (e.g. in digital format).

7.9.4 Upon receipt of the information, the complaint will be allocated to a CI.

7.9.5 If the information requested is not produced then a 7 day warning letter will be sent explaining that any further failure to respond will result in action being taken to recover the information by instructing solicitors to act for the SLCC in raising proceedings in the Court of Session.

7.9.6 If no response is received to the above two requests within the requested timeframe, the SLCC mayimmediately proceed to instruct solicitors to raise proceedings on its behalf for recovery of the information and files. At the same time the SLCC will proceed to ask the Complainer if they wish to add a conduct complaintagainst the Practitioner / Client Relations Manager about this failure/delay unless there are specific reasons not to.

7.9.7 If the complainer does wish to raise a conduct complaint the case will be allocated to a CI who will follow the process to add an additional issue of complaint.

7.9.8 The SLCC will be alive to the difference and challenges in seeking information in relation to third party complaints; however a complete failure to respond to **Error! Reference source not found.** and 0 will result in the same action under 7.9.6.

7.9.9 The s17 work must proceed simultaneously to any conduct complaintbeing added.

7.9.10 If court action is to be taken, the SLCC will issue a letter to the complainer 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 the SLCC will be in touch within the next six weeks.

7.9.11 Complainer

7.9.12 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.

7.9.13 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.

7.10 Section 19 – third parties

7.10.1 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.

7.10.2 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.

7.10.3 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.

7.11 When a complainer dies

7.11.1 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.

7.11.2 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.

7.11.3 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.

7.11.4 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.

7.11.5 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.

7.11.6 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.

7.11.7 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.

7.11.8 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.

7.11.9 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).

If there are conduct issues the conduct aspect of the complaint should be passed to the RPO if appropriate.

7.12 Simultaneous investigation

7.12.1 Where a complaint has been categorised as hybrid (meaning it contains both issues to be investigated as service by the SLCC and issues to be investigated as conduct by the RPO) and either:

- the firm/practitioner holds no files for the matter; or
- the firm/practitioner has provided very limited papers which can easily be scanned; or
- the files have been provided by the firm/practitioner in digital format

7.12.2 The SLCC and RPO will liaise in order to agree whether the complaint should be investigated simultaneously.

7.12.3 To proceed with a simultaneous investigation, the SLCC or RPO will share the relevant information with the other organisation to allow both investigations to commence. The investigations will proceed separately and be subject to their own usual process and procedure thereafter.

7.13 Recordings (video and/or audio) as evidence

7.13.1 Recording made with the consent of all parties recorded are admissible as evidence, if relevant. Covert recordings, that is those made without the consent of one or more parties present, will be considered on a case-by-case basis.

7.13.2 Whilst the SLCC does not wish to encourage the practice of non-consensual recordings, equally the rules of the SLCC (Rule 3) require it to consider what it is fair to admit, and what is relevant to the complaint. In doing so, the SLCC may decide in cases that covert recordings are not fair or relevant, and in such circumstances they will form no part of any decision-making on the issues stated in the summary of complaint.

7.13.3 However, the SLCC may also consider there are factors which make the admission of the evidence relevant. In undertaking this consideration, the SLCC may take account of the reliability of the evidence and the need for any evidence from which a conclusion is drawn to be transparent to parties. It may also consider the seriousness of the allegation the evidence relates to, matters of public interest, the context the recording was made in, and/or the availability of other evidence on the matter.

8 Compliments and complaints made about the SLCC policy and process

This section sets out the policy and process for dealing with complaints about the SLCC's service and conduct of its staff, including Board Members. We refer to these types of complaints as "service delivery complaints" (SDCs).

This section also sets out how we record compliments about our staff and Board Members.

8.1 Definition of a complaint

8.1.1 A complaint for the purposes of this document is any expression of dissatisfaction with any or all of the;

- service provided by the SLCC or a named member of staff;
- SLCC's policies or processes;
- conduct of a named member of staff or Board Member;
- Complaints about the merits and/or outcome of a legal complaint are not covered by this policy/process. Separate guidance is available for those who are unhappy with a decision (Appeal a decision | Scottish Legal Complaints Commission)

8.2 Policy

8.2.1 Complaints

8.2.2 The SLCC will:

i. record and monitor all complaints made about the service it provides and its staff (set out in 8.3 below);
ii. deal promptly and fairly with all such complaints;
iii. ensure that, where issues relate to personal actions, those complained about have an opportunity to respond to allegations made about them;
iv. be open and honest in its responses to service users;
v. learn from complaints made and review and change policies and procedures as appropriate.

8.2.3 Compliments

8.2.4 The SLCC will record all compliments/expressions of thanks it receives and monitor them to identify where there is specific good practice that can inform improvements to policies, procedures and behaviours.

8.2.5 MSPs & MPs

8.2.6 All SDCs from MSP/MPs will be copied to the Chief Executive Officer (CEO).

8.2.7 Records and reporting

8.2.8 The main record of complaints and compliments are held centrally by the Director of Resolution (DoR).

8.2.9 The SLCC keeps a record of all complaints made about service and the outcome of each complaint. We publish statistical information relating to these complaints each year in our Annual Report. We may refer to any compliments received in our internal and external publications.

8.2.10 It is the personal responsibility of every member of staff and every Board Member to follow the policy and procedures set out in this section. Failure to do so may result in disciplinary action.

8.3 Complaints guidance

8.3.1 In respect of this section a complainer is anyone who wishes to complain about the SLCC's service. This includes complaints regarding:

- The service received from the SLCC;
- Our policies and processes;
- The conduct of a specific member of staff.

8.3.2 Complaints about the merits and/outcome of a complaint about a legal practitioner are not covered by this process. The Service Delivery Complaint process is not an alternative way of appealing a decision.

8.4 Complaints process

8.4.1 General

8.4.2 Generally, Service Delivery Complaints should initially be responded to be a member of our Investigation Management Team (IMT) and a review should be dealt with by a member of our Senior Management Team (SMT). However, no one will deal with a complaint about themselves.

8.4.3 Generally, the CEO should only be asked to be involved if the complaint has been initially dealt with by the DoR or where the complaint is about a Board Member.

8.4.4 The DoR should monitor trends in SDCs. Lessons from complaints received, and any recommendations made, should be fed back to the area/person concerned via the relevant line manager, so that remedial action can be taken quickly.

8.4.5 Records of recommendations made and management comment on those, including actions taken or proposed, should be maintained and tracked on the SDC spreadsheet.

8.4.6 Process

8.4.7 If a complaint is received by phone, an attempt may be made to resolve it during the conversation. A note should be made on the case file of what the complainer was dissatisfied with, what was done to resolve it and what the outcome was.

8.4.8 If the complainer remains unhappy and wishes to complain further, they should be asked to submit the interactive Service Delivery Complaint form on our website. Alternatively, we should request they put their complaint in writing (if possible), addressed to the DoR.

8.4.9 If there are reasons why the complaint cannot be made in writing, for example due to a disability, the staff member should offer to take a note of the details of the complaint. They should ensure the notes are read back to the complainer to agree that they are an accurate reflection of their concerns. The note should then be forwarded to the DoR.

8.4.10 Receipt of a Service Delivery Complaint

8.4.11 Service Delivery Complaints can be received by telephone, email, post or through the interactive form on our website Service Delivery Complaint Form | Scottish Legal Complaints Commission.

8.4.12 If a complaint is received by email/letter, the complaint should immediately be referred to the DoR (failing which the CEO), who should review the complaint and ask Admin to open an SDC file on Newpro.

8.4.13 A Service Delivery Complaint should be acknowledged by the SLCC within 7 days.

8.4.14 The DoR will ask a manager to deal with the SDC and respond to the complainer. The SLCC should aim to provide a full reply within 14 days of us receiving and SDC. If we are going to take longer than 14 days we should contact the complainer to let them know.

8.4.15 If a complaint is received about a specific person's conduct, they will be told that the complaint has been made. They can be asked for comments, but they will not be involved in looking into the complaint.

8.4.16 If we think the complaint is justified, we will apologise and explain how we will address the problem. Where relevant, we will also explain how we plan to make sure the mistake does not happen again.

8.4.17 Review of a Service Delivery Complaint

8.4.18 If a complainer considers the SDC process failed to consider some information or got something factually incorrect, then they can ask for the decision to be

reviewed. A senior manager should review the concerns raised and provide a written response within 28 days.

8.4.19 Complaints about our Chief Executive Officer (CEO)

8.4.20 Complaints about our CEO should be dealt with by one of our Board Members. A complainer wishing to raise a complaint of this nature should title their letter or email '**Service Delivery Complaint'** and send it to the Secretary to the Board (boardsecretary@scottishlegalcomplaints.org.uk).

8.4.21 If the complainer remains unhappy with the Board Member's response, they can ask that their complaint is reviewed again. This review should be by the Chair of the Board, who may ask someone external to the SLCC to carry out an investigation.

8.4.22 Complaints about Board Members

8.4.23 If a complainer has a complaint about a Board Member they should write to our CEO at Neil.Stevenson@scottishlegalcomplaints.org.uk, who will review their complaint and decide what the appropriate next steps are. Our CEO should then contact the service user to advise what action he intends to take next.

8.4.24 If the service user is not satisfied with the CEO's response and believes a Board Member has breached the Code of Conduct: Members' Code of Conduct | Scottish Legal Complaints Commission, they can complain to the Commissioner for Ethical Standards in Public Life in Scotland: Make a Complaint - Overview.

8.5 Compliments and thanks

8.5.1 All compliments and thanks should be sent to the DoR who will log them in the spreadsheet. Compliments can be in any form including;

- Letters
- Emails
- Cards
- Telephone calls (forward the note of the call)

8.5.2 Compliments will be reviewed to identify trends and/or good practice and reported back to the relevant area(s).

9 Unacceptable action from service users

9.1 Aims

9.1.1 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.

9.1.2 This section sets out the approach of the SLCC to the relatively few occasions we consider people's actions to be unacceptable

9.1.3 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.

9.2 What is unacceptable?

9.2.1 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.

9.2.2 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.

9.2.3 The SLCC has grouped these actions under three broad headings; aggressive or abusive behaviour, unreasonable demands and unreasonable persistence.

9.3 Aggressive or abusive behaviour

9.3.1 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.

9.3.2 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.

9.4 Unreasonable demands

9.4.1 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.

9.4.2 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.

9.4.3 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.

9.5 Unreasonable persistence

9.5.1 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.

9.5.2 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.

9.5.3 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.

9.6 Managing unacceptable actions

9.6.1 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, 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.

9.6.2 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).

9.6.3 We do not deal with correspondence (letter 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.

9.6.4 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.

9.6.5 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.

9.6.6 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.

9.6.7 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.

9.6.8 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.

9.7 Deciding to restrict a service user's contact

9.7.1 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.

9.7.2 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.

9.7.3 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.

9.7.4 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.

9.8 Appealing a decision to restrict contact

9.8.1 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.

9.9 Recording and reviewing a decision to restrict contact

9.9.1 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.

9.9.2 A decision to restrict a service user's contact may be reconsidered if the service user demonstrates a more acceptable approach.

9.9.3 The SLCC reviews the status of all service users with restricted contact arrangements on a regular basis.

10 Steps the SLCC may take if systemic issues arise

10.1.1 From time to time the SLCC may see a significant issue of public protection arise.

10.1.2 The SLCC is not the primary regulator – a role which sits with the Lord President and the Relevant Professional Bodies. We are not, therefore, likely to be responsible for the overall management of the situation but must ensure we perform our role in the best possible way and, where possible, share data and insight which may assist those primary regulators.

10.1.3 Each past scenario has been different in terms of causes and the impact on the public, but examples are:

- Failed/ceased firms, leaving complainers with a number of different issues
- High complaints volumes in relation to an area of work (say wills and executrixes)
- High volumes of complaints relating to a single issue (say a single large-scale employment or investment issue, where a law firm has multiple clients pursuing one respondent)
- Business practices which may be indicative of another issues – complaints about failure to pay suppliers, failure to pay SLCC levies, failure to pay SLCC court costs, etc.
- Patterns of behaviour causing concern (failure to engage with the SLCC, non-compliance with SLCC decisions, high Complaints Relations Manager turnover, etc.)

10.1.4 The first issue is identifying when a scenario is emerging that is more than an average variance in the SLCC, and an individual firm's, normal pattern of complaints or operations. There is no set formula for this, but data and anecdotal evidence is monitored on incoming complaint numbers, uphold rates, etc. and discussed in staff meetings.

10.1.5 The next issue is to create a management structure around an identified scenario. The scenario will be brought to IMT or SMT. The DoR will make sure both management teams are aware and work to ensure there is an IMT lead and any other support needed to manage the systemic issue identified. The issue will be discussed weekly at IMT and SMT will be updated.

10.1.6 The SLCC is more likely to err on the side of declaring an emerging systemic issues internally, and starting to take additional steps, even if a trend is not yet clear. Measures can be easily stepped down if no longer term pattern emerges, but early consideration allows the best chance of efficient and effective measures being put in place.

10.1.7 Any future scenario may, or may not, have similarities to those previously experienced, but learning from these past incidents suggests a number of principles the SLCC may wish to consider in its response:

- **Evidence based** - assembling data to understand the issues and causes as best we can (recognising data is often limited)
- **Role focussed** – at times parties may wish us to be a 'consumer champion' or to 'defend the profession', neither of these is our role as an independent adjudicative and oversight body.
- **Values led** – aligned to our organisation values
- **Engagement driven** - with complainers and practitioners, to understand their concerns and issues
- **Consumer focussed** – recognising our role in public protection and supporting vulnerable parties
- **Iterative and responsive** - working iteratively through our internal 'agile' approach – data and issues will evolve, and the SLCC needs to be responsive.
- **Scenario based** – assessing how situations and solutions may play out medium and longer term, and the implications for different parties in the situation
- **Outcome focussed** – considering what parties need, and our role in assisting, rather than starting consideration with our current processes. Encouraging or facilitating others to act, even if the SLCC is not credited with having performed that role.
- **Risk confident** – accepting that risk appetite may need increased to allow effective and proportionate handling.

10.1.8 Past learning also suggests there are a number of specific actions the SLCC may wish to consider. Any actions will depend on circumstances, resources, duties and powers, legal advice (where appropriate), strategy, and values and may include (in no order):

- Appointing dedicated management leads, and/or staffing
- Considering use of our trend reporting function
- Considering use of our guidance issuing function
- Considering use of all of our oversight functions
- Liaising with the primary regulators (the Law Society of Scotland, Faculty of Advocates, Association of Construction Attorneys)
- Liaising with other jurisdictions' legal regulators
- Liaising with other Scottish and UK regulators
- Liaising with the police
- Meeting with 'victims' groups
- Liaising with indemnity providers
- Creating bespoke processes for complaints (standardising issues of complaint, pre agreeing certain issues with CRMs, etc).
- Considering waiver of elements of the process where this is possible within law
- Using outcomes from early complaints (service and conduct) to inform handling of future tranches

- Creating scripts, FAQs, and escalation procedures for staff assisting with enquiries
- Issuing public statements
- Preparing briefings for media or parliamentarians
- Ensuing our Board has specific oversight of the grouped complaints
- Liaising with our Scottish Government Sponsor team
- Awareness raising with the public or targeted groups of the right to make a complaint
- Escalating reporting to SMT agenda
- Escalating reporting to Audit Committee and/or Board agenda
- Resource review – evaluating scaling back work to free resources, impact on future budgets, whether reserves release is required, etc.
- Active management of staff communication and morale relating to the issue (all our functions are delivered through people)
- Monitoring feedback from stakeholders and parties on our actions to assess if we need to adjust our approach
- Considering our s43 duty of confidentiality in the light of other duties and information already in the public domain to determine what we can communicate to assist in the handling of the situation
- Consider requesting RPOs raise a complaint in their own names about issues we may see as a pattern (but which individual complaints are not capturing)
- Consider requesting the Lord President raise a complaint in their own name about issues we may see as a pattern (but which individual complaints are not capturing)
- Ensuring sufficient but light touch documentation and tracking to allow review of the overall management of the issue
- Carrying out a mid-way and/or issue-end ‘lessons learnt’ review (inc reviewing whether management of the situation was in line with our values)
- Specifically consider legislative or policy issues which prevented efficient or effective handling, and liaise with others on findings as appropriate
- Engage with stakeholders and parties on ‘lessons learnt’ outcomes

10.1.9 Few of these actions would be a ‘one off’, our agile approach means such actions would be regularly reviewed throughout the management of the situation to consider whether they should be taken, or repeated.