

Analysis of Law Society of Scotland conduct complaint investigation timescales

Scottish Legal Complaints Commission's approach to oversight

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

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

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

Identification of trends across handling complaints

Both the person who makes a complaint and the solicitor complained about can make a handling complaint about how the LSS dealt with the conduct complaint investigation.

Part of a handling investigation involves reviewing the time taken by the LSS to deal with a conduct complaint. The LSS's published target timescale for completing conduct complaint investigations changed to "about 12 months" in February 2020.

In 2020-21 we reported on 13 handling complaints. We identified that the LSS conduct investigations were routinely taking longer than "about 12 months", with timescales ranging from 15 months to 34 months. In 2021-22 we reported on a further 9 handling complaints, where 2 of the relevant conduct investigations were

completed within the LSS's target timescale. The remaining 7 conduct investigations ranged from 15 months to 16 years.

The LSS divides its complaints process into five stages: liaison, planning, evidence gathering, analysis and report writing, and committee. Our handling investigations suggest that the main delay in investigations falls between the evidence gathering and analysis and reporting writing stage of the process. This is when complaints can be "queued" awaiting allocation to the person who will write the report.

We made 9 statutory recommendations for compensation for unreasonable and avoidable delays in our last 2 operational years. The LSS accepted all 9 recommendations. The time those complaints awaited allocation to a reporter ranged from 4 to 14 months.

In addition, we identified opportunities for improvement in the LSS's handling of complaints. Our guidance focused on improving the transparency of its communications, better managing the expectations of both parties and taking action to reducing the report queuing time.

Conduct complaint investigation timescales data

To understand if the trends identified in handling investigations were representative of conduct complaint investigations overall, we initially requested data from the LSS on all conduct complaints open at 31 March 2022. In June 2022 we shared with the LSS our analysis of 295 open conduct complaint investigations.

To supplement our analysis of open conduct complaint investigations, we then analysed data on conduct complaint investigations closed over the past two SLCC operating years. This covers the period from 1 July 2020 to 30 June 2022. We established the LSS have sent decision letters in 497 conduct complaints, meaning 497 investigations were closed in that period.

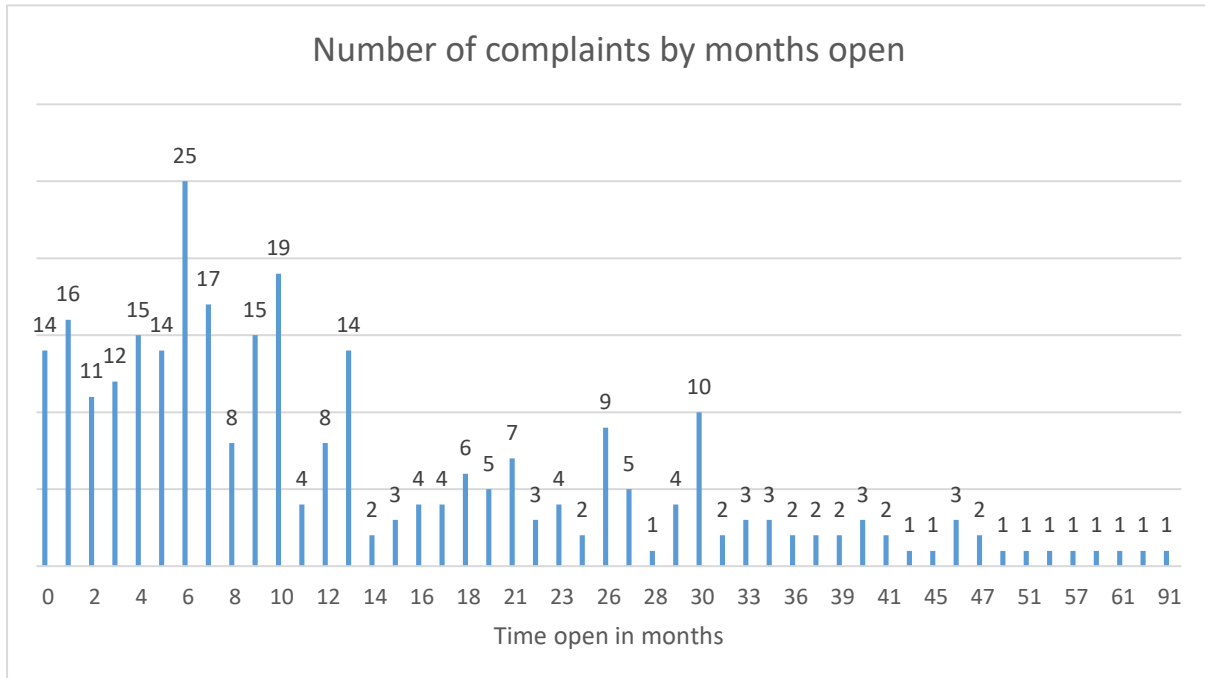
Key findings and trends

Open cases

We found that 40% of complaints open at 31 March 2022 had been open for more than 12 months, with around a third (34%) having been open for more than 14 months. 25% of cases had been open for 21 months or more, and 10% of cases for 33 months or more.

The graph below reveals a wide range of investigation timescales across the 295 open cases. It also shows a significant proportion of conduct complaints are historical, that is opened prior to 2020.

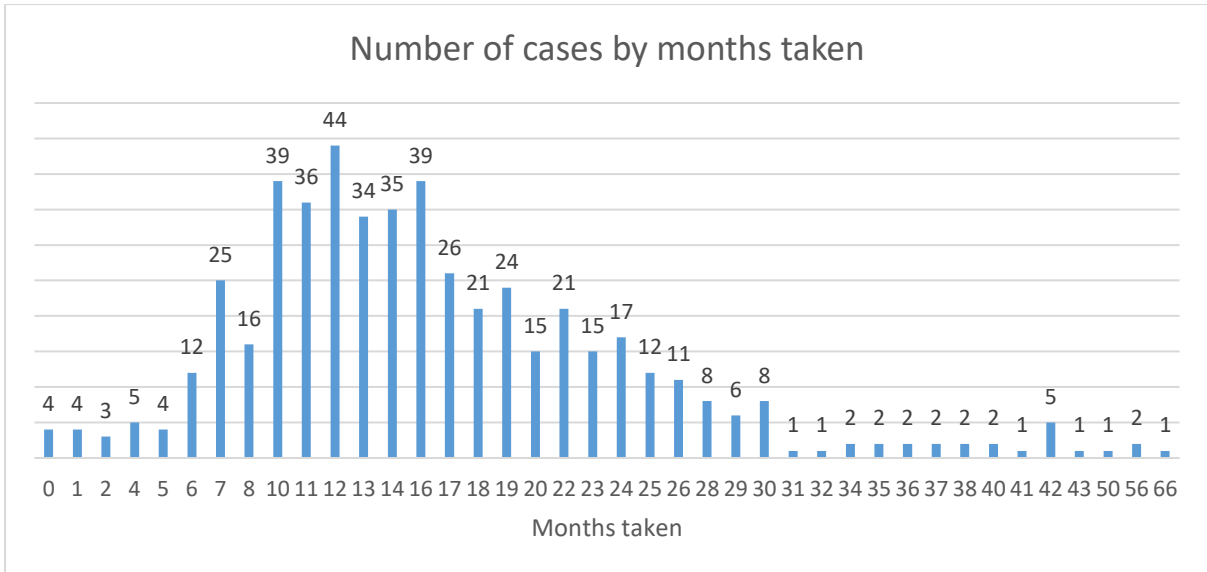
The data shows that 53 complaints pre-date 2020. Of these 31 were opened in 2019, 15 in 2018, and 5 in 2017. One complaint was transferred to the LSS in October 2016 and the oldest complaint was transferred in August 2014. This suggests that further action is needed to address the historical backlog.



Closed cases

We found that 30% of the closed complaints were dealt with in 12 months or less. On average, the time taken was 15.9 months and the median time was 14.4 months. In 25% of complaints the investigations took longer than 20 months to complete.

As with the open cases, the range of timescales for the 497 closed cases is large, from less than half a month to 66 months. The data includes 26 complaints where the investigation was discontinued. These took significantly less time on average than complaints that had a full investigation. In fact, if the discontinued complaints are excluded from the data, the percentage of complaints dealt with in 12 months reduces from 30% to 27%.



This indicates that in the majority of complaints the LSS is not meeting its published target timescale for completing conduct investigations in “about 12 months”.

Covid lockdowns

We are aware that the progress of complaints was impacted by the furloughing of staff and office closures due to the Covid lockdowns. Despite restrictions, we are of the view that arrangements for business critical activities, including access to files and progression of reports, should have been facilitated if at all possible.

Response from LSS to reports

In August 2022 the LSS provided an interim response to our report on open complaint investigation timescales. The LSS recognised the impact delays can have on the parties involved and confirmed its commitment to reducing the time taken to report on complaints.

We sought further detail on the LSS’s plans for addressing the identified delays, to ensure that the end to end complaints process functions well, within the restrictions of the current system and legislation.

In November 2022, the LSS provided a detailed response to our initial report. The LSS recognise there have been longstanding issues in relation to complaints timescales. Its response covers actions taken over the LSS’s last operational year (2021/22) to improve its handling of complaints and key areas of focus in the current operational year.

The LSS outlined a number of changes which have contributed to an approximately 25% reduction in the number of live cases in its system in the past two years, and a 50% reduction in the number of cases that remain at a 'stage' for more than six months in the past year. The SLCC welcomes this improvement as a positive step forward.

The LSS acknowledged that most delay occurs at the recommendation stage of the process. As a result, the LSS states it will focus on improvement to this part of the process. Planned improvements include an increased focus on the oldest cases to address a bottleneck of cases at the 3 to 4 year point. This focus on the known backlog of reports is welcome progress.

Crucially, the LSS also shared details of increased resourcing for the Professional Conduct Team. The SLCC recognise this is a significant additional investment by the LSS and looks forward to the agreed posts being advertised as soon as possible.

Conclusions and recommendations

Our analysis of both open and closed conduct complaint investigations suggests that the trend we have seen across handling complaints is broadly reflective of the timescales for conduct complaint investigations overall.

This is of concern due to the multiple risks associated with delay in the investigation of conduct complaints. We have identified the following key risks;

- public protection issues associated with solicitors continuing to practice whilst under investigation
- complainers conclude their complaint is not being taken seriously, which may impact public confidence in the complaints process
- a negative impact on the effectiveness of administration and decision making
- an adverse impact on both parties' ability to recall events
- a negative impact on the confidence of the legal profession that disciplinary matters are dealt with effectively and swiftly
- both parties do not think the process is open and transparent
- a negative impact on the mental health of both parties.

We recognise that each complaint is unique and there are often multiple factors resulting in delay in an investigation. The planned improvements outlined by the LSS do provide assurance that the LSS is striving to balance the requirement to run a cost-effective conduct complaints process with the need to improve the efficiency and effectiveness of its investigations, and mitigate the risks associated with lengthy investigations.

This is in line with the LSS's commitment in its 2020-2022 strategy "to take action to deal with complaints quickly and fairly, intervening directly in firms when it is right to

do and ensuring swift disciplinary action in serious cases of misconduct". This approach would benefit both consumers and LSS members.

The planned reform of legal service regulation offers both the LSS and the SLCC opportunities in the medium term to remove restrictions that cause delay in the current complaints process. However, it is essential that the LSS takes action now to rectify the delays in the existing system. This will ensure it is well placed to demonstrate it is both accountable and transparent as a regulator.

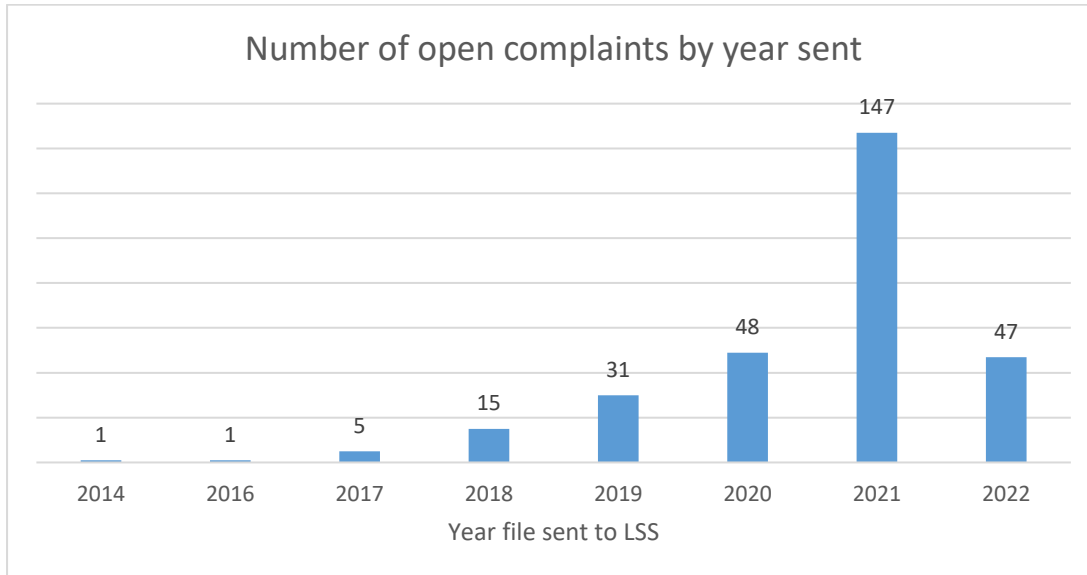
We appreciate the LSS's positive engagement to date on this issue. To mitigate the risks associated with delay in the investigation of conduct complaints we recommend the LSS takes the following actions;

- Set a realistic and achievable target timescale for the completion of conduct investigations as a key performance indicator (KPI).
- Improve the transparency of communications with both complainers and solicitors on the timescales for the completion of investigations and on the progress of investigations.
- Create a plan of action to achieve the new key performance indicator, detailing how and when the improvements outlined in the LSS's response to our reports will be achieved.

Appendix – caseload

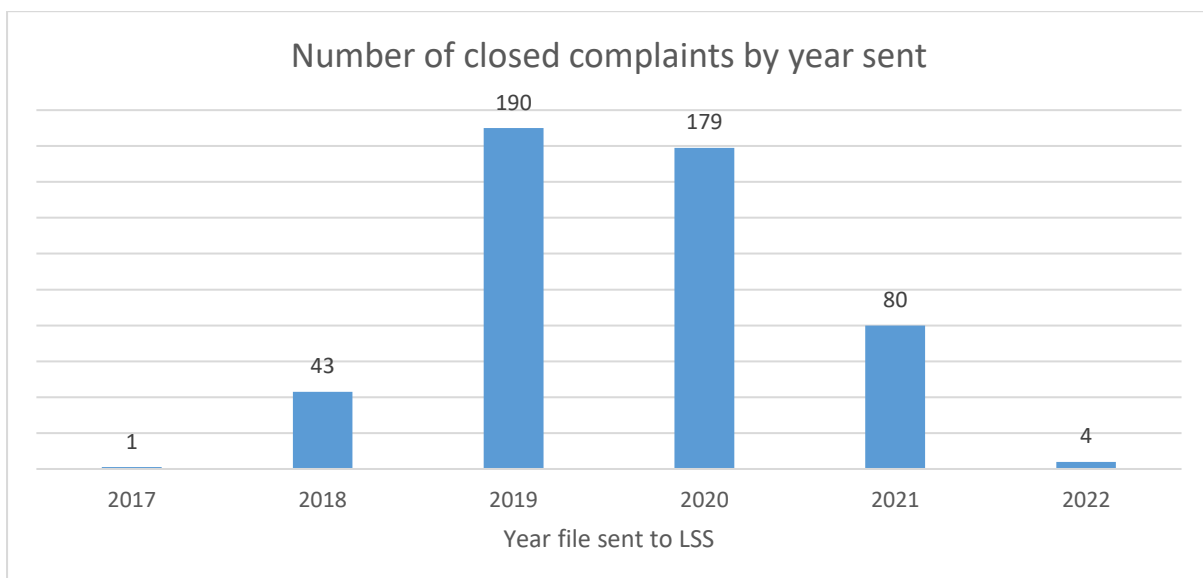
Open cases

The data provided on the 295 open cases shows that the LSS received 47 new conduct complaints in the first 3 months of 2022. Of the 295 open complaints, 147 date from 2021, and 48 from 2020. The remaining cases pre-date 2020.



Closed cases

The table below breaks down the 497 closed complaints by the number sent by the SLCC to the LSS for investigation of the conduct issues of complaint each year from 2017 onwards. All 497 cases were closed over the past two SLCC operating years. This covers the period from 1 July 2020 to 30 June 2022.



The table below shows the number of complaint decision letters issued by the LSS each quarter. This reflects the number of complaints closed each quarter over the period from 1 July 2020 to 30 June 2022.

