

Association of Construction Attorneys Review

Introduction

The Scottish Legal Complaints Commission (**SLCC**) has responsibility for the independent oversight of the complaints system of the Association of Construction Attorneys (**ACA**). In this report we provide an overview of the role and purpose of ACA and look specifically at its process for dealing with complaints.

Association of Construction Attorneys

ACA acts as a professional body responsible for construction attorneys, distinct from the Law Society of Scotland or Faculty of Advocates. The current information published on ACA's holding website shows that there are currently seven practicing members. An individual member takes on the role of Director and another as Secretary.

ACA are a relevant professional organisation under the Legal Profession and Legal Aid (Scotland) Act 2007 (**2007 Act**). ACA (formerly the Association of Commercial Attorneys) was approved by the Lord President and Scottish Ministers as a regulator in 2009, under section 26 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

The latest version of ACA's revised scheme, which came into force in July 2023, introduced its name change. The scheme can be found on the Scottish Government's [website](#). The scheme sets out information relating to;

- The rights of members
- Membership categories
- Entrance requirements
- Practising certificates
- Continuing professional development
- Code of Practice
- Complaints procedure
- Admissions board

Members of ACA must have a legal qualification and a professional or construction qualification. In addition, members are required to have relevant construction and litigation experience such as an architect, quantity surveyor, builder or engineer. Where there are legal issues, the construction attorney can provide legal advice and undertake court proceedings in the courts of Scotland in respect of construction litigation. In respect of construction matters the construction attorney can provide professional advice related to the individual's construction qualification. This dual qualification enables construction attorneys to provide a comprehensive service in respect of construction matters and can often mean that only one individual is required rather than two separate advisors at the initial stages when a dispute arises. This applies to court actions and also to arbitration and adjudication.

Construction attorneys are often closely involved in the day-to-day progress of a construction project by way of reviewing contracts as well as undertaking contract administration, such as notices of delay and disruption, formulating interim applications and considering technical and programming issues. Construction attorneys are well placed to be involved in the management of a project and can give advice on both the legal and technical consequences of decisions and actions while a project is live. Such early intervention can assist in avoiding disputes or where a dispute cannot be avoided ensure that the client's position has been protected in respect of any future litigation, adjudication or arbitration.

Members of the ACA have the following rights:

- (a) the right to conduct construction litigation in the sheriff court (including ordinary actions, summary applications and simple procedure) together with the right to conduct an appeal in the Sheriff Appeal Court and the Court of Session in any case conducted by a member in the sheriff court at first instance;
- (b) a right of audience in respect of construction litigation in the sheriff court proceeding by way of simple procedure, including a right of audience in an appeal to the Sheriff Appeal Court in that case;
- (c) a right of audience in respect of construction litigation in procedural hearings (including case management conferences however conducted) in ordinary actions in the sheriff court and in an appeal to the Sheriff Appeal Court in any case conducted by a member at first instance;
- (d) a right of audience in respect of construction litigation in the sheriff court which is proceeding by way of an undefended ordinary action, in relation to a motion for decree; and
- (e) the right to conduct construction litigation in the Court of Session at first instance, including any appeal to the Inner House of the Court of Session that may arise thereafter, but no right of audience.

The Scottish Legal Complaints Commission

The SLCC's oversight function forms a core part of the regulatory system for legal services in Scotland. Members of ACA are officers of the court and complaints about them can be made to the SLCC in the same way as complaints about solicitors, advocates and solicitor advocates.

As a relevant professional organisation ACA has responsibility for dealing with complaints about the conduct of construction attorneys. ACA's conduct complaint processes and policies are overseen by the SLCC, as part of our statutory monitoring function under Section 36 of the 2007 Act. ACA is also subject to handling complaints, raised under Section 23 of the 2007 Act, which relate to how ACA deals with conduct complaints.

Association of Construction Attorneys: revised scheme

The Code of Practice for construction attorneys can be found at Section 10 of the scheme. The Code of Practice details the standards construction attorneys are expected to adhere to. This includes the fact construction attorneys must notify clients in writing that ACA operates a complaint handling procedure. This information may be conveyed by inclusion in the construction attorney's terms and conditions. Construction attorneys are also under a duty to inform clients of the existence of the SLCC and their right to make a complaint to the SLCC.

ACA has established a complaints procedure for the investigation of complaints of professional misconduct and inadequate professional service. The revised scheme sets out ACA's complaints procedure.

ACA encourages construction attorneys to resolve complaints directly with the person complaining wherever possible. However, where resolution is not possible clients must be signposted, at the earliest opportunity, to the SLCC, as the gateway for unresolved complaints. In addition, the ACA complaints board may also advise the client to refer the matter to the SLCC as well as refer the matter itself to the SLCC.

Where, under Part 1 of the 2007 Act, the SLCC decides that a complaint about the conduct of a construction attorney should be accepted for investigation, the SLCC will remit the complaint to the ACA to deal with under its conduct complaints procedure. In addition to the complaints procedure outlined in the scheme, ACA must comply with the statutory requirements of the 2007 Act.

The scheme sets out details of the complaints board that investigates complaints about construction attorneys. The role of the complaints board is to investigate complaints of professional misconduct and, where appropriate, to discipline construction attorneys. The complaints board comprises a minimum of six persons consisting of both members/fellows of ACA and non-members. The head of the complaints board carries out the initial investigation of any complaint against a construction attorney. A complaints panel may also be formed to deal with the complaint.

ACA has confirmed that to date none of its members have received a complaint.

Conclusions

The SLCC acknowledges that ACA are a small, member run organisation. ACA has assured us that, in the event of a complaint being received from the SLCC for investigation, it has a sufficient number of named individuals available to sit on the complaints board, allowing for conflicts. We are therefore satisfied that ACA are suitably prepared to handle potential complaints, having a clearly defined complaints procedure.

This places ACA in a strong position, from a complaints perspective, to assume its new responsibilities as a Category 2 Regulator once the relevant sections of the Regulation of Legal Services (Scotland) Act 2025 are commenced.

We will continue to monitor ACA's management of complaints and intend to revisit this within our next strategy period.

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