



Rules of the Scottish Legal Complaints Commission 2023

Contents

Definitions and Interpretation	4
Chapter 1: General	7
1. Status of Rules.....	7
2. Directions as to procedure	7
3. Admissibility of evidence	7
4. Waiver of confidentiality	7
5. Communications in writing	8
6. Complaint made or continued on behalf of other person.....	8
Chapter 2: Services complaints, conduct complaints and regulatory complaints	9
7. Making a complaint	9
8. Time limits.....	10
9. Premature complaints.....	11
10. Services complaints about other professionals within a licenced provider.....	11
11. Preliminary steps	12
12. Obtaining information.....	12
13. Failure and delay in provision of documents or explanations	13
14. Power to discontinue and reinstate services complaints.....	13
15. Resolution.....	14
16. Offer of mediation	15
17. Representations.....	15
18. Settlement of a services complaint	15
Chapter 3: Complaints about approved regulators	16
19. Determining nature of complaints against approved regulators	16
20. Preliminary steps	16
21. Resolution of approved regulator complaints.....	16
22. Obtaining information.....	16
23. Investigation of multiple approved regulator complaints	17
24. Written Interim Reports	17
25. Determination of an approved regulator complaint	18

Chapter 4: Handling complaints	19
26. Handling complaints about approved regulators.....	19
27. Making a handling complaint	19
28. Obtaining information.....	20
29. Delay in provision of information.....	21
30. Power to discontinue and reinstate handling complaints	21
31. Written interim reports	22
Chapter 5: Determination committees	23
32. Determination committees	23
Chapter 6: Oral hearings	24
33. Dealing with a complaint in the presence of parties.....	24
Chapter 7: Procedural defects, extension of time, deferment etc	26
34. Procedural defects.....	26
35. Extension of time	26
36. Deferment.....	26
Chapter 8: Miscellaneous and general	27
37. Further provision regarding prior involvement.....	27
38. Quorum.....	27
39. Standing orders	27
40. Giving of Reasons	27
41. Annual general levy	28
42. Complaints levy	28
43. Levy payable by approved regulators	28
44. Citation and commencement	29

Definitions and Interpretation

“the 2010 Act” means the Legal Services (Scotland) Act 2010 (asp 16) or any amendment or re-enactment thereof currently in force;

"the Act" means the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) or any amendment or re-enactment thereof currently in force;

"adult with incapacity" means a person over the age of 16 years who is incapable of acting, making decisions, communicating decisions, understanding decisions or retaining the memory of decisions in terms of section 1(6) of the Adults with Incapacity (Scotland) Act 2000;

“approved regulator” means a body authorised by Scottish Ministers under section 10 of the 2010 Act to exercise its regulatory functions as an approved regulator of licensed providers (currently the Law Society of Scotland);

“approved regulator complaint” means a complaint, or any part of a complaint, about an approved regulator which is not a handling complaint;

"child" means a person who has not reached the age of 16 years;

"the Commission" means the Scottish Legal Complaints Commission and includes, unless the context otherwise requires, a determination committee and, if and in so far as authorised to exercise a function of the Commission, a single member of the Commission;

"complainer" means the person who makes the complaint and, where the complaint is made on behalf of another person, includes that other person;

“conduct complaint” means a complaint, or any part of a complaint, suggesting professional misconduct or unsatisfactory professional conduct by a practitioner other than a firm of solicitors or an incorporated practice; or 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, made under section 2(1)(a) of the Act;

"determination committee" means a committee of members established to make a decision under paragraph 11(1)(a) of schedule 1 to the Act;

"handling complainer" means the person making a handling complaint;

“handling complaint” means a complaint which relates to the manner in which a conduct complaint or regulatory complaint has been dealt with by a relevant professional organisation or approved regulator, made under section 23 or 57E of the Act;

“legal services” means the services described in section 3 of the 2010 Act;

“licensed provider” means a business entity which provides legal services to the general public for a fee, under a licence issued by an approved regulator.

“member” means a member of the Scottish Legal Complaints Commission appointed in terms of the Act;

"oral hearing" means a hearing appointed by the Commission where it decides that the complaint, or any matter in relation to the complaint, is to be dealt with in the presence of parties (see Rule 24);

"the parties" in respect of a conduct complaint or services complaint means the complainer, the practitioner, the practitioner's firm, the licensed provider and, where the practitioner is an employee of another practitioner, that other practitioner;

“the parties” in respect of a handling complaint means the handling complainer, the relevant professional organisation or approved regulator, and whichever of the complainer, practitioner and licensed provider in the original conduct or regulatory complaint is not the handling complainer;

“the parties” in respect of an approved regulator complaint means the complainer and the approved regulator;

"person" includes a body of persons (corporate or unincorporate);

"practitioner" means a legal practitioner of a kind described in section 46 of the Act about whom a complaint is made and includes a practitioner within a licensed provider;

"premature complaint" means a complaint received by the Commission where the complainer has not previously communicated the substance of the complaint to the practitioner, the practitioner's firm or the employing practitioner, and given them a reasonable opportunity to deal with it (see Rule 9);

"professional services" means legal services and other services customarily provided in the course of the practitioner's professional practice;

“regulatory complaint” means a complaint, or any part of a complaint, made under section 57B of the Act, suggesting that a licensed provider is failing or has failed to have regard to the regulatory objectives (described in section 1 of the 2010 Act), adhere to the professional principles (described in section 2 of the 2010 Act), comply with its approved regulator’s regulatory scheme or comply with the terms and conditions of its licence.

"relevant professional organisation" means:

- (a) in the case of complaints concerning an advocate, the Faculty of Advocates;
- (b) in the case of complaints concerning a solicitor, a firm of solicitors, an incorporated practice, a conveyancing practitioner, an executry practitioner or a registered European or foreign lawyer, the Council of the Law Society of Scotland;

and

- (c) in the case of complaints concerning a commercial attorney, the Association of Commercial Attorneys;

"services complaint" means a complaint, or any part of a complaint, suggesting that professional services provided by a practitioner or licensed provider in connection with any matter in which the practitioner or licensed provider has been instructed by a client were inadequate, made under section 2(1)(b) of the Act;

"supporter" means an individual who accompanies a person to an oral hearing at the Commission, but does not represent them in either a legal or lay capacity;

"third party complainer" means a complainer in a complaint concerning a matter in which the practitioner was not instructed by the complainer or by any person on whose behalf the complaint is made.

and

In these Rules, unless the contrary intention appears words in the singular include the plural and words in the plural include the singular.

Where the provisions of these Rules expressly or impliedly confer any power or impose any duty then, unless the contrary intention appears, that power may be exercised and that duty shall be performed from time to time as occasion requires.

Chapter 1: General

1. Status of Rules

- (1) These Rules are made by the Scottish Legal Complaints Commission ("the Commission") under section 32 of the Act, after consultation under subsection (5) of that section. The Rules apply to all procedures of the Commission and any committee, member of the Commission or member of staff of the Commission carrying out any functions under these Rules. The Rules are to be read in conjunction with the Legal Profession and Legal Aid (Scotland) Act 2007 and orders made under that Act by the Scottish Ministers.

2. Directions as to procedure

- (1) The Commission may regulate its own procedure as regards a particular complaint and, in particular, may give such direction as it thinks fit as to the procedure to be followed at any stage in the complaint (provided the direction is consistent with the Act, with the other Rules and with the interests of justice and is made with regard to considerations of proportionality).
- (2) A direction under paragraph (1) is to include, in so far as it is appropriate to the stage in question, provision as to the evidence which may be required or admitted and as to the extent to which any such evidence may be oral or written. For 'hearings', see Chapter 5 of these Rules.

3. Admissibility of evidence

- (1) The Commission may, in proceedings under these Rules, admit such evidence, in whatever form—
 - (a) as it considers it would be fair to admit, and
 - (b) as appears to it to be relevant to a services complaint, conduct complaint or handling complaint,

whether or not the evidence would be admissible in proceedings in an ordinary civil action in a Scottish court.

4. Waiver of confidentiality

- (1) The Commission is not to—
 - (a) investigate a services complaint by virtue of section 9 of the Act,

- (b) remit a conduct complaint or regulatory complaint to a relevant professional organisation or approved regulator under section 6(2)(a) or 15(5)(a) of the Act,
- (c) investigate a handling complaint by virtue of section 23 or 57E of the Act, or
- (d) investigate an approved regulator complaint by virtue of section 79 of the 2010 Act

unless the complainer has or, where the services complaint, conduct complaint or handling complaint is made on behalf of another person who has the capacity to consent, the complainer and that other person have, for the purposes of Parts 1 and 2 of the Act, waived their right to confidentiality in relation to matters to which the complaint relates.

5. Communications in writing

- (1) Subject to paragraph (2) below, communications in writing include communications sent by electronic means.
- (2) Any notice which is required to be given by the Commission to a complainer or practitioner under these Rules may be sent by electronic means where the complainer or practitioner agrees to that means of sending.

6. Complaint made or continued on behalf of other person

- (1) A complaint may be made or continued by a person (“A”) on behalf of another person (“B”) but only if the Commission is satisfied, as regards the particular complaint, that A has B’s authority to make the complaint on B’s behalf. The Commission is free to contact the person on whose behalf a complaint has been made, as appropriate, regarding that complaint.
- (2) The Commission may require verification that the complainer (“A”) has the authority to make or continue a complaint on behalf of the other person or body (“B”).
- (3) Where B is a child, adult with incapacity or deceased person, the Commission may be satisfied that A has the authority to make or continue a complaint on B’s behalf by virtue of A’s relationship with B. In such complaints, the Commission may require verification of the nature of that relationship.
- (4) Where B is not an individual, the Commission may be satisfied that A has the authority to make or continue a complaint on B’s behalf by virtue of the office or position which A holds in relation to B. In such complaints, the Commission may require verification of A’s office or status.

Chapter 2: Services complaints, conduct complaints and regulatory complaints

7. Making a complaint

- (1) A services complaint, conduct complaint or regulatory complaint is made when it is submitted in writing and registered as received by the Commission.
- (2) The Commission is to maintain a register for the purposes of paragraph (1).
- (3) To be registered, a services complaint, conduct complaint or regulatory complaint submitted to the Commission —
 - (a) must identify the complainer clearly by name and provide contact details so as to allow for communication with the complainer in writing,
 - (b) may include a postal address, any e-mail address and telephone number for the complainer and a statement as to which means of communication is preferred,
 - (c) must contain information sufficient to enable the Commission to understand the factual basis upon which the complaint proceeds,
 - (d) where the services complaint, conduct complaint or regulatory complaint is made on behalf of another person, must clearly identify that other person, and
 - (e) where the services complaint, conduct complaint or regulatory complaint is made on behalf of another individual who is not a child, adult with incapacity or deceased person, must include evidence of that person's authority to pursue the complaint as specified in Rule 6(2).
- (4) Where a services complaint, conduct complaint or regulatory complaint is registered, it will be deemed to have been made on the date on which the information specified in paragraph (3) above is received by the Commission.
- (5) The Commission will provide such guidance and practical assistance as it considers appropriate to any person requesting advice in relation to making such a services complaint, conduct complaint or regulatory complaint (and, without prejudice to the generality of this paragraph, such assistance may include assistance in formulating a complaint).

8. Time limits

- (1) 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.
- (2) A regulatory 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 failure complained of.
- (3) A services complaint (other than a complaint made by a third party complainer as described in paragraph (4) below) 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.
- (4) 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.
- (5) For the purposes of paragraph (3) above, the date on which the services ended is the last date, in the opinion of the Commission, on which the practitioner, practitioner's firm or licensed provider undertook work (whether paid or unpaid) for the client on the matter or transaction in connection with which the services complained about were provided.
- (6) 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:
 - (a) in the case of a conduct complaint, of the conduct or conviction complained about;
 - (b) in the case of a regulatory complaint, of the failure complained about; or
 - (c) in the case of a services complaint, of the inadequacy of the professional services complained about.
- (7) The Commission may accept a complaint that has not been made within the time limits specified above if, in the opinion of the Commission:
 - (a) there are exceptional reasons why the complaint was not made sooner; or
 - (b) the matters complained about, or the circumstances in which it is made, are exceptional.
- (8) A services complaint, conduct complaint or regulatory complaint will not be accepted where, in the opinion of the Commission, the substance of the services complaint, conduct complaint or regulatory complaint has been the subject of a prior complaint which has been rejected by the Commission in

accordance with section 4(1) of the Act on the basis that it was not made timeously.

9. Premature complaints

(1) Other than in the circumstances described in paragraph (3) below, if the Commission is not satisfied that:

- (a) the substance of a complaint has been duly communicated in accordance with section 4(4)(a) of the Act, and
- (b) the person to whom the communication was made has been given a reasonable opportunity to deal with the complaint,

it need not take any preliminary steps or further action in respect of such a complaint (a “premature” complaint).

(2) A person is not to be considered, for the purposes of section 4(4)(a) of the Act or paragraph (1)(b) above, to have been given a reasonable opportunity to deal with a complaint unless at least 4 weeks have elapsed since that communication was made.

(3) The Commission may proceed at once to take preliminary steps and further action as regards a premature complaint if it appears to the Commission, having regard to —

- (a) the terms of the practitioner or licensed provider's response to the substance of the complaint; or
- (b) the nature of the matters complained about;

that deferring such preliminary steps and further action would not result in any realistic prospect of the parties agreeing a resolution of the complaint; or that it would not be appropriate in the circumstances to require the parties to take any further steps towards agreeing such a resolution.

10. Services complaints about other professionals within a licenced provider

(1) Where the Commission considers that any element of a services complaint about a licensed provider –

- (a) concerns the professional activities or a person who is a member of a profession but is not a practitioner; and
- (b) is capable of being dealt with a professional association which regulates that profession;

the Commission may refer the relevant element of the services complaint to that professional association.

- (2) Where the Commission refers an element of a services complaint to a professional association under paragraph (1) and the Commission is satisfied that it is being dealt with by that professional association, the Commission—
- (a) is not required to take the preliminary steps mentioned in section 2(4) of the Act and Rule 11, or any further action in relation to that element of the complaint; and
 - (b) will give written notification of its decision to the complainer, licensed provider and anyone else the Commission considers appropriate.

11. Preliminary steps

- (1) After a services complaint, conduct complaint or regulatory complaint is registered under Rule 7(1), a single member of the Commission or, if the Commission thinks fit, a committee of the Commission, is to determine—
- (a) under paragraph (a) of section 2(4) of the Act, whether the complaint is frivolous, vexatious or totally without merit, and
 - (b) under section 3(1) of the Act, whether any element of the complaint is capable of being dealt with under a specified regulatory scheme.
- (2) A member of the Commission, or a committee, making a determination under paragraph (1) is to state the reason or reasons for the determination.

12. Obtaining information

- (1) In the performance of its functions under the Act, the Commission may require a practitioner, a licensed provider or a complainer to provide to the Commission, by a date to be specified by the Commission, any:
- (a) documents,
 - (b) explanations,
 - (c) other information,
 - (d) written representations,

as it considers appropriate in respect of a services complaint or a conduct complaint. When communicating such a requirement to the practitioner, licensed provider or complainer, the Commission may identify the specific nature of the information the Commission wishes to receive.

- (2) When a requirement to provide the information described in paragraph (1) above is communicated to a practitioner or licensed provider, the Commission may specify the form in which the Commission considers the information

would be most usefully provided. The Commission may request that the information is provided by the practitioner or licensed provider in a specified electronic format or, where production in that format is not possible, in such other format as the Commission considers appropriate.

13. Failure and delay in provision of documents or explanations

- (1) Paragraph (2) applies where the Commission, by notice under section 17(1) of the Act, requires a practitioner, a practitioner's firm, an employing practitioner or a licensed provider to produce or deliver documents or explanations.
- (2) If the time specified in the notice for compliance elapses without such production or delivery having been obtained, the Commission may, where appropriate—
 - (a) inform the relevant professional organisation or approved regulator of the delay and of the relevant circumstances;
 - (b) apply to the court for an order in terms of Schedule 2 to the Act;
 - (c) proceed to make a determination under section 2(4) or section 9(1) of the Act.
- (3) Paragraph (4) applies where, by notice under section 17(4) of the Act, the Commission requires a complainer to produce or deliver documents or to provide an explanation.
- (4) If the time specified in the notice for compliance elapses without such production or delivery having been obtained, the Commission may:
 - (a) apply to the court for an order in terms of Schedule 2 to the Act;
 - (b) where appropriate, proceed to make a determination under section 2(4) or section 9(1) of the Act.
- (5) Where a person other than a practitioner, practitioner's firm, employing practitioner, licensed provider, complainer, relevant professional organisation or approved regulator fails to comply with a request that documents or information in their possession or control be produced to the Commission for the purposes of an investigation by the Commission under the Act within a timescale specified by the Commission, the Commission may proceed to deal with the matter in accordance with section 19 of the Act.

14. Power to discontinue and reinstate services complaints

- (1) The Commission may at any time during the investigation of a services complaint discontinue the investigation in the following circumstances:

- (a) where a complainer repeatedly fails to respond, co-operate and/or provide information to the Commission;
 - (b) where a complainer withdraws a complaint; or
 - (c) where a complainer dies and the complaint is not continued by the complainer's Executor.
- (2) Where the investigation of a complaint has been discontinued, the Commission may reinstate the investigation on the request of the complainer.
- (3) A complaint may not be reinstated if, in the opinion of the Commission,:
- (a) the complainer has given inadequate reasons for reinstatement of the complaint; or
 - (b) there has been excessive delay between the complaint being discontinued and the request to reinstate.
- (4) Where the Commission discontinues, reinstates or declines to reinstate an investigation of a services complaint it will give notice in writing to the complainer and the practitioner or licensed provider specifying the reason or reasons for its decision.
- (5) Where notice is given under paragraph (4) above, the complainer, practitioner or licensed provider may request that the Commission review the decision specified in that notice. Such a request must be:
- (a) made in writing; and
 - (b) received by the Commission within 14 days of the date on which notice is given in terms of paragraph (4).

On receipt of such a request the Commission will invite the complainer and the practitioner or licensed provider to make representations within such period as the Commission considers appropriate. After the expiry of that period the Commission will consider any representations made and will review its decision. The Commission will give notice in writing to the complainer and the practitioner or licensed provider of the outcome of that review. That notice will specify the reason or reasons for the Commission's decision.

15. Resolution

- (1) The Commission will seek to resolve services complaints at the earliest stage by encouraging and facilitating an agreed outcome between the parties.

- (2) The Commission may communicate with the parties at any time it considers appropriate, whether or not in the circumstances described in section 8(2) of the Act, to invite them to take further steps with a view to achieving a settlement.

16. Offer of mediation

- (1) The Commission may give notice under section 8(4) of the Act offering mediation in relation to a services complaint at any time, whether or not it has begun to investigate the complaint (and, where such investigation has begun, whether or not it began by virtue of section 9(1)(c)(ii) of the Act).
- (2) Where the Commission considers it appropriate to do so, it may propose that mediation takes place by telephone or video conference and, in such circumstances, will include that proposal within the notice referred to in paragraph (1) above.

17. Representations

- (1) Where the Commission investigates a services complaint it will provide details of its completed investigation in writing to the parties to the complaint for the purpose of giving the parties the opportunity to make representations on its findings and recommendations.
- (2) To be considered by the Commission before determining the complaint, such representations must be made within 3 weeks after the Commission has provided details of its completed investigation to the parties.

18. Settlement of a services complaint

- (1) In respect of a services complaint which falls within the terms of section 9(2) of the Act, the Commission will, at the same time as providing details of its completed investigation, also provide the parties with a proposed settlement of the complaint.
- (2) If all parties accept the proposed settlement within 3 weeks of it being proposed (whether or not after adjustment of the terms of settlement), the services complaint will be resolved on that basis, and the Commission will not proceed to determine it.
- (3) If the settlement proposed is not accepted by the practitioner and complainer within 3 weeks after being so proposed, the Commission, under section 9(1) of the Act, will proceed to determine the services complaint.

Chapter 3: Complaints about approved regulators

19. Determining nature of complaints against approved regulators

- (1) Where the Commission receives a complaint about an approved regulator, the Commission is to determine whether the complaint is a handling complaint or an approved regulator complaint.
- (2) Any complaint, or part of a complaint, which is determined under paragraph (1) to be a handling complaint will be dealt with in accordance with Chapter 4 of these Rules, and the approved regulator is to be regarded as the relevant professional organisation for the purposes of that Chapter.

20. Preliminary steps

- (1) Where a complaint, or part of a complaint, is determined under Rule 19(1) to be an approved regulator complaint, the Commission is to determine under section 79(2)(b) of the 2010 Act whether the complaint is frivolous, vexatious or totally without merit.
- (2) The Commission is to notify the complainer and approved regulator and state the reason or reasons for any determination under paragraph (1).

21. Resolution of approved regulator complaints

- (1) The Commission may, in circumstances it considers appropriate, seek to resolve approved regulator complaints by encouraging and facilitating an agreed outcome between the parties.
- (2) The Commission may communicate with the parties at any time it considers appropriate to invite them to take further steps with a view to achieving a settlement.

22. Obtaining information

- (1) During the course of its investigation of an approved regulator complaint, the Commission may invite the parties to provide written representations to the Commission in respect of that complaint, as the Commission considers appropriate.
- (2) During the course of the investigation, the Commission may:
 - (a) require information and documents from the complainer;
 - (b) give notice to the approved regulator requiring it to provide:
 - (i) such information that is within the knowledge of the approved regulator;

- (ii) such documents that are within the possession or control of the approved regulator;
- (iii) an explanation from the approved regulator regarding the issue or issues to which the complaint relates;

as the Commission considers relevant for investigating the complaint; and the Commission may specify a date for the submission to it of such information and documents. In the case of any explanation required by subparagraph (iii), the specified date will be no less than 28 days after the date of service of the notice. When communicating such a requirement to complainer or approved regulator, the Commission may identify the specific nature of the information the Commission wishes to receive.

- (3) When a requirement to provide the information described in paragraph (3) above is communicated to the approved regulator, the Commission may specify the form in which the Commission considers the information would be most usefully provided. The Commission may request that the information is provided by the approved regulator in a specified electronic format or, where production in that format is not possible, in such other format as the Commission considers appropriate.
- (4) When documents or information is provided by the approved regulator in response to a notice served under paragraph (3), the Commission will serve a further notice on the approved regulator without delay giving particulars of the documents or information it has received and the date of receipt.

23. Investigation of multiple approved regulator complaints

- (1) If, at any time before or during the investigation of an approved regulator complaint, it appears to the Commission that more than one complaint –
 - (a) concerns the same act or omission (or series of acts or omissions) by an approved regulator; or
 - (b) alleges a failure by the approved regulator to comply with the same requirement imposed by or under the 2010 Act;

the Commission may conduct a single investigation in those complaints.

24. Written Interim Reports

- (1) At any time during the course of investigating an approved regulator complaint, the Commission may prepare a written interim report in relation to the investigation.
- (2) Where the Commission issues a written interim report under paragraph (1), it must provide a copy of that report to each of the parties and may invite written comments on that report. Where the Commission does invite such comments

on that report, it must do so from each of the parties. Such comments are to be provided to the Commission in writing within a timescale to be specified by the Commission.

- (3) Where written comments have been received from the parties on the interim report within the specified timescale, the Commission must consider those comments before producing its final written investigation report under Rule 25(1).

25. Determination of an approved regulator complaint

- (1) Following completion of the Commission's investigation of an approved regulator complaint, the Commission will prepare a final report setting out the findings of the investigation and its recommendations as to whether or not the approved regulator complaint should be upheld, and will issue a copy of its report to each of the parties.
- (2) The final report of the findings of the investigation prepared in accordance with paragraph (1) will be considered by a determination committee constituted in accordance with Rules 32 and 38, which will determine whether or not the complaint should be upheld.
- (3) The determination committee will prepare a written decision explaining the reason or reasons for its determination under paragraph (2) and the Commission will provide a copy of that decision to each of the parties.
- (4) Where the determination committee upholds an approved regulator complaint, the Commission will submit the decision prepared in accordance with paragraph (3) to the Scottish Ministers at the same time as issuing the decision to the parties.
- (5) The decision submitted to the Scottish Ministers under paragraph (4) may contain such recommendations as the determination committee considers appropriate as to whether the Scottish Ministers should take any of the measures described in section 38(4) of the 2010 Act.
- (6) The Commission will provide the Scottish Ministers with any other information regarding the approved regulator complaint it considers may be helpful, or the Scottish Ministers may request, to assist them in making and implementing their decision on the taking of any of the measures described in section 38(4) of the 2010 Act.
- (7) The Commission will notify each of the parties of the decision by the Scottish Ministers on the making of any of the measures described in section 38(4) of the 2010 Act as well as any reason or reasons for that decision given by the Scottish Ministers.

Chapter 4: Handling complaints

26. Handling complaints about approved regulators

- (1) Where the Commission receives a complaint which relates to the manner in which a conduct complaint or regulatory complaint has been dealt with by an approved regulator, and the complaint is determined under Rule 19(1) to be a handling complaint, the handling complaint about the approved regulator will be dealt with in accordance with Chapter 4.
- (2) In any handling complaint falling within paragraph (1), the approved regulator is to be regarded as the relevant professional organisation for the purposes of this Chapter.

27. Making a handling complaint

- (1) A handling complaint is made when it is submitted in writing and registered as received by the Commission.
- (2) The person making the complaint will be known as the “handling complainer” for the purposes of these Rules.
- (3) The Commission is to maintain a register for the purposes of paragraph (1).
- (4) A handling complaint—
 - (a) must clearly identify the handling complainer by name and provide contact details so as to allow for communication with the handling complainer in writing;
 - (b) may include a postal address, any e-mail address which the handling complainer has, a telephone number for such communication and a statement as to which means of communication is preferred; and
 - (c) must contain information sufficient to enable the Commission to understand the factual basis upon which the handling complaint proceeds.
- (5) Where a handling complaint is registered, it will be deemed to have been made on the date on which the information specified in paragraph (4) above is received by the Commission.
- (6) The Commission will provide such guidance and practical assistance as it considers appropriate to any person requesting advice in relation to the process of making a handling complaint (and, without prejudice to the generality of this paragraph, such assistance may include assistance in formulating a handling complaint).

28. Obtaining information

- (1) At the commencement of its investigation of a handling complaint, the Commission is –
- (a) to notify the parties about the handling complaint and provide them with a copy of the complaint and such other information as the Commission considers necessary; and
 - (b) to require the following:
 - (i) from the relevant professional organisation, its investigation file in respect of the original conduct complaint or regulatory complaint; and
 - (ii) from the handling complainer, any additional information or documents in support of the handling complaint;

to be submitted to the Commission by a date to be specified by the Commission.

- (2) During the course of its investigation of a handling complaint, the Commission is to invite the parties to provide written representations to the Commission in respect of that complaint, as the Commission considers appropriate.
- (3) During the course of the investigation, the Commission may require:
- (a) information and documents from the practitioner or licensed provider, and the complainer;
 - (b) the relevant professional organisation to provide:
 - (i) such information that is within the knowledge of that organisation;
 - (ii) such documents that are within the possession or control of that organisation;

as the Commission considers relevant for any of the purposes of sections 23 or 24 of the Act;

and the Commission may specify a date for the submission to it of such information and documents. When communicating such a requirement to the practitioner, licensed provider, complainer or relevant professional organisation, the Commission may identify the specific nature of the information the Commission wishes to receive.

- (4) When a requirement to provide the information described in paragraphs (1)(b) and (3) above is communicated to a practitioner, licensed provider or relevant

professional organisation, the Commission may specify the form in which the Commission considers the information would be most usefully provided. The Commission may request that the information is provided by the practitioner, licensed provider or relevant professional organisation in a specified electronic format or, where production in that format is not possible, in such other format as the Commission considers appropriate.

29. Delay in provision of information

- (1) Paragraph (2) applies where, for the purposes of an investigation into a handling complaint under section 23, the Commission has required the provision of information or documents under section 37 of the Act.
- (2) If the date specified in a requirement under section 37(1) or 37(3) of the Act by the Commission for the production of information or documents, as appropriate, either by the relevant professional organisation or by the practitioner or licensed provider, elapses without production of such information or documents to the Commission, or without explanation as to why the information or documents cannot be produced by the specified date, the Commission may deal with the organisation, practitioner or licensed provider in accordance with Schedule 2 to the Act.

30. Power to discontinue and reinstate handling complaints

- (1) The Commission may at any time during the investigation of a handling complaint discontinue the investigation in the following circumstances:
 - (a) where a handling complainer fails repeatedly to respond, co-operate and/or provide information to the Commission;
 - (b) in the event that a handling complainer withdraws a complaint;
 - (c) where a handling complainer dies and the complaint is not continued by the handling complainer's Executor; or
 - (d) where the practitioner concerned in the conduct complaint to which the handling complaint relates dies or becomes subject to a legal incapacity which, in the opinion of the Commission, could affect the ability of the relevant professional organisation to comply with any recommendations the Commission may make under section 24(2) of the Act.
- (2) Where the investigation of a handling complaint has been discontinued, the Commission may reinstate the investigation on the request of the handling complainer.
- (3) A complaint may not be reinstated if, in the opinion of the Commission,:
 - (a) the handling complainer has given inadequate reasons for reinstatement of the handling complaint;

- (b) there has been excessive delay between the handling complaint being discontinued and the request to reinstate; or
 - (c) the relevant professional organisation may be unable to comply with recommendations the Commission may make under section 24(2) of the Act due to the death or incapacity of the practitioner.
- (4) Where the Commission discontinues or reinstates an investigation of a handling complaint, it will give notice in writing to the complainer, the practitioner or licensed provider, and the relevant professional organisation specifying the reasons for its decision.

31. Written interim reports

- (1) Where the Commission exercises its power to issue a written interim report under section 23(8) of the Act, it must provide a copy of that report to each of the parties and may invite written comments on that report. Where the Commission does invite such comments on that report, it must do so from each of the parties. Such comments are to be provided to the Commission in writing within a timescale to be specified by the Commission.
- (2) Where written comments have been received from the parties on the interim report within the specified timescale, the Commission must consider those comments before producing its final written report under section 24(1) of the Act and before making any recommendations under section 24(2) of the Act.

Chapter 5: Determination committees

32. Determination committees

- (1) A determination committee authorised to exercise functions in terms of paragraph 13 of Schedule 1 to the Act is to consist of 3, 5, 7 or 9 members of the Commission, as the Commission, in establishing it, thinks fit.
- (2) The majority of the members of a determination committee are to be non-lawyer members and the committee is to be chaired by a lawyer member.
- (3) So long as the quorum requirements set out in Rule 38 are met, a determination committee may make any decision in respect of a services complaint, including the determination of the complaint under section 9(1), or a determination or direction under section 10(2), of the Act:
 - (a) by meeting in person, by video conference or by telephone conference; or
 - (b) via any other form of communication or digital tool which permits the members to participate effectively in the decision-making process.
- (4) Where the Commission proposes a settlement of a services complaint under section 9(2) of the Act but the settlement is not accepted and it then falls to a determination committee to determine the services complaint under section 9(1), or to make a determination or direction under section 10(2), of the Act, the members of the committee are not to include anyone who was involved in any aspect of—
 - (a) investigating the services complaint (including deciding under section 2(4)(a) of the Act whether the complaint was frivolous, vexatious or totally without merit); or
 - (b) the formulation or making of the proposed settlement.

Chapter 6: Oral hearings

33. Dealing with a complaint in the presence of parties

- (1) Where the Commission is required to proceed to determine a complaint, the Commission may, at its own instance or on written request supported by reasons from any of the parties, decide that the complaint, or any matter in relation to the complaint, is to be dealt with in the presence of parties (an “oral hearing”).
- (2) In deciding whether to hold an oral hearing, the committee to which a complaint has been allocated will decide whether it is necessary, in the interests of fairness, that an oral hearing be held.
- (3) The committee will decide, on a case by case basis, taking into account all relevant information, whether any oral hearing is to:
 - (a) be held in public or private; and/ or
 - (b) take place in person or by video conference.
- (4) Where a committee decides that any oral hearing is to be held in public and is to take place by video conference, the Commission will provide means of accessing the oral hearing to any person who makes a request in writing that such access is provided.
- (5) An oral hearing will be heard by a determination committee, or by the Commission sitting as a whole.
- (6) The determination committee, or the Commission, as appropriate, will decide what matters are to be considered at the oral hearing including, but without prejudice to that generality, any of the following matters:
 - (a) any issues that the committee/Commission considers will require to be explored;
 - (b) any disputes of fact that the committee/Commission considers will require to be resolved;
 - (c) any witnesses that the committee/Commission considers should give evidence;
 - (d) the extent to which any oral evidence may be given by video conference;
 - (e) any other matter that the committee/Commission considers should be addressed at the hearing.

- (7) Any person who is to give evidence at an oral hearing may do so on their own behalf or be represented by any other person and may be accompanied to the oral hearing by a supporter.
- (8) If any of the parties decline or fail to be present at the place, date and time fixed for an oral hearing, or to attend the oral hearing by video conference where the oral hearing is to proceed by those means, the Commission may proceed to hold the oral hearing in the absence of one or more said parties and proceed to make a determination under section 9(1), or a direction under section 24(6), of the Act.

Chapter 7: Procedural defects, extension of time, deferment etc.

34. Procedural defects

(1) The Commission may, where it considers it appropriate to do so in the interests of fairness, relieve a party from the consequences of a procedural defect in relation to—

- (a) the making of a complaint under Part 1 of the Act, or
- (b) the Commission dealing with such a complaint,

and may give such procedural directions as it thinks fit to enable the complaint to proceed as if the failure had not occurred.

(2) In paragraph (1), "procedural defect" includes any failure to comply with a time limit, other than the time limits referred to in Rule 8.

35. Extension of time

The Commission may, if it thinks fit, grant a request to it from a party for—

- (a) an extension of time for the taking of any procedural step, or
- (b) permission to take a procedural step out of time.

36. Deferment

The Commission may at any time, at its own instance, defer further proceedings in any complaint, either indefinitely or to a date or event specified by it.

Chapter 8: Miscellaneous and general

37. Further provision regarding prior involvement

Where it falls to the Commission itself (and not to a determination committee) to make a determination under section 9(1), or to make a determination or direction under section 10(2), of the Act, the members of the Commission who are involved in doing so are not to include anyone who was involved in any aspect of –

- (a) investigating the complaint (including deciding under section 2(4)(a) of the Act whether the complaint was frivolous, vexatious or totally without merit; and
- (b) the formulation or making of the proposed settlement.

38. Quorum

- (1) Any quorum of the Commission or of any committee of the Commission will consist of a greater number of non-lawyer members than lawyer members.
- (2) A quorum of the Commission is 5, at least 3 of whom are to be non-lawyer members.
- (3) A quorum of any committee established by the Commission is 3, at least 2 of whom are to be non-lawyer members.

39. Standing orders

The Commission is to provide, in the form of Standing Orders, guidance to—

- (a) its committees (including a committee to be known as the Board of Governance); and
 - (b) any working party or group set up by the Commission
- regarding the exercise of their respective functions.

40. Giving of Reasons

The Commission is to give reasons in writing, whether or not required to do so by the Act, for any determination, direction, decision or recommendation made by it under Part 1 of the Act.

41. Annual general levy

- (1) The Commission may waive a proportion of the annual general levy payable under sections 27(1) and 57C(1) of the Act if, after consultation with relevant professional organisations and/or approved regulators, it determines that it should do so.
- (2) A sum falling to be paid under section 27(2)(b) of the Act to the Commission by a relevant professional organisation or approved regulator in respect of a financial year is due on the day before the financial year commences.
- (3) The Commission may charge interest on the sum, at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) of the Act, from the day on which the sum is due until the sum is paid.
- (4) In this rule, "financial year" means a period of 12 months ending on 30 June.

42. Complaints levy

- (1) The Commission may waive any requirement under section 28 of the Act for a practitioner or licensed provider to pay the complaints levy in part or full.
- (2) Any sum falling to be paid to the Commission under section 28(1) of the Act by a practitioner or licensed provider is due to be paid within 28 days, commencing with the date immediately following the date of the invoice.
- (3) The Commission may charge interest on the sum, at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) of the Act, from the date 29 days after the date of the invoice until the sum is paid.

43. Levy payable by approved regulators

- (1) The Commission may waive any requirement under section 80 of the 2010 Act for an approved regulator to pay the annual levy or complaints levy in part or in full.
- (2) The annual levy falling to be paid by an approved regulator under section 80(1)(a) of the 2010 Act in respect of a financial year is due on the day before the financial year commences.
- (3) Any complaints levy falling to be paid by an approved regulator under section 80(1)(b) of the 2010 Act is due to be paid within 28 days commencing on the date immediately following the date of the invoice.

44. Citation and commencement

- (1) These rules may be cited as the Rules of the Scottish Legal Complaints Commission 2023 and come into force on 1 April 2023 (the “date of commencement”).
- (2) These rules do not apply to complaints received by the Commission before the date of commencement.