



**slcc**  
scottish legal complaints commission

# Scottish Legal Complaints Commission

Annual Report  
1 July 2011 - 30 June 2012

Scottish Legal Complaints Commission  
Annual Report 2011 - 2012

This Report covers the SLCC's period from  
1 July 2011 to 30 June 2012.

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Scottish Ministers, pursuant to section 16 of  
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**Jane Irvine, Chair**

# Chair's foreword

**I am delighted to present the 4th Annual Report of the Scottish Legal Complaints Commission ("SLCC"), which sets out the work and achievements of the SLCC during 2011-2012.**

This is my final foreword. My term as Chair of the SLCC comes to a close on 31 December 2012. I hope it gives you some idea of the progress we have made building on solid foundations, and looking to improve our service during this past year of change. As ever we welcome feedback on our performance.

In this past year the needs of those using the SLCC services have continued to be our focus. The SLCC has moved from its setting up phase to a phase in which the Board has driven operational efficiency and pushed for performance to best match user needs. The Board has also set targets for the SLCC to use its powers in issuing complaints handling guidance and in oversight of the regulation systems operated by the professional bodies (The Law Society of Scotland, The Faculty of Advocates or The Association of Commercial Attorneys).

It stands as a huge tribute to the skills and hard work of all our Staff and Board Members that we have achieved all we have this year. This past year has been one of significant change at the SLCC. The original eight Board Members

appointed with me in 2008 all departed when their terms of office ended on 31st December 2011. Their contributions to the setting up of the SLCC were very significant and I thank them all for their considerable support and hard work. Our Chief Executive, Rosemary Agnew, following her appointment as Scottish Information Commissioner, also sadly left us in April 2012. Rosemary played a very significant role in setting up and progressing the SLCC, and I again thank her for all she achieved. With the loss of such expertise, the SLCC team had to cope with added pressures during the year. Fortunately new Board members and our new CEO Matthew Vickers bring with them ideal skills and they, plus the ever hard working operational team, have kept our focus on improving our performance and efficiency.

Despite these changes, increasing demands placed on us and our resources, growing case loads and increasing financial pressures, along with the added complications deriving from transitional arrangements and backlog of earlier case, the commitment and strength of our Staff and Board Members remains unflinching. I am grateful to all at the SLCC for their hard work, commitment and diligence to the organisation throughout 2011-2012.

Our focus next year will continue to be driving our own performance to match the needs of those who use our services. At the same time of course we will continue to use the powers we have wisely and move our oversight roles from taking stock of conduct systems to taking a broader look at their effectiveness. However we remain firmly of the view that legislative changes are required to allow us to best serve our users. The Legal Profession and Legal Aid (Scotland) Act 2007 requires us to operate processes that are too convoluted and overly complex in areas. We will therefore continue to highlight the need for legislative changes to help drive greater efficiency and effectiveness, and to position us better to face the demands alternative business structures will bring.

The SLCC has a stakeholder group, Board and operational team who constantly throw up new ideas and challenges. As Chair I have benefitted working in an area where diverse views and fresh ideas abound. This has been stimulating and it also means that lots of people have contributed a great deal to get the SLCC to where it is now. So I take this opportunity to sincerely thank everyone who has debated issues, offered me ideas, given me practical help and provided me with very wise counsel on many an occasion whilst I have Chaired the SLCC.





Matthew Vickers, Chief Executive Officer

# Chief Executive's report

**In the four years since it was set up, the SLCC has become the gateway for complaints about legal services in Scotland. Much has changed in that time, so it is important that our focus remains clear. The SLCC exists to strengthen public trust and confidence in our legal services.**

We look to resolve complaints about service quickly and effectively, making the most of our resources which are raised by a levy on the legal profession. We oversee how professional organisations, such as the Law Society of Scotland and the Faculty of Advocates, investigate conduct complaints. We have an important role in identifying issues and trends, and in providing guidance to raise standards of complaint handling and to build on existing good practice.

As this annual report demonstrates, we are proud of what we have achieved but we recognise that there is a great deal of work still to be done. As a young organisation, we recognise there are areas where we need to improve and we have plans to tackle them. Reducing our backlogs, speeding up our process, understanding the issues which lead to complaints and helping consumers and practitioners to resolve them are priorities for us in the year ahead.

Complaint numbers have risen by 16% from last year. The Legal Profession and Legal Aid (Scotland) Act 2007 which established the SLCC at times doesn't help us to resolve complaints the way we think we should. The eligibility steps which we must go through are complex and include a number of steps. They can create false expectations that a complaint will be quickly upheld. Since our investigations are thorough and independent, they frequently take around a year to complete. Approximately one in three of the cases which are determined by the SLCC are upheld.

The language which we have to use in upholding or rejecting complaints can be hard to understand or offensive for complainers and practitioners. We cannot reconsider decisions and the appeal process to the Inner House of the Court of Session can be complex and expensive. The SLCC should be an example of the benefits of user focus, early resolution and efficiency in our legal system. With the benefit of hard won experience, we can now see areas where the Act could be reviewed to sit more comfortably easily with these aspirations.

But any shortcomings in the 2007 Act do not reduce our own accountability. The SLCC can, must and will continue to improve.

The more we can develop co-operation and shared insights with consumer groups, professional bodies, academics and government, the more likely we are to create trust and confidence in Scotland's legal services. Our approach is informed by the four pillars of reform identified by the Scottish Government in *Renewing Scotland's Public Services*: a shift towards prevention; collaboration and integration; workforce development; and improving performance.

Collaboration does not lessen our independence and impartiality. Where consumers haven't received the service they should have, the SLCC will act quickly and resolutely to play its part in putting things right as some of the case studies in this report show.

I have joined a talented and hard-working team who are energetically tackling a heavy workload. My colleagues and our Board Members are committed to making the SLCC even more effective and efficient in handling complaints and more influential and impactful in improving legal services. I thank them for their work over the past year and hope to help them in building on the SLCC's achievements in the year ahead.





# Our purpose

The Scottish Legal Complaints Commission (SLCC) provides a single point of contact for all complaints against legal practitioners operating in Scotland. We investigate and resolve complaints about inadequate professional service; refer conduct complaints to the relevant professional body and have oversight of complaint handling across the profession. We also have a role in promoting and advising on good complaint handling across the legal profession.

We make recommendations to contribute to the development of good professional legal practice in Scotland.

Operating independently of the legal profession and government, we aim to resolve complaints efficiently and effectively and to improve complaints handling across the profession. We are funded by a levy paid by legal practitioners through their professional bodies.

# Our strategic aims and values

**We've sharpened our focus on how best we can build trust and confidence in Scotland's legal system around our five strategic objectives. The SLCC will:**

1. Provide a high quality, independent and impartial complaint handling service which focuses on early resolution
2. Be an efficient, accountable organisation that works to best-value principles
3. Support and contribute to high standards in the legal profession in Scotland through our oversight and complaint-handling functions
4. Promote understanding of our role
5. Be recognised as expert in complaint handling and an organisation that attracts and retains experienced and skilled people

**In delivering against our five objectives, we've identified five key values and associated behaviours which everyone at the SLCC aspires to. Staying true to our values and behaviours will help us to achieve our aims and create a Commission which Scotland can be proud of:**

## RESPECT

We respect others and are respected

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## TRUST

Our decisions and outcomes can be trusted

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## EFFICIENCY AND EFFECTIVENESS

We make a positive, measurable impact

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## LEADERSHIP

We are decisive in taking well-informed action

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## USER FOCUS

We are mindful of the needs of our service users

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# Complaint process

We received more than 1200 complaints over the course of last year which was an increase of 16% on the previous year. Each complaint is considered carefully in accordance with the procedures set out by the legislation which established us – the Legal Profession and Legal Aid (Scotland) Act 2007.

## Eligibility

It is at this stage we consider whether a complaint is eligible – this means we assess whether it meets the criteria set out in the 2007 Act and the SLCC's Rules to be accepted for investigation.

The timing of when a complaint is made is important. We don't normally accept complaints which are made more than a year after the service ended or the conduct occurred (taking into account any time the complainer could not reasonably have been aware of their concerns), although we consider doing so where there are exceptional circumstances. Under the 2007 Act and our rules, we must reject complaints which are made out of time.

Before we assess a complaint, it's important that the complainer gives the practitioner who they are complaining against a chance to resolve their concerns. In many cases, things can be put right even once a complaint has been made. Listening to complaints leads to improved services, better customer relationships and enhances the reputation of a practitioner or a firm. Many practitioners understand this and we're

keen to do what we can to help improve standards of complaint handling in the legal profession.

However, others have been slower to recognise the benefits of taking complaints seriously. Where a complaint is not resolved even after the practitioner has had a reasonable opportunity to do so, we will assess whether it should be accepted for investigation and whether it should be considered as a complaint about service or about conduct.

So whilst complaints must be made in good time, practitioners must have an opportunity to address them, or we will usually class a complaint as premature and refer it to the practitioner. Since timing is so important, we've recognised that there's more that we can do, working with the profession, to make complainers aware of the timescales for complaints and we'll be looking at this over the next year.

If a complaint meets the time criteria and is not premature, the 2007 Act turns to whether the complaint is "frivolous, vexatious or totally without merit".

**"Frivolous"** could be applied to a complaint that has very little substance or is of a very trivial nature or where to investigate it would be out of all proportion to the seriousness of the issues complained about.

**"Vexatious"** complaint could be one made solely with the intention of causing annoyance or trouble for the person or firm complained about.

**"Totally without merit"** could be applied to a complaint that would not be upheld based on the information the SLCC has seen or which even if factually correct, does not amount to a breach of standards.

These can be very emotive terms. Complainers understandably can be upset by having a complaint which is important to them categorised in this way. However, under the Act we must use this legalistic language since our decisions can be appealed to the Court of Session.

If a complaint is eligible it is categorised as conduct or service (or both). Conduct complaints are those that allege breaches of Solicitors' and Advocates' Standards of Conduct. These are not investigated by us, but are sent to the relevant professional organisations for investigation (The Law Society of Scotland, The Faculty of Advocates or the Association of Commercial Attorneys). Part of our role is to monitor how conduct complaints are dealt with by the Relevant Professional Organisations generally.

It's important to remember that just because a complaint has been defined as eligible, it does not necessarily mean that it will be upheld. At this stage we have decided that the complaint is worthy of investigation but following a more detailed investigation we may find that it cannot be upheld. In fact of the complaints which are formally determined after an investigation report, around one in three is upheld.



# The process

1

## ELIGIBILITY

Can the complaint be accepted for investigation?

- Has it been made too soon?
- Has it been made too late?
- Does it meet other criteria set out in the 2007 Act?

If yes, complaints about conduct are referred to the professional body to investigate and complaints about service are referred to the SLCC’s Mediation Manager.

2

## MEDIATION

Can the complainer and practitioner settle the matter through mediation? If they can, the complaint is closed.

If they can’t, it is referred to a Case Investigator.

3

## INVESTIGATION

The complaint is investigated. The investigator encourages resolution throughout the investigation. If resolution can’t be achieved they report their findings and invite the parties to settle the complaint. If the recommendations are accepted, the case is closed. If the recommendations are not accepted by either or both parties the complaint is referred to Members for a formal decision – called a Determination.

4

## DETERMINATION

The complaint is referred to a Determination Committee. This is chaired by a legal Member, has at least two other Members and always has more lay Members than legal Members. The Determination Committee makes a formal decision about the complaint and how it must be settled. The parties have an opportunity to comment on the decision in draft before it is issued.

“Any contact I have had with SLCC has been helpful and friendly”



# Case studies

## COMPLAINTS MADE OUTSIDE TIME LIMITS

### CASE 1

**Complaint reasons:**

Allegation that the solicitor did unnecessary work in respect of a family law matter, which resulted in over charging of fees

**Outcome:**

The case was made outside time limits and there appeared to be no exceptional circumstances to warrant the case being accepted

**Decision:**

The complaint was considered time barred

Mr C submitted a complaint to us regarding his solicitor allegedly undertaking unnecessary work and over charging him fees, in respect of a family law matter.

Our initial view was that the complaint may be time barred as Mr C's solicitors had ceased acting in respect of the matter and had issued their final fee note to Mr C in 2010, more than one year before the complaint form was submitted. We considered that Mr C could reasonably have been aware of his concerns for more than one year before complaining to us.

We wrote to both parties inviting them to submit any comments they wished to make. Specifically, Mr C was asked to comment on:

- whether he had made his complaint within the time limits;
- whether there was anything exceptional about the circumstances of the complaint; and
- whether there were exceptional circumstances that prevented him from submitting his complaint earlier.

Mr C stated that he had not been aware until recently that he could complain to us. However, we noted that Mr C had been advised by the solicitors of the existence of the SLCC in the terms of business letter they had sent him at the outset. We did not consider there were any exceptional circumstances which would warrant the complaint being accepted.

## CASE 2

**Complaint reasons:**

Alleged breach of Account Rules by the solicitor

**Outcome:**

Whilst the complaint was made outside time limits, we considered there were exceptional circumstances to warrant the complaint being accepted. It was also in the public interest for the matter to be assessed further

**Decision:**

The case was accepted

Mr C submitted a complaint form to us regarding his former solicitor in respect of an alleged Breach of Account Rules. Whilst the complaint was made more than one year after the alleged professional misconduct and inadequate professional service, we considered that the allegation was sufficiently serious to warrant acceptance. We also considered that it was in the public interest for the matter to be assessed further.

**Reflections**

Practitioners should try to:-

- Respond to complaints as soon and helpfully as possible including information on the SLCC time limits
- Resolve the issue internally
- Provide clear explanations
- Where matters remain unresolved, inform and provide their clients with details of the SLCC

Service users should try to:-

- Contact their legal provider as soon as possible, if you have a complaint
- Should matters remain unresolved after giving the provider reasonable time (we consider 4 weeks to be reasonable) to explain and or resolve the complaint, get in touch with the SLCC (noting our time limits).

**“The SLCC was efficient and responded promptly”**



## COMPLAINTS THAT ARE FRIVOLOUS, VEXATIOUS OR TOTALLY WITHOUT MERIT

### CASE 3

**Complaint reasons:**

Alleged failure to deal with case effectively

**Outcome:**

No evidence to suggest the solicitor had failed to act on the complainer's instructions or in the complainer's best interests

**Decision:**

Complaint was considered to be without merit

Ms C complained that her solicitor had failed to deal with her case effectively when representing her in a personal injury case. Ms C alleged that her solicitor had failed to follow her instructions to take her case to court and had instead negotiated a settlement sum.

We considered that in negotiating the offer on behalf of Ms C, the solicitor acted on her instructions and in her best interests, which was to try and negotiate the best possible offer she believed Ms C could achieve. We reflected that it was up to the solicitor to negotiate the offer and up to Ms C to accept it or reject the amount offered. There was no evidence that in acting on Ms C's behalf, the solicitor had failed to act on her instruction or in her best interests.

When considering whether the solicitor had inappropriately rejected Ms C's instruction to take her case to court we found this addressed by the solicitor in correspondence to Ms C.

The solicitor had explained that in this case it was likely that Ms C would be awarded much less than she hoped for. The defenders would be entitled to draw the court's attention to earlier offers and could hold Ms C liable for most of the expenses of the case. We found that the solicitor had not accepted Ms C's instructions and had clearly explained why not.

We considered it was up to Ms C to decide whether she wished to accept the settlement offer and, if not, whether she wished her solicitor to continue acting for her if she was not happy with the advice received.

Our decision in this case was the complaint was totally without merit.

**Reflections**

We considered whether the solicitor acted on their client's instructions and in their clients best interests. A solicitor does not automatically have to accept the client's instructions.



## CASE 4

**Complaint reasons:**

Third party complaint concerning alleged threatening correspondence from the opponent’s solicitor

**Outcome:**

We considered that contrary to the allegation, the correspondence in question was not threatening. The solicitor had made it clear that they were writing on behalf of their client and were outlining their client’s views and not their own

**Decision:**

The complaint was considered to be without merit

In connection with a dispute concerning payments, Ms C alleged that the opposing side’s solicitor had issued a threatening letter to her.

In a letter to Ms C, the solicitor stated that their client was experiencing difficulty in obtaining payment from her and that they were instructed to request that Ms C make payment directly to his client. The solicitor noted that if Ms C failed to make the payment, his client may be required to raise legal proceedings against her.

Following review of the correspondence, we considered the letter from the solicitor was not

threatening. The solicitor made it clear he was writing on his client’s instructions and that he was outlining his client’s position. The client was legally entitled to raise an action so it followed the solicitor was entitled to write and indicate this was being considered. We considered that in writing the letter, the solicitor had acted appropriately on the instructions of his client.

**Reflections**

Legal practitioners should make it clear that they are acting on their clients instructions, expressing their client’s views and outlining their client’s position.

**“We greatly appreciate SLCC efforts on our behalf. But for you, I think we would still be waiting”**

## CASE 5

**Complaint reasons:**

Alleged undue delay in dealing with action and alleged derogatory remarks being made by the solicitor

**Outcome:**

We noted that the complexity and adversarial nature of the action had caused delay and that there was no undue delay on the part of the solicitor and that the allegation of a derogatory remark was totally without merit

**Decision:**

The complaint was considered to be totally without merit

Mr C and Mrs C were in the process of a divorce action when Mr C alleged that Mrs C's solicitor had failed to bring the divorce action to an end in a timely manner and made a derogatory remark about his lifestyle. This complaint represented a third party complaint in that Mr C was not a client of Mrs C's solicitor.

We noted that the financial affairs were complex and required verification by each side. Due to this complexity and the adversarial approach of the parties, we considered that it was reasonable that the proceedings could take some time.

We also considered the allegation that Mrs C solicitor made a derogatory remark concerning Mr C to be totally without merit. The solicitor's observation was based on the examination of the financial information provided by Mr C's solicitor and the remark made was considered not to be derogatory but a reasonable observation.

**Reflections**

We will look at the circumstances of each complaint and what is reasonable. Legal action can be complex and lengthy.

**“I do believe that the information given by the SLCC throughout all stages of the investigation was of the highest standard and I do appreciate everything the SLCC was able to provide”**





**Marjorie Mantle, Mediation Manager**

## MEDIATION

Mediation gives the parties the opportunity to resolve the complaint with the help of an impartial, independent mediator. Mediation is voluntary which means both parties must agree to it.

Mediation is confidential. The parties sign an agreement before the mediation takes place which includes agreeing not to tell

anyone about the content of what is discussed or the details of any settlement they reach. At no point is this or the actual detail of the mediation made known to anyone except the parties, the mediator, and the SLCC’s Mediation Manager. Even if a complaint goes on to be investigated, the details of the mediation remain confidential.

## EXAMPLES OF SETTLEMENTS

ISSUE	RESOLUTION
<b>Anxiety caused by firm’s delay in clarifying defenders claim for damages</b>	The firm provided an explanation and acknowledged that there was a lack of effective communication by staff. The complainer accepted the explanation and welcomed the firm’s offer to write to him detailing changes to their communications process.
<b>Difficulties for the complainer and family regarding application for Leave to Remain in the United Kingdom</b>	After lengthy discussion, the parties decided that the firm would write a letter detailing the original application to the Home Office. In recognition of the additional costs incurred by the complainer, the firm agreed to pay some compensation.
<b>Problems arising from the winding-up of a trust</b>	The parties acknowledged that there had been miscommunication on both sides. The firm agreed to undertake fixed additional work for no fee. The complainer agreed to pay the balance of the current outstanding fee.
<b>Stress caused by poor communication and delays in finalising divorce</b>	The firm agreed to provide fortnightly updates and to progress matters quickly. They also made an ex gratia payment as a gesture of goodwill. In return the complainer agreed to go no further with the complaint.
<b>Potential claim against complainer because house purchase did not proceed</b>	During the mediation it became clear that both parties had different understandings of when missives would be concluded. Together they decided that if a claim were made by the sellers, the firm would represent the complainer for no fee. If the sellers’s claim were successful, the parties would share the cost of the claim.

If mediation does not resolve the complaint or is not accepted as an approach, the complaint is passed to an investigator.

## INVESTIGATION

We take all of the complaints which we receive very seriously and make careful enquiries as we investigate complaints. This can be a lengthy process taking a number of months and throughout, we continue to look for opportunities

for the complaint to be resolved. Where this isn't possible, then the investigator writes a report detailing their recommendations and any proposed settlement. If the two parties accept the report then the complaint is resolved.

## INVESTIGATION CASE STUDIES

### CASE 6

**Complaint reasons:**

Alleged failure of solicitor to keep client updated and delay in undertaking work

**Outcome:**

We found that the solicitor had cancelled a set meeting without informing the client and delayed in preparing the instructed work

**Decision:**

The complaint was upheld. Compensation of £150 was awarded, along with payment of £65 in respect of actual loss to cover the expenses the client incurred travelling to the cancelled meeting

Ms C complained about the action of a solicitor who handled her Power of Attorney. Ms C complained that the solicitor had failed to notify her in advance of the cancellation of their arranged meeting and delayed in preparing the requested Power of Attorney.

We considered whether Ms C suffered any actual loss as a result of the inadequacy of the service provided. We noted that Ms C had expended time and incurred expense as a result of having travelled to the scheduled meeting. We also considered that Ms C had

experienced delay in having the Power of Attorney prepared and that the inadequacy of the service provided would have caused Ms C modest inconvenience.

We awarded £150 compensation to Ms C for inconvenience and distress, and £65 for costs incurred by Ms C in travelling to the cancelled meeting.

**Reflections**

Practitioners should update their clients appropriately and notify them of changes.

**CASE 7**

**Complaint reasons:**

Third party complaint alleging failure of solicitor to administer estate within appropriate timescales and to communicate effectively with the beneficiaries of the estate

**Outcome:**

We considered there were shortcomings in the service provided

**Decision:**

The complaint was upheld. The solicitors were instructed to reduce their fee by £267 (this reflected a 15% reduction in the solicitors' fee) and to pay £400 in compensation

The complaint concerned the administration of a deceased relative's estate and the consequent communication with the beneficiaries of the estate. We noted unaccountable delays in the winding up of the estate. (delay in applying for Confirmation and a general failure to keep parties updated as to progress.)

We considered that there should be a 15% reduction in the solicitors' fee to reflect the shortcomings of the service provided, on account of the extensive delays and the extra work resulting from same.



**“Your intervention has given me hope in the matter. Thank you so much”**

## DETERMINATION

If either party does not agree to settle a complaint at the investigation stage, it is referred for determination.

Determination is by a Determination Committee consisting of at least three Members of the SLCC

(chaired by a legal member). The Determination Committee is informed by the investigation report but is not bound by it. The Committee makes its own decision based on the supporting evidence. Decisions are called determinations. The parties are each sent the draft

determination so they have an opportunity to comment before a final determination is made. These final determinations are formal and binding and can only be challenged by appeal to the Court of Session.

## DETERMINATION CASE STUDIES

### CASE 8

#### Complaint reasons:

Alleged failure to issue Terms of Business letter, failure to communicate effectively and failure to progress leave to Appeal as requested by the client

#### Outcome:

The Determination Committee considered there was inadequate professional service from the solicitor and awarded compensation

#### Decision:

The complaint was partly upheld

Mr C submitted a complaint against his solicitor who he instructed in respect of court proceedings and alleged that his solicitor failed to issue him with a Terms of Business letter, failed to explain the application process to him and failed to return his telephone calls and communicate effectively with him regarding the progress of his case.

The Determination Committee examined afresh all of the information which had been provided by the parties in respect of the complaint.

The Determination Committee discussed in detail the specific issues raised by Mr C in his complaint and confirmed that it

was satisfied that all the issues had been fully investigated in terms of the SLCC Investigation Report and that the conclusions and recommendations contained in the Investigation Report reflected the Determination Committee's own view on the issues.

The Determination Committee considered that as the work that was undertaken by the solicitor on behalf of Mr C was adequate and that the solicitor ultimately succeeded in obtaining Leave to Appeal, Mr C's position had not been adversely affected. However, inadequate professional service did exist in relation to the solicitor's failure to send a Terms of Business letter to Mr C, along with delayed communications.

The Determination Committee was of the view that an abatement of fees was not an appropriate remedy in this case. The Determination Committee considered that the inadequate professional service identified would have caused Mr C some worry and concern of limited effect and duration and the appropriate level of compensation in this case was £250.



## CASE 9

**Complaint reasons:**

Alleged failure of solicitor to have certain documents translated along with delay in progressing work

**Outcome:**

The Determination Committee agreed with the Investigations Report and considered there was evidence of inadequate professional services and that compensation would be appropriate

**Decision:**

The complaint was upheld, with £350 being awarded in compensation

Mr C issued a complaint against his solicitor, submitting that his solicitor had failed to arrange for the translation of certain documents.

The Determination Committee noted that the solicitors had asked for a quote from a translation firm to translate Mr C documents. The Determination Committee agreed with the Case Investigator’s reasoning that it could not be taken from the evidence presented that the solicitor had committed to having the documents translated, but that it could see no evidence that the solicitor had at any time told Mr C that they would not have the documents translated. In view of the fact that the client had delivered the documents to the solicitor, the Determination Committee considered that there was the expectation that something had to be done with the documents, whether that was having them translated or advising Mr C they were not having the documents translated.

The Determination Committee went on to consider the appropriate remedy in light of the inadequate professional service identified. The Determination Committee agreed with the Case Investigator’s reasons for finding that an abatement of fees and compensation for actual loss were not appropriate remedies in this case.

The Determination Committee similarly was of the opinion that the level and duration of worry that resulted to Mr C as a result of the inadequate professional service had caused Mr C modest inconvenience and worry on a number of occasions but for a limited duration. The Determination Committee decided that £350 would be appropriate compensation.

**“The SLCC was extremely diligent”**

## CASE 10

**Complaint reasons:**

Alleged failure to keep client informed

**Outcome:**

The Determination Committee agreed with the Investigations Report, that no inadequate professional service was evidenced

**Decision:**

The complaint was not upheld

Mr C submitted a complaint, alleging that his solicitor had failed to keep him informed of all correspondence.

The Committee noted the comments which Mr C had made in respect of the Investigation Report. The Committee noted that it did not consider the comments to include any new information which had not already been taken into consideration during the investigation of the issues in this complaint.

The Determination Committee agreed with the conclusions reached in the Investigation Report that it was not the usual practice for solicitors to copy their client into all correspondence unless this had been expressly agreed. The Committee agreed that the complaint should not be upheld.

**Reflections**

Although the Committee agrees with the investigation report, they do consider cases with fresh eyes and sometimes make a different decision.



George Clark, SLCC Board Member

## SERVICE DELIVERY

As a complaints handling organisation, it's especially important that we take complaints about our own performance seriously. We do make mistakes and we do get things wrong and where this happens we try to learn from our mistakes and put things right. Sometimes people complain about the SLCC because they don't agree with the decision we've made about their case. Complaints can be very emotive on both sides, touching on deeply held feelings so naturally parties can sometimes be angry, disappointed and upset about the outcome of their case. We need to distinguish between complaints about the outcome of our process and complaints about how our service delivery of the process. This isn't always easy.

Where either party disagrees with the outcome, they have the right to appeal against our decision to the Court of Session. Our service delivery complaint process doesn't cover the merits of our decisions.

Where either party believes that they haven't had the courteous and professional treatment which they should expect from us, this is covered by our service delivery process. A manager will investigate the service delivery complaint and respond to it. If this still does not resolve the concerns raised, then our Chief Executive Officer will investigate and respond.

Service Delivery Complaint Outcomes	
Upheld	5
Not Upheld	47
Resolved	3
Withdrawn	1
<b>Total</b>	<b>56</b>

The complaints which were upheld related to delay and poor communication and we have taken steps to make sure that we learn from them.

## APPEALS

The decisions which we make at the eligibility and determination stages can only be challenged by appeal to the Court of Session. Even if new information comes to light that may have influenced our original decision, the SLCC cannot change a decision except through the court process. We take our responsibility to make decisions very seriously and we recognise that the appeal process can be lengthy, complex and costly.

The SLCC received sixteen appeals in 2011-12. Of the appeals, fourteen related to appeals against the SLCC's assessment of eligibility. The other two appeals concerned determinations.

Six of the appeals are still on-going. Of the ten that have concluded, four were remitted back to the SLCC for a fresh decision on eligibility and one was remitted back for a fresh decision by a Determination Committee. The SLCC lost one appeal, won two and two were withdrawn by the appellants.

Of the appeals about eligibility decisions, eight were from practitioners who did not agree with our decisions to accept complaints against them for investigation and four were from complainers who did not agree with our decisions to reject their complaints (or part of their complaints) as ineligible. The two appeals concerning determinations were made by practitioners.

Outcome	
Ongoing at 30 June 2012	6
Remitted back for eligibility decision	4
Remitted back for determination decision	1
Won	2
Withdrawn by appellant	2
Lost	1
<b>Total</b>	<b>16</b>

## OVERSIGHT

The SLCC investigates and determines complaints about service, but complaints which are assessed as conduct are investigated by the relevant professional organisation (RPO). Our role in strengthening public confidence about conduct complaints has several aspects.

Firstly, as the single gateway for legal complaints, we decide whether a complaint should be accepted for investigation or not under our eligibility process. Secondly, where a complainer is dissatisfied with how a conduct complaint has been investigated, we can review how this was done and if necessary tell the RPO to reinvestigate, sharing

any concerns which we have with the parties to the original conduct complaint. The SLCC also has powers to order the RPOs to pay complainers limited compensation, if it considers it appropriate to do so. These are called handling complaints. Thirdly, we have oversight powers to audit the systems and processes which the RPOs use in investigating and determining conduct complaints and to bring any areas which we think could be improved to their attention, making recommendations and giving guidance if appropriate.

The SLCC also has a duty to oversee how practitioners deal with complaints and how they deal with matters that result in complaints

being made to the SLCC. The SLCC monitors practitioners' compliance with the complaint process and where deficiencies and or concerns are identified, these are brought to the attention of the RPO.

In some cases, the SLCC has asked the RPO to consider dealing with the matter as a potential conduct complaint against the practitioner concerned.

The SLCC intends to provide more extensive complaint handling guidance over the course of the next year.

## HANDLING COMPLAINTS

We received twelve new handling complaints this year and have investigated and closed three. The remaining complaints are currently suspended pending further information being received or are in process of being investigated.

In respect of our closed handling complaints, two complaints related to the Law Society of Scotland. In one we found that there had been unreasonable delay in managing the investigation. The Law Society of Scotland accepted our recommendations and paid the complainer compensation. The Law Society of Scotland also confirmed that there is a project in place to set targets and timescales,

which should give more stringent time frames to work with when investigating conduct complaints. The other handling complaint was investigated and classified as being a generally satisfactory investigation by the Law Society.

One complaint was made against the Faculty of Advocates. The Faculty of Advocates did not

accept the recommendations in our final report. The SLCC used powers under the 2007 Act to issue a Direction requiring the Faculty of Advocates to follow the recommendations in the final report. The Faculty of Advocates agreed to follow the Direction and took the appropriate action.

Status	Number
In hand at start of year	3
New complaints received	12
Final Report Issued	3
In hand at year end	12



## AUDITING SYSTEMS AND PROCESSES

We conducted two audits during the year.

The first looked at the workings of the Guarantee Fund, making a detailed assessment following the research carried out by the University of Manchester which was mentioned in last year's Annual Report. The audit concluded that there was a reasonable level of assurance around how claims to the Guarantee Fund were dealt with and noted some improvements to processes and documentation over recent years. Whereas the University of Manchester had

stated that the outcome of individual claims was statistically related to factors beyond the merits of the individual claim, our audit found no evidence that the way in which policies and procedures were and are applied were factors.

The second looked at the processes which the Law Society of Scotland has in place to make sure conduct investigations are carried out within reasonable time frames. Once this report has been finalised we will be discussing it with the Law Society and publishing it on our website.

## GUIDANCE

An area we consider extremely important is providing good practice guidance to the legal profession. We commissioned a telephone survey of solicitors and advocates to gain a better understanding of how complaints are handled by practitioners before they reach us. We are currently integrating the results of the survey with the data which we hold about the complaints which reach us. Our plan is to publish a report about the survey on our website and to use it to help develop better guidance for practitioners.

We have met with Consumer Focus Scotland and Citizens Advice Scotland, as well as the relevant professional organisations to

discuss complaints about legal services and based on these meetings we have identified two priorities for our guidance work for next year.

- 1. Educating consumers about the extent of legal services they can expect from practitioners and empowering them to raise their concerns and take appropriate action if they are unhappy.**
- 2. Supporting the profession by identifying common areas of complaint and suggesting best practice to prevent complaints or to improve how complaints are dealt with**

**“I thought the SLCC handled everything well”**

# Who we are

## BOARD

The SLCC Board has nine Board Members. Six are lay Members (i.e. not part of the legal profession in Scotland) and three are legal Members (i.e. they are or have been part of the legal profession). Under the 2007 Act, there must always be more lay Members than legal and the Chairing Member must always be a Lay Member.

Our Board is drawn from a wide variety of backgrounds across Scotland. Our Members have a wealth of experience in corporate governance, complaint handling and public service. Our legal Members contribute the legal expertise we need to inform our decision making.

The Board currently comprises:

- Jane Irvine, Chairing Member (Lay)

### Lay Members

- Ian Gibson
- Siraj Khan
- Iain McGrory
- Fiona Smith
- Samantha Jones

### Legal Members

- George Clark
- Maurice O'Carroll
- Ian Leitch CBE

Further details of our Members are available from our website

## STAFF

A team of experienced, highly skilled and dedicated colleagues work to deliver the SLCC's objectives. Our work demands not only legal expertise, but also strong skills in analysis, communication and customer service. We continue to invest in training and development and wherever possible we look to learn from similar organisations.

We conducted a staff survey to find out how staff felt about the SLCC, the way that we work and areas where we could improve and have followed this up as part of our weekly staff meetings.

We recognise the importance of developing new talent and have recently started a programme of work experience placements and internships which support the Scottish Government's plans to tackle youth unemployment. Our pay structures are governed in accordance with the principles of the Scottish Government pay remit.



Samantha Jones, SLCC Board Member

# Talking and listening

## TALKING

The SLCC continues to give presentations and deliver seminars to a range of stakeholders. We have spoken to stakeholder groups on topics that include our role and responsibilities, the value of mediation in complaint resolution and good practice in complaint handling.

The SLCC responds regularly to consultations from, for example, government departments, MSPs and policy makers.

During the year we responded to:

- Scottish Governments consultation on the creation of a Scottish Civil Justice Council
- Scottish Government Consultation on Financial Contributors in Criminal Legal Aid Changes to Financial Eligibility
- Proposed Apologies (Scotland) Bill Consultation

## LISTENING

Under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007, we are required to consult with the professional bodies and ministers on our budget proposals. We issued our consultation budget in January 2011 for comment on proposals for the financial year starting in July 2012. The budget consultation also included consultation about the general levy we intended to charge for the coming year. Our budget was laid before Parliament in April 2012 and is available from our website at <http://www.scottishlegalcomplaints.com/news/slcc-budget-for-2012-2013.aspx>

The SLCC also issues feedback questionnaires to everyone who has had a complaint through our system. Responses continue to be monitored and used to actively inform our service delivery.

We are also keen to listen to internal stakeholders. We ensure that everybody in the SLCC has a route to raise issues and make a contribution to the way we run and manage ourselves.

# Complaints statistics

## COMPLAINT NUMBERS

Enquiries	
	2011/12
Enquiries in hand at the start of the year	4
Enquiries received	4627
Enquiries dealt with	4627

Complaints	
	2011/12
Complaints in hand at the start of the year	566
Complaints received	1264
Complaints ineligible for investigation	486
Withdrawn/resolved before eligibility decision made	128
Eligible conduct complaints referred to professional body for investigation	144
Eligible service complaints dealt with and closed by SLCC	289
Complaints in hand at the end of the year	783

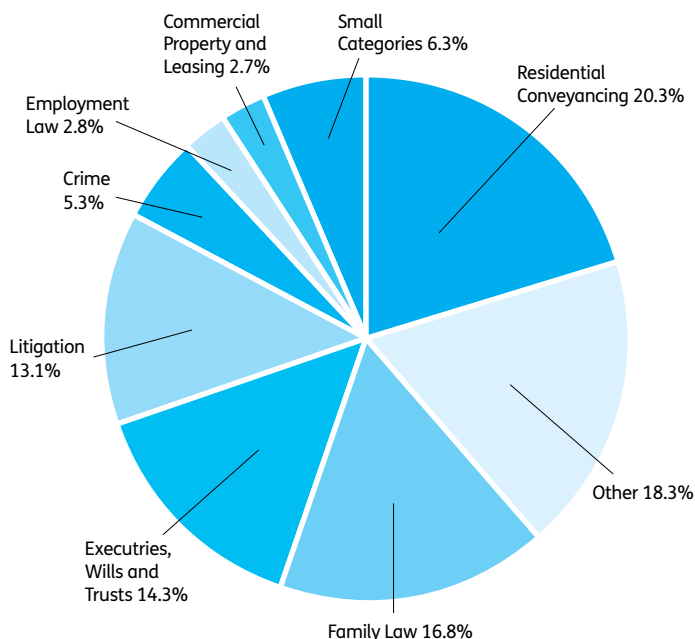
Split between conduct and service complaints accepted as eligible for investigation

	2008/09	2009/10	2010/11	2011/12
Conduct	84%	45%	29%	23%
Inadequate Professional Service	16%	55%	71%	77%

**“The SLCC provided a good and efficient service”**



### Breakdown of business category



### Small Categories

Breakdown By Business Category	<2%
Medical Negligence	
Housing, Landlord and Tenant	
Commercial and Company Law	
Immigration and Asylum	
Financial Services - Other	
Mental Health	
Consumer Law	
Agricultural Law	
Child Law	
Crofting Law	
Negligence	
Planning and Compulsory Purchase	
Taxation	
<b>Total</b>	<b>6.3%</b>

## ELIGIBILITY

### Summary of decisions taken about the eligibility of complaints

Premature - practitioner not give reasonable opportunity to resolve the complaint	<b>115</b>
The complaint was about a practitioner acting in a judicial capacity	<b>4</b>
The complaint was made outside time limits	<b>174</b>
Frivolous, vexatious or totally without merit (198 were totally without it, 2 vexatious and two were a combination of reasons)	<b>202</b>
Resolved before an eligibility decision was taken	<b>61</b>
Accepted as an eligible conduct complaint	<b>104</b>
Accepted as an eligible hybrid complaint (hybrid includes both conduct and service complaint)	<b>51</b>
<b>total</b>	<b>711</b>

As can be seen from the breakdown of decision types, two of the commonest reasons for not accepting complaints were that they had been made outside the time limits or were frivolous, vexatious or totally without merit.

## MEDIATION

### Complaints resolved by mediation

Resolved at mediation	<b>56</b>
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The types of complaints we have mediated cover a range of subjects. The resolution the parties reached included accepting the explanation given by the solicitor, accepting an apology, expediting the work the solicitor was doing, rebating fees which generally ranged from

£100 to £3000 and compensating the complainer, generally ranging from £100 to £2500. (In a few instances the fee rebate or the compensation was higher than the range.) Once the terms of a settlement agreement are fulfilled, the SLCC closes the complaint file.

## INVESTIGATION

Resolved at investigation by report	46
Resolved at investigation by conciliation	19
Withdrawn by the complainer at investigation stage	22

Of the cases settled by an investigation report, 26 were either fully or partly upheld. In each of these cases compensation was awarded amounting to a total of £15633 or an average of £601 per case. In addition, fees were abated in 13 of these cases amounting to a total of £3101 or an average of £310 per case.

## DETERMINATION

Complaints wholly/partially upheld at determination	<b>44</b>
Complaints not upheld at determination	<b>92</b>
<b>Total number of cases determined</b>	<b>136</b>

In 33 of the cases either fully or partially upheld by a Determination committee compensation was awarded. This totalled £37042 or an average of £1122 per case where compensation was awarded. In a further 17 cases fees totalling £3851 were abated.

We have seen an increase in cases of non-compliance where practitioners fail to pay awards which have been made against them by the SLCC. We take a firm line on this and use Sheriff's officers and the Small Claims Court processes to enforce the outstanding sums.

We are in discussion with the relevant professional organisations to ensure their support in tackling non-compliance.

In addition, we have found that complainers sometimes have to wait a considerable length of time to receive compensation or fee rebates where a judicial factor or trustees have been appointed. Since this does little to build public confidence, we have started to work with the relevant professional organisations to assess options to address this issue.

## SLSO LEGACY WORK

The SLCC continues to deal with handling complaints that under transitional arrangements are dealt with under the powers of the ex-Scottish Legal Ombudsman.

### In the year we dealt with the following:

Complaints in hand at 1 July 2011	<b>4</b>
New complaints received	<b>45</b>
Complaints not accepted for investigation	<b>17</b>
Complaints investigated and closed	<b>64</b>
Complaints in hand	<b>4</b>

# Governance

**“Corporate Governance is the way in which organisations are directed and controlled. The Audit Committee of the SLCC plays a key role in the governance function, with its’ primary responsibility being to support the Board and Accountable Officer. It does this by providing assurances that effective controls are in place to ensure proper management of finances and our organisation. In effect the audit committee provides a “health check”, by providing assurance to the Board and Accountable Officer, that we are focussing on the significant issues, which will impact on our ability to deliver our Strategic Objectives”.**

*Iain McGrory,  
Chair of the Audit Committee*

In respect of corporate governance, significant events took place during the year with all of the founding members leaving office at the end of their fixed terms,

followed by our Chief Executive. Our present committee intends to build on the firm foundations left by the previous Chair and members of our earlier committee.

The SLCC recognises that we need to have robust governance arrangements in place to provide assurance that our activities comply with standards and legislation, promote quality, equality and efficiency in how we do business.

The remit of the SLCC’s audit committee is to ensure that it monitors and supports our CEO, as Accountable Officer and provides assurance to the Board in respect of:

- Financial management and performance
- Strategic processes for risk control and governance
- Activity of internal and external audit and implementation of recommendations, including proposals for tendering for audit

services or for purchase of non-audit services from contractors who provide audit services

- The effectiveness of the internal control environment including best value and efficiency
- The SLCC’s corporate governance requirements
- Anti-fraud and whistle-blowing policies and arrangements for special investigations

During the year our Internal Auditors Audit Programme focussed upon

- Core Financial Systems
- Freedom of Information and Data Protection
- Best Value
- Business Continuity Planning
- ICT Network Infrastructure
- Corporate Governance
- Risk Management

The feedback from our Internal Auditors is positive and we are confident that our governance approach is sound and that we manage risk effectively. However, we recognise that there will always be room for improvement and we continue to adjust our policies and procedures in light of experience.

New External Auditors were appointed during the year and an Audit Strategy Overview and Plan has been approved.



**Iain McGrory, SLCC Board Member and Chair of Audit Committee**

## FREEDOM OF INFORMATION

The SLCC is committed to Freedom of Information and aims to be as open as it can be in the information it shares.

We reviewed our publication scheme and adopted the model scheme published by the Scottish Information Commissioner.

We put in place steps for regular review to ensure that we put as much information as we can on our website.

We complied with our statutory duties as a body subject to the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) by responding to information requests. We did not receive any requests under EIRS.

Number of requests under FOISA and who made them				
	2008/09	2009/10	2010/11	2011/12
Legal Profession	0	1	0	4
Member of public	40	42	37	53
Media/press	3	7	11	41
MSP/MP	0	5	8	3
Other	0	0	1	0
<b>total</b>	<b>43</b>	<b>55</b>	<b>57</b>	<b>101</b>
<b>Percentage of requests made by the same person</b>	<b>42</b>	<b>29</b>	<b>39</b>	<b>38</b>

NB figures for 2008-09 cover the nine months 1 October 2008 to 30 June 2009

The outcomes of requests under FOISA				
	2008/09	2009/10	2010/11	2011/12
Information Supplied	11	26	18	55
Information Partially Supplied	17	14	25	25
Information Withheld	14	11	13	21
Insufficient information provided by the requestor to respond	0	0	1	0
Request Withdrawn	1	4	0	0
<b>total</b>	<b>43</b>	<b>55</b>	<b>57</b>	<b>101</b>



## ACCESSIBILITY

We work to make our service accessible to all and to communicate with people as helpfully as possible according to their needs and preferences. Accordingly we offer:

- A translation service for translating correspondence to and from languages other than English;
- Information leaflets in languages other than English
- Information in alternative formats such as large print, audio CD and easy to read text, on request.

**“Thanks to the perseverance of the SLCC, a solicitor was reminded of their ‘duty to the court’”**

## EQUALITY AND DIVERSITY

To ensure we are accessible to all and that people are aware of us, we gather information about who our users are, their race and ethnicity, their gender, their age group, whether they consider they have a disability, how they found out about the SLCC and whether they are ordinarily resident in Scotland. For further information please see our website.

## HELPING OTHERS

The SLCC are proud to support MacMillan Cancer Research:-

<http://www.macmillan.org.uk/Home.aspx>

Staff at the SLCC vote every year on what charity to support and for this term elected this very worthy cause.



## SUMMARISED ACCOUNTS 2011-2012

The information set out here is an extract from the SLCC's audited annual accounts for the year ending 30 June 2012. The full accounts are available on our website: [www.scottishlegalcomplaints.org.uk](http://www.scottishlegalcomplaints.org.uk)

The SLCC set its anticipated expenditure requirements for 2011-12 at £2,796,000 against which it received income of £1,909,000. Actual expenditure was £2,645,000 leaving an annual deficit of £736,000 compared to the previous annual deficit of £175,000.

Total reserves held at the end of the year amounted to £1,033,000 (compared to £1,816,000 at 30 June 2011)

### Statement of Comprehensive Income and Expenditure for year ending 30 June 2012

	2012 £'000	2011 £'000
<b>Operating Income</b>	(1,909)	(2,232)
<b>Expenditure</b>		
Staff Costs	1,630	1,415
Other Administration Costs	1,008	989
Depreciation	7	4
Pension Interest Cost and Expected Return on Pension Assets	(2)	(1)
<b>Net Operating Cost</b>	<b>734</b>	<b>175</b>
<b>Other Comprehensive Income</b>		
Actuarial Loss/(Gain) on Pension Scheme	21	(8)
<b>Net Deficit for Year</b>	<b>755</b>	<b>167</b>

**Statement of Comprehensive Income and Expenditure for year ending 30 June 2012**

	2012 £'000	2011 £'000
<b>Non Current Assets</b>		
Property, Plant and Equipment	139	64
Intangible Assets	90	–
<b>Total Non Current Assets</b>	<b>229</b>	<b>64</b>
<b>Current Assets</b>		
Trade and Other Receivables	69	94
Cash and Cash Equivalents	953	3,365
<b>Total Current Assets</b>	<b>1,022</b>	<b>3,459</b>
<b>Total Assets</b>	<b>1,251</b>	<b>3,523</b>
<b>Current Liabilities</b>		
Trade and other payables	(153)	(1,709)
<b>Total Current Liabilities</b>	<b>(153)</b>	<b>(1,709)</b>
<b>Non Current Assets plus Net Current Assets excluding Pension Liabilities</b>	<b>1,098</b>	<b>1,814</b>
Pension Scheme Liability	(21)	2
<b>Non Current Assets plus Net Current Assets including Pension Liabilities</b>	<b>1,077</b>	<b>1,816</b>
<b>Non Current Liabilities</b>	44	–
<b>Assets less Liabilities</b>	<b>1,033</b>	<b>1,816</b>
<b>Equity</b>		
General Fund	1,002	1,757
Donated Asset Reserve	31	59
<b>Total Equity</b>	<b>1,033</b>	<b>1,816</b>

Scottish Legal Complaints Commission  
The Stamp Office  
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