

A guide for MSPs, MPs and Parliamentary Staff



This guide aims to assist MSPs, MPs and their staff in helping constituents who are unhappy with the service provided by a lawyer, or who have concerns about the way a lawyer has behaved.



Who are we?

We were set up in 2008 as the single gateway for all legal complaints in Scotland. Our service is independent and free.

What do we do?

- > We answer enquiries about legal complaints and **provide advice** to the public on how to make complaints directly to lawyers, or to us.
- > We assess the **eligibility** of all legal complaints about Scottish qualified lawyers – that means deciding if can be investigated and if so, how.
- > Where possible, we help consumers and lawyers agree a way to **resolve** any issues, including by providing free, independent mediation.
- > We carry out investigations into complaints about alleged **inadequate services** provided by members of the legal profession.
- > We refer any complaints about a lawyer’s conduct to the relevant professional body – the Law Society of Scotland, Faculty of Advocates or Association of Commercial Attorneys – to investigate. We oversee how those bodies deal with those complaints.
- > We monitor trends in complaints and publish **guidance on best practice** in complaint handling to help lawyers recognise the common causes of complaints and resolve complaints early when they do arise.

Funding and governance

Although a public body, we are funded by an annual levy which all legal practitioners are obliged to pay – we are responsible for setting the amount of that levy, and we lay our budget in Parliament annually.

We have a publicly-appointed Board with a majority of lay Members and a lay Chair. Our Board Members also make formal decisions on some aspects of complaints.

We also have an independent Consumer Panel which assists us in our policy-making and research.

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What can we do for your constituents?



Making a complaint about a lawyer or law firm

We can answer enquiries about making a complaint about a lawyer or law firm and **provide advice and support** to do so.

Your constituents can contact our enquiries team on **0131 201 2130** or at **enquiries@scottishlegalcomplaints.org.uk**

We can advise on how to make a complaint, support them to do this, and explain what information we'll need to be able to consider their complaint.

We also provide **guidance and template letters** to **help people make a complaint directly to the lawyer or firm**, as in most cases someone wanting to complain to us will need to be able to show that they have first given the lawyer or firm a reasonable opportunity to deal with the complaint themselves.

Resolving complaints about poor legal service

Our main role is investigating and resolving complaints about poor levels of service provided to consumers by legal practitioners in Scotland.

Our aim, wherever possible, is to **resolve** complaints at the earliest opportunity as we believe that this is generally in the best interests of all parties but, especially complainers. We will help to find a mutually agreed outcome, either through offering free, confidential mediation with professional mediators, or by helping parties agree a consensual settlement.

Where that isn't possible, we will investigate the complaint, listening to both parties, and make a recommendation.

If required, we will issue a formal decision on the complaint and any settlement required.

Where we formally uphold a complaint, we can **award compensation** of up to £20,000. We can also instruct the practitioner to refund fees and outlays – either to the complainer or the Scottish Legal Aid Board if the case was legally-aided – or remedy any defect caused by the poor service.

Overseeing complaints about a lawyer's conduct

Where we identify a complaint about a lawyer's conduct, we have to refer it to the relevant professional body – the Law Society of Scotland, Faculty of Advocates or Association of Commercial Attorneys – to investigate.

However, we oversee how those bodies deal with those complaints. This includes **accepting complaints** about the way a professional organisation has dealt with a conduct complaint.

Guidance and advice for lawyers and law firms

As well as investigating individual complaints, we **draw learning** from these complaints to drive improvement.

We **publish data and trends** about complaints and we offer **free guidance, advice and training** to law firms within your constituency on avoiding the common causes of complaints and good complaint handling.

Learning from complaints can help firms improve their risk management, reduce costs, and help them to attract and retain clients. It also helps improve customer experience and **drive public confidence in legal services**.



MSP/MP Postbag

Some common questions

My constituent is unhappy with the service provided by their lawyer – what should they do?

Under most circumstances, your constituent should first make a complaint directly to the lawyer or firm. They can find **guidance and a template letter on our website** to help do this. Each solicitor firm has a Client Relations Manager responsible for dealing with complaints and the firm should also have its own complaint process. This often helps to resolve the complaint swiftly and by mutual agreement. If the complaint is not resolved this way, then your constituent can make a complaint to us. There are certain circumstances where we may accept a complaint without this step having to take place – for example, if it is a clear and serious conduct matter.

When should someone bring a complaint to the SLCC?

We usually advise complainers to allow the lawyer or firm at least four weeks to investigate their complaint before referring it to us if it remains unresolved. We advise complainers to make their complaint as soon as possible while memories of events are fresh and matters are easier to investigate. There are **statutory time limits** on making a complaint too.

Is there a fee for making a complaint?

No our service – including mediation where that is considered appropriate – is completely free to complainers.

Can you provide advice or assistance to my constituent to make a complaint?

Your constituents can contact us directly by **phone or email** for advice on making a complaint to us, or for any help or assistance they require.

How can my constituent make a complaint?

Complaints can be made via our website using our **online complaint form**, or a form can be downloaded and printed to complete on paper then scanned/ photographed or posted to us. The form asks about the issues being complained about, how it has affected the complainer, and what the complainer would like to happen to resolve the matter.

What information should my constituent send to you?

Our complaint form details the information we require, but generally anything which supports their complaint – this could include correspondence including letters or emails received from their lawyer or other supporting information. If the information is held electronically, this can also be submitted with the online form.

How long will it take to investigate the complaint?

This depends very much on the nature and complexity of the complaint. Our formal investigation process is thorough and will usually take several months. However, we do look for opportunities to resolve matters throughout the process.

How does mediation work?

Mediation is a free and voluntary service which allows the parties to the complaint the opportunity to understand and explore each other's position in a non-confrontational setting in the presence of an independent mediator. We employ professional mediators to carry out our mediations, and we tailor each mediation to the preferences and needs of the parties involved. Mediation is not suitable for all complaints but, where it does take place, we find that it is a very successful way to resolve complaints.

My constituent has asked for my help with their complaint – can I contact you?

Normally we are prohibited from providing any information about a complaint by our legislation (for example, we can't answer press queries about individual complaints). However, as an elected representative, contacting us on behalf of a constituent, we are entitled to assume that your constituent has given their consent to disclosure of their personal data. That allows us to discuss the case with you in general terms.

What can my constituent expect if their complaint is upheld?

Where we uphold a complaint we have a **range of sanctions** available to us depending on the extent to which the complainer has been inconvenienced or distressed and taking into account any loss incurred as a result of the inadequate service. These include awarding compensation up to £20,000 ordering the refund or rebate of fees or outlays, or directing that remedial action be taken or work re-done.

Who makes the final decision?

If a complaint cannot be resolved by agreement a final decision is made by a Determination Committee. This usually comprises a panel of three of our Board Members. Each committee is chaired by a member who is legally qualified but the committee must have a majority of lay members.

Will my constituent have to attend to give evidence?

Both the complainer and the lawyer will be given the opportunity to make written comments before the Determination Committee sits, but there is no requirement to attend to give evidence. The Determination Committee will make its decision based on the previous investigation and any subsequent evidence it may have received or requested. Complainers can ask to give oral evidence but this will only happen if the committee considers that it is necessary.

My constituent is unhappy with your decision – what can they do?

Formal decisions can only be **appealed through the Court of Session**. This should be done within 28 days of the date the decision is notified to the parties involved.

My constituent is unhappy with a professional body's decision about a conduct complaint – what can you do?

We can **investigate** whether, in making a conduct decision, the organisation concerned has followed its own process and operated fairly – this includes how the decision was reached and whether this was reasonable. If we consider that it has not followed its processes, we can ask them to look at it again. However, an appeal of a conduct decision however has to be made to the appropriate Tribunal.

My constituent is unhappy with the service provided by the SLCC – what can they do?

Where someone is unhappy with the service they have received from our staff, or if they feel that we have not handled something properly, they can make a **service delivery complaint** to us. This will involve the matter being investigated by one of our management team.



The SLCC's Consumer Panel



What does it do?

The SLCC Consumer Panel is an independent advisory panel, set up in January 2015 to assist the SLCC in understanding and taking account of the interests of consumers of legal services.

The main duties of the Panel are:

- **Making recommendations on how the SLCC can improve its policies and processes;**
- **Suggesting topics for research connected to legal consumers; and**
- **Expressing a view on matters relating to the SLCC's functions – for example, responding to consultations.**

Who are the Panel members?

The Panel must include at least two members from organisations representing the interests of consumers and at least one member from an organisation promoting equality. The Panel can have up to eight members.

Organisations who have been or are represented on our Consumer Panel include:

- Citizens Advice Scotland
- The Competition and Markets Authority
- The Scottish Independent Advocacy Alliance
- The Equality and Human Rights Commission
- Queen Margaret University's Consumer Dispute Resolution Centre
- Young Scot
- Scottish Women's Aid

Contact the Panel

The Panel is interested in hearing directly from legal consumers about their experience of, and views on, standards of legal services in Scotland. The Panel can be contacted directly at: Consumerpanel@scottishlegalcomplaints.org.uk

Legal Complaints

Legislation and regulatory reform

There has been a live debate about legal services regulation since the start of the Scottish Parliament. The Legal Profession and Legal Aid (Scotland) Act 2007 set up the SLCC, and further legislation in 2010 and 2014 has further amended our role.

The SLCC believes that further reform is necessary to modernise and streamline the complex maze of regulation and complaints handling and to drive public confidence in legal services. Our **Reimagine Regulation** publication set out our proposals for reform.

Current proposals for reform of legal services regulation

In April 2017 the then Minister for Community Safety and Legal Affairs, Annabelle Ewing, invited Esther Robertson, Chair of NHS 24, to Chair an Independent Review of Legal Services Regulation in Scotland. The Report, '**Fit for the Future: report of the independent review of legal services regulation in Scotland**', was published in October 2018 and makes 40 recommendations aimed at reforming and modernising the existing legal services regulatory framework, to provide a proportionate approach to regulation whilst supporting growth and competitive provision within the legal services sector, and placing consumer interests at its heart.

The Report's recommendations were not universally accepted and the Scottish Government **responded** to the Report in June 2019, saying it aimed to achieve consensus among key stakeholders. A planned consultation was **postponed** due to Covid-19, but we hope to see that consultation come forward early in this Parliament. In the meantime, the Scottish Government has **consulted on some proposed changes** that could be made within the current legislative framework. This is welcome, but we believe much broader reform is necessary.

The SLCC **welcomed and supported** the findings of the Independent Review, despite the significant implications it would have for our organisation. We believe it's time to act on those recommendations.

Our calls

Over the past ten years discussions have continued about the best way to regulate legal services, to drive choice and innovation in the market, and to promote public confidence and protect legal service users from harm. In that time, little has changed to achieve this. The reforms that have been introduced have layered further complexity over already convoluted regulatory arrangements, or have proved unworkable in practice.

It's time for fundamental reform to create a regulatory system fit for the future – one that works for legal service users and providers, and meets society's need for a well-functioning legal services market.

We'd be delighted to talk to MSPs about proposals for reform of legal services regulation, or to provide briefing on these issues. If you'd like to know more, contact Vicky Crichton, Director of Public Policy at **Vicky.Crichton@scottishlegalcomplaints.org.uk**.





Contact

Contacting the SLCC

For any assistance regarding the legal complaints process and enquiries about how to make a complaint, including how to complete the complaint form:

Enquiries@scottishlegalcomplaints.org.uk

If you want to find out more about us and what we do, please visit **www.scottishlegalcomplaints.com**

You can also follow us on Twitter: **[@SLCCcomplaints](https://twitter.com/SLCCcomplaints)**

Scottish Legal Complaints Commission

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