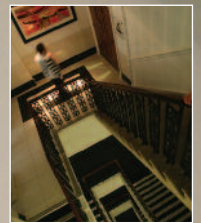


Scottish Legal Complaints Commission Annual Report 1 July 2009 - 30 June 2010



Scottish Legal Complaints Commission Annual Report 2009 - 2010

This Report covers the SLCC's period from 1 July 2009 to 30 June 2010

Laid before the Scottish Parliament by the Scottish Ministers,
pursuant to section 16 of Schedule 1 of the
Legal Profession and Legal Aid (Scotland) Act 2007

January 2011

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ISSN: 2042-4515

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The cover of this annual report is printed on 100% ECF Virgin Fibre and FSC Accredited.
The text pages are printed on a recycled grade containing 100% post consumer waste and manufactured at
a mill accredited with ISO14001 environmental management standard. The pulp used in this product is
bleached using a Totally Chlorine Free process (TCF).

Photographs: Devlin Photo Ltd, 21 Service Street, Lennoxtown G66 7JW
Design: George Nicol Graphics, 10a Buckingham Terrace, Edinburgh EH4 3AA

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Report from the SLCC Chair



This Annual Report covers the first full year of operation of the SLCC.

The theme of the year has been one of a team coming together making the Legal Services and Legal Aid (Scotland) Act 2007 work.

The SLCC has multiple powers under the 2007 Act.

We provide a gateway for complaints, deal with service complaints and oversight operation of insurance and regulatory systems operated by the professional bodies. We have significant powers to call for evidence we require and to issue guidance. We intend to use all our powers to enhance provision of legal services in Scotland.

Our priority this year has been to provide a complaint service. In my view, the range of legal services provided means our complaints are very diverse. The range can include complaints about limited advice on dog control, complaints that poor representation was provided in a murder trial or complaints regarding badly drawn up title deeds in a multi million pound international property development. Every case we receive involves something important to the person who raises it and the person who provided the service, and just like diverse complaints, diverse people's' needs do not always fit rigid systems. As a result we must flex our complaint handling powers to ensure we work in a way that meets multiple needs.

Operating a legal complaints system flexibly, starting oversight functions and using other powers available under a new Act, inevitably means boundaries require to be tested. Indeed the SLCC Board always anticipated we would need to push boundaries to establish a fair system of dealing with complaints about legal services. We set aside money anticipating that our processes might be challenged and we would have to engage in expensive Court processes. That planning was justified as we received 11 appeals through the Courts, with the most significant number coming from the Law Society of Scotland. The outcomes of these appeals could mean the SLCC has less ability to flex processes. It might also mean conduct processes are more constrained. I very much hope not, and we shall work hard to prevent this.

It has not been all about testing boundaries though. Team work is the way creative work is really achieved. It is satisfying to work with people who are committed to do everything necessary to make our service the best it can be. I thank everyone who has helped us do so much this year. I include all staff, Board Members and our stakeholders. Everyone has worked hard to make the SLCC effective. I especially acknowledge work done by Rosemary Agnew, who as Acting Chief Executive, has done much to create our can and will do attitude.

As usual, I hope this Report helps people understand a bit more about us and encourages more involvement. As I have said, our role is people focused, so we want to know if people think we are getting it right, or where we might improve. The SLCC is committed to listening and to learning from feedback from everyone with an interest in our services, so please do let me know how you think we are doing.

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

Report from the SLCC Acting Chief Executive



This report looks back over a year, which although challenging, has served to highlight the strengths of the SLCC team. Every member of staff has their own defined role, which collectively provides a strong skill-base which has enabled us to build on the firm foundations we created during our first nine months of operation.

On a personal level, my own role as Head of Investigations changed when I was asked to take on the responsibility of Accountable Officer and Acting Chief Executive Officer following the decision of our CEO, Eileen Masterman, to leave after a period of illness.

Operationally, the first challenges to the Legal Profession and Legal Aid (Scotland) Act 2007, the legislation which gives us our powers, are in the process of being heard in the Court of Session. The outcomes of these appeals are important to us as they are in relation to the interpretation of the 2007 Act and the SLCC's policies and processes based on our understanding of the Act.

Statistically, the number of enquiries and complaints coming to the SLCC is lower than originally predicted. There is no clear reason for this and it may be due to a number of factors such as the economic downturn. We have responded by adopting a cautious approach to recruitment and have expanded only to meet the needs of our current workload. At the end of our financial year, we employed 29 members of staff (including me) instead of the predicted 45, which was the figure anticipated prior to our opening in 2008.

Over the past year we have successfully established the 'gateway' for all complaints about legal practitioners and deal directly with complaints about inadequate professional service. In line with our aim to resolve complaints at the earliest opportunity, we continue to develop our mediation function and aim for resolution through both formal and informal approaches. Under transitional arrangements, complaints about matters instructed before 1 October 2008 or conduct from before 1 October 2008 are sent to the Law Society of Scotland or Faculty of Advocates to investigate.

In addition to complaints about practitioner's service and/or conduct, under transitional arrangements, we continue to consider cases in line with the former Scottish Legal Services Ombudsman's powers. These cases are about the way in which the Law Society of Scotland and the Faculty of Advocates investigated complaints from before the SLCC opened on 1 October 2008. The legislation which gives us these powers comes to an end on 1 October 2010 and after this time; we anticipate an increase in the number of complaints eligible for investigation under the 2007 Act. Our team is preparing for the change now. We also continue to pursue our research into the Master Policy and Guarantee Fund.

We have achieved a lot during the last year. Together, we have consolidated many of the necessary policies and procedures which underpin our work and are fundamental to the SLCC achieving best value in the delivery of all our core objectives.

It has also been a fulfilling and inspiring 12 months and my thanks must go to the SLCC staff. They have given me their support and worked hard to continue to deliver a high quality, independent and impartial complaint resolution service.

Rosemary Agnew
Acting Chief Executive of the
Scottish Legal Complaints
Commission

About the SLCC

“As a complaint resolution body, it is important to us that all parties involved have a voice.”

Rosemary Agnew
Acting Chief Executive of the
Scottish Legal Complaints
Commission

The Scottish Legal Complaints Commission, or SLCC, was set up by the Scottish Government to provide a single point of contact for all complaints about 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.

The SLCC powers are set out in the Legal Profession and Legal Aid (Scotland) Act 2007 (the Act) and under the terms of the Act, we also have the authority to oversee the Master Policy and Guarantee Fund.

The SLCC is responsible for its own finances and sets its own budget which is funded by a levy on the legal profession. The SLCC is not funded from the public purse.

The SLCC operates independently of the legal profession and government.

The SLCC’s aim is to resolve complaints efficiently and effectively.

The SLCC is independent, impartial and accessible. Making a complaint is free.



Who and what we are

“As Chair of the SLCC, I appreciate the hard work of both the staff and Board Members which has established the organisation in a relatively short period of time”

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

The SLCC - public or private body?

Although the SLCC was set up by the Scottish Government we are considered a hybrid organisation with both public obligations and private attributes.

Our public obligations mean we are subject to freedom of information, standards in public life and the Human Rights Act 1998. Our private attributes mean we are responsible for our own finances, set our own annual budget and are not funded by the state from public money.

The SLCC is funded by way of a levy paid by members of the three professional bodies; the Law Society of Scotland, Faculty of Advocates and Association of Commercial Attorneys.

A Board of Members govern the SLCC and they are appointed by Scottish Ministers in consultation with the Lord President of the Court of Session.

The work of the organisation is carried out by 29 staff, under the direction of the Acting Chief Executive Officer.

Details of the remit of the SLCC can be found on our website, www.scottishlegalcomplaints.org.uk or on request.

THE BOARD

There are currently 9 Members of the SLCC Board which comprises a lay or non-legal Chair, 4 lay Members and 4 legal Members.

The Chair is Jane Irvine who was the Scottish Legal Services Ombudsman from April 2006 until the office closed on 30 September 2008 to make way for the SLCC. She is a specialist in consumer complaints having held a number of positions as a mediator, arbitrator and adjudicator of consumer complaints. Between 2001 and 2005 she was HM Lay Inspector of Constabulary, and considered the handling of complaints against the police in Scotland. Jane later

prepared a report on modernising police complaint and conduct systems for the Justice Minister. She also sat on a range of disciplinary tribunals. Currently, Jane sits on the Discipline Board of the Institute of Actuaries and is the Deputy UK Pensions Ombudsman.

The Lay Members are Douglas Watson, Dr Linda Pollock, Professor George L Irving and Ian Gordon.

Douglas Watson

Douglas Watson was a police officer for 30 years and is currently an Adult Protection Development Officer for the Edinburgh, Lothian and Borders Executive Group. He was previously a chairing member of the Child Protection Committee, Scottish Borders Council and the Edinburgh Drug and Alcohol Action Team. Douglas was also a lay Committee Member for the Law Society of Scotland and is currently a Sessional Inspector with the Social Work Inspection Agency.

Dr Linda Pollock BSc, RGN, RMN, Dist Nursing, Diploma (Clinical Nursing), PhD, MBA

Dr Linda Pollock has had a broad based career in the NHS with clinical, teaching, research and management experience. She was an Executive Nursing Director until 2006, and interim Board Nurse Director (2002-2003). Her last role, before leaving the NHS, was a full time secondment as the Chief Nursing Officer's Advisor for Nurse Prescribing. She was also a part

time nurse member of the Mental Welfare Commission (1997-2005). Currently, Linda is a registrant member of the Nursing and Midwifery Council Appointments Board and a Board member of the Accounts Commission for Scotland. She is also Chair of an Advisory Board in Pain Concern, setting up a two weekly radio programme for pain sufferers.

Professor George L Irving CBE, D.Univ MSc, CSW, FRSA, FRSM

Professor George Irving was Director of Social Work North Ayrshire Council and during 1999 – 2000, he served as President of the Association of Directors of Social Work (Scotland). From 2001 to 2006, he was Chair of NHS Ayrshire and Arran and led the National Support Team, Management of Offenders from 2005 until 2007. Currently, George is a Visiting Professor to Glasgow Caledonian University School of Health, a member of the Scottish Criminal Cases Review Commission and Chair of the Ayrshire Council on Alcohol.

Ian Gordon OBE, QPM, LL.B (Hons)

Ian Gordon is a retired Deputy Chief Constable of Tayside Police. He is currently an Associate Professor in Policing for Charles Sturt University in Australia. He was Chair of the Association of Chief Police Officers in Scotland (ACPOS) Professional Standards Business Area and Vice-Chair of ACPOS General Policing Business Area. Ian is the current Convener of the Standards Commission for Scotland.

The Lawyer Members are Professor Alan Paterson, David Smith, Margaret Scanlan and David Chaplin.

Prof Alan Paterson OBE, FRSE

Alan Paterson is a Professor of Law and Director of the Centre for Professional Legal Studies at Strathclyde University; an independent "Think Tank" on the Scottish Legal System. He has researched and published on the regulation of lawyers and the provision of public legal services for over twenty years and although he is qualified as a solicitor in Scotland, he has never practised. He served as a co-opted member of the Council of the Law Society from 2001 until 2008 and is a former member of the Judicial Appointments Board. Currently, Alan is a Research Adviser to the Scottish Legal Aid Board, and a former member of the Judicial Appointments Board.

David Smith

David Smith is a retired solicitor. He was a commercial property partner with Shepherd and Wedderburn LLP for 34 years, including 6 years as Chairman. David has extensive experience of client relations, professional negligence and risk management work.

Margaret Scanlan OBE

Margaret Scanlan is an accredited specialist in family law with Russells Gibson McCaffrey. She served on the Sheriff Court Rules Council and was a member, and latterly Deputy Chair, of the Scottish Legal Aid Board between 1997-2007. Margaret was a Director of the Legal Defence Union between 1998-2002 and was a founder member of both Strathkelvin Women's Aid and the Family Law Association. She held the post of Chair of the latter between 1992-1993.

David Chaplin

David Chaplin was the senior partner in Anderson Fyfe for 17 years until he retired in 2008. He is a specialist in insolvency law. He was the Client Relations Partner for ten years and advised in pre litigation resolution of commercial disputes. David was a member of the Education Committee of the Royal Faculty of Procurators in Glasgow during 2004/2005.

The Acting Chief Executive is Rosemary Agnew.

Rosemary joined the SLCC as Head of Investigations shortly before it opened on 1 October 2008. She has a background in complaint handling and was the Assistant Ombudsman for Local Government in England. Previously, Rosemary worked on policy and strategy in the Westminster administration, particularly in the areas of Health and Welfare. Throughout her career she has lectured in Post Graduate Business Management and her experience also includes working at a university in China as the Head of Business and Economics. Rosemary has experience of working within a statutory framework which gives her insight and essential skills for her role within a neutral legal complaints handling body.

The Acting Chief Executive is supported by her Personal Assistant, Head of Communications, Human Resources Manager, Clerk to the Board, Secretariat to the Board, Investigations Manager, Gateway Team Manager, Gateway Team, Investigation Team, Office Manager, Administration Team and the Mediation Manager.

Our strategy and vision

OUR PURPOSE

The SLCC's purpose is to investigate and to either resolve or direct settlement of complaints about legal professionals registered in Scotland. We have a role to look into the way the professional bodies concerned, deal with complaints about their members' conduct and about how these bodies make arrangements for professional indemnity insurance. We also have a role in promoting and advising on good complaint handling across the legal profession. We make recommendations in order to contribute to the development of good professional legal practice in Scotland.

OUR STRATEGIC AIMS

The SLCC's strategic aims are to deal with all our responsibilities independently, impartially and to be accessible to all who need to use our services.

INDEPENDENT

We are established by law and do not promote the interest of any party, either the person complaining or the person complained against. We operate free from any outside influence or control. We look carefully at all the facts presented to us.

IMPARTIAL

We are fair and even-handed to all the parties to a complaint. We offer advice to any party to a complaint to allow the matter to be resolved early, avoiding the necessity of a formal complaint to us.

We make fair and reasonable proposals for settlement and determination, based on facts.

ACCESSIBLE

We are approachable and communicate clearly, understandably and in the most appropriate way. We explain all our decisions. Our service is available to everyone. We are not a court and will deal as informally as possible with the circumstances of the case before us. No one should need expert legal help to pursue or defend their case with us.

OUR VALUES

OBJECTIVITY

We are focused and impartial in everything we do

ACCOUNTABILITY

We each take ownership of our work and are answerable for what we do

OPENNESS

We listen to and accept new ideas and suggestions readily

PERSONAL RESPONSIBILITY

We are responsible for our own actions and promote the SLCC's values

CONSISTENCY

We make the same decisions on cases with similar circumstances and facts and learn from experience

PROPORTIONALITY

We take a flexible, balanced approach and use a range of investigation techniques which reflect the needs of the parties involved, their circumstances and the nature of the complaint.

“Our strategic aims and values define us to everyone who needs to use our service”

Jane Irvine
Chair of the Scottish Legal
Complaints Commission

Our people and processes

“Our corporate objectives provide the framework within which we set our operational priorities and measure our achievements”

Rosemary Agnew
Acting Chief Executive of the
Scottish Legal Complaints
Commission



- Encourage and support early resolution
- Develop and maintain strong working relationships and regular contact with outside bodies
- Are independent, impartial and accessible
- Communication is open and beneficial to all
- Provide expert and appropriate advice
- Offer and provide assistance on best practice in complaints handling
- Provide appropriate information to enable informed decisions
- Foster an open exchange of information and ideas and provide regular opportunities for feedback on the work of the SLCC
- Are developed to support complaint handling that is effective, fair and practical.

OUR PROCESSES ARE ...

- Clear, written and in understandable language
- Reviewed regularly, learning from experience
- Shared with our stakeholders to encourage and promote good complaint handling
- Supported by secure, effective technology and systems
- Proportionate and achieve value for money.

OUR PEOPLE ARE ...

- Committed and a great team
- Well-trained and continuously developed
- Excellent, inclusive communicators
- Have clear personal and organisational goals and receive regular feedback
- Have competitive terms and conditions

We endeavour to build strong working relationships and effective teams through regular communication, both formal and informal, staff surveys and team development.

Our corporate objectives

To achieve these strategic aims, we have set ourselves the five following corporate objectives:

OBJECTIVE 1

The SLCC will provide a high quality, independent and impartial complaint handling service which focuses on early resolution.

OBJECTIVE 2

The SLCC will be an efficient, accountable organisation that works to best-value principles.

OBJECTIVE 3

The SLCC will support and contribute to high standards in the legal profession in Scotland through our oversight and complaint-handling functions.

OBJECTIVE 4

The SLCC will promote understanding of its role.

OBJECTIVE 5

The SLCC will be recognised as expert in complaint handling and an organisation that attracts and retains experienced and skilled people.

Challenges and opportunities

The last year has been a positive one for the SLCC but has presented its challenges and opportunities. These include:

- Working within a new, untested, legislative framework that, as our experience grows, we are learning is not always ideal or supportive of flexible, inclusive and proportionate complaints handling and oversight of the profession's complaint handling.
- Eleven appeals against SLCC decisions. One was from a

complainer who unsuccessfully appealed our decision not to accept a complaint for investigation. Seven appeals are from the Law Society of Scotland and three are from solicitors, all of whom have appealed the SLCC's decisions to accept complaints about conduct for investigation. These appeals may impact on SLCC policies, processes and resources, but as yet are undecided.

- The unpredictable transition of complaints from the 'old' Scottish

Legal Services Ombudsman system, to those covered by the provisions in the 2007 Act has been slower than anticipated, impacting on our resource planning but enabling us to review and refine procedures in a manageable way.

- Complaint numbers have remained relatively steady, and lower than anticipated when the SLCC was set up, enabling the SLCC to operate on fewer resources than originally planned for.

“Any new body expects its founding legislation to be tested in the Courts. We are ready to deal with such challenges and to learn from the outcomes”

Jane Irvine
Chair of the Scottish Legal
Complaints Commission



Our performance

Complaints numbers for the year 1 July 2009 until 30 June 2010 were lower than predicted with the majority of enquiries and complaints coming from Scotland, some coming from other parts of the UK and a few from other parts of the world. In terms of business area, the largest proportion of complaints was about Residential Conveyancing.

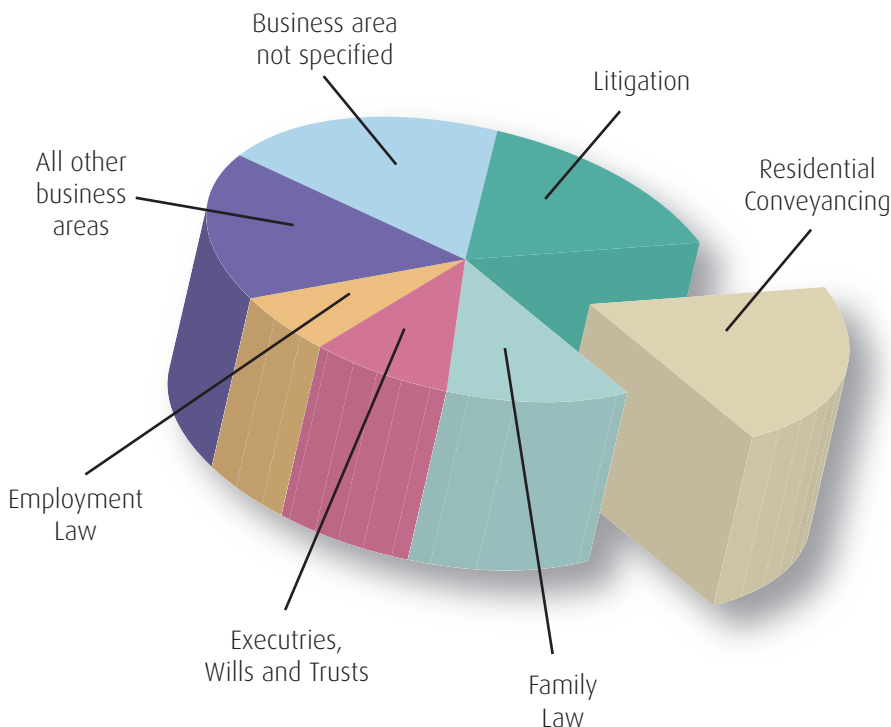
Our figures detail the number of complaints dealt with during the year and also reflect the number of cases we dealt with under the powers of the former Scottish Legal Services Ombudsman.

Under the terms of the Legal Professional and Legal Aid (Scotland) Act 2007 (the Act), the SLCC is unable to investigate complaints where the service issue or conduct incident occurred before we opened on 1 October 2008. These complaints are instead referred to the relevant professional

body for investigation and if the complainer remains dissatisfied with the outcome, the complaint can then be considered by us under powers similar to those of the former Scottish Legal Services Ombudsman. These powers mean that we can investigate how the professional body investigated the complaint, but **not the actual complaint**.

The Transitional Order which gives the SLCC these powers will come to an end on 1 October 2010.

BREAKDOWN OF COMPLAINTS BY MAIN BUSINESS AREA



OVERVIEW OF SLCC COMPLAINTS NUMBERS

We received 3,561 enquiries and complaints and had in hand 214 giving a total case load of 3,775

- Of these, 1,452 enquiries were legal complaints,
- And 299 enquiries and complaints were still being dealt with at the end of the 12-month period

Cases we considered under the powers of the Scottish Legal Services Ombudsman

- 216 cases were accepted for investigation
- 180 Opinions were completed
- 49 Opinions were outstanding.

Our complaints and how we dealt with them

Every complaint coming to the SLCC starts a "journey" which can have four stages; **enquiry**,

eligibility, investigation and **determination**. The following statistics are set out in the

sequence of our complaints procedure. On page 16 there is a more detailed explanation of some of the stages.

ENQUIRIES

We received 3,561 new contacts and had a total of 25 enquiries in hand at the end of the year

What we did with Enquiries

- 1,858 were general enquiries dealt with and closed, the majority on the same day
- 34 complainers did not submit complaint forms
- 1,452 enquiries were legal complaints

At this stage we give help, support and guidance to people on a range of issues, particularly about making legal complaints. We also issue complaint forms and direct people to organisations better able to help them.

1,452 of the enquiries received this year were legal complaints and went on to be considered as complaints and their eligibility assessed

ELIGIBILITY

We assessed the eligibility of 1,452 complaints and had a total of 142 complaints in hand at the end of the year

We closed 1,510 complaints at this stage.

- 928 were referred to the Law Society of Scotland because they were about matters from before 1 October 2008
- 12 were referred to the Faculty of Advocates because they were about matters from before 1 October 2008
- 16 were premature conduct or service complaints
- 35 were body out of jurisdiction
- 226 were subject out of our jurisdiction

We start assessing whether complaints are eligible from the point we receive a signed complaint form. An eligible complaint is one that meets all the tests set out in the 2007 Act.

- 3 were not about a legal practitioner
- 1 was about a practitioner acting in a judicial capacity
- 1 was a conduct/service complaint made out of time
- 111 were considered vexatious, frivolous or totally without merit
- 1 was a handling complaint rejected for other reasons
- 34 complaints were withdrawn by the complainer.

- 142 complaints were about a solicitor's conduct and were sent to the Law Society of Scotland to investigate

204 were accepted to be dealt with by the SLCC

- 2 complaints were about an advocate's conduct and were sent to the Faculty of Advocates to investigate

MEDIATION

204 cases were considered for mediation with 17 still in hand at the end of the year

- 17 cases were resolved through mediation

We have a panel of expert mediators who conduct confidential, independent mediations if both parties agree to mediation. This gives the complainer and the practitioner an opportunity to discuss the issues and resolve them.

170 eligible complaints went on to be investigated

INVESTIGATION

170 complaints were or are being investigated of which 92 complaints were still being investigated at the end of the year

- 16 complaints were resolved and closed when the investigation report was accepted by both parties
- 7 complaints were resolved and closed before the investigation report was issued
- 7 complaints were withdrawn by the complainer

Our investigators make sure that both parties have the opportunity to comment on the complaint and put forward information and views. The investigators will also check the law, policies and standards and consider any other information relevant. Their findings and proposed settlement of the complaint will be set out in a report which both parties are asked to consider

48 complaints were referred for determination

DETERMINATION

48 complaints were referred for determination

- 1 complaint was upheld
- 15 complaints were not upheld
- 8 complaints were partially upheld
- 1 complaint was withdrawn by the complainer

23 determinations were still being considered at the end of the year.

Determination is a formal decision about a complaint and it is made by a Determination Committee comprising 3, 5, 7 or 9 Members. It is always chaired by one of our legal Members and always has a majority of lay members. The Determination Committee decides whether or not to uphold a complaint, what settlement is due and whether a complaint levy should be paid

CASES DEALT WITH BY THE SLCC UNDER THE POWERS OF THE FORMER SCOTTISH LEGAL SERVICES OMBUDSMAN

- 216 cases were accepted for investigation
- 180 opinions were completed
- 49 opinions were still outstanding at the end of the year.

Explaining some of the terms we use

We assess whether complaints are eligible for investigation under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007. The following explains why some complaints were closed because they were ineligible.

Pre-1 October 2008 complaints sent to the Law Society of Scotland or to the Faculty of Advocates

The SLCC registers all legal complaints. If the complaint is about service instructed before 1 October 2008, or conduct issues that occurred before 1 October 2008, we do not investigate them because we have no powers to do so. We send them to the relevant professional body to deal with. The professional bodies are the Law Society of Scotland (LSS) and the Faculty of Advocates (FA).

If the complainer is unhappy with the professional body's investigation, the SLCC can still consider how the professional body handled the complaint under the old Scottish Legal Services Ombudsman's powers, but we are unable to investigate the actual complaint.

These arrangements are in place up to 1 October 2010.

Premature conduct or service complaints

The professional bodies and practitioners must normally be given reasonable opportunity to resolve conduct or service complaints before they can be referred to the SLCC. If reasonable opportunity has not been given, unless there are very exceptional circumstances, the SLCC will not accept them until the complainer has complained directly to the practitioner.

Premature handling complaints

Handling complaints are complaints about how the professional body has investigated conduct complaints. The SLCC can consider how the professional body handled the complaint under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007, but we are unable to investigate the actual complaint. The professional body should be given the opportunity to investigate the complaint and write to the complainer with their decision. If the professional body has not made a written response to the complaint, it is termed premature and should not be investigated by the SLCC until the relevant professional body has responded. There were no premature handling complaints recorded in the last year.

Body out of jurisdiction

These are complaints that fall outside the powers of the SLCC as they concern organisations not covered under the terms of the Legal Profession and Legal Aid (Scotland) Act.

Subject out of jurisdiction

These are complaints that fall outside the powers granted to the SLCC under the Legal Profession and Legal Aid (Scotland) Act 2007 because they are not about the service provided by, or the conduct of legal practitioners.

Not a legal practitioner

The SLCC is unable to accept a complaint about someone who is not a registered legal practitioner as it would not fall outside the powers of the Legal Profession and Legal Aid (Scotland) Act 2007.

Practitioner acting in a judicial capacity

These are complaints where the practitioner has been appointed by the Court or Crown to act in another capacity.

Conduct/service complaint or handling complaint made out of time

These are complaints that have been made outside the time limits of conduct/service complaints and handling complaints.

Complaint is vexatious, frivolous or totally without merit

This is where the SLCC has rejected a complaint because it concerns something we consider to be vexatious, in a legal sense of the word, frivolous or trivial, or totally without merit, which means it is not considered a complaint as defined under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007.

Eligible for investigation but not by the SLCC

These were referred to either the Law Society of Scotland or the Faculty of Advocates. Any complaints we receive and decide are eligible complaints about conduct, are referred to the relevant professional body for investigation.

Discontinued

This is when a complainer has contacted us about something that is a legal complaint but then fails to submit a complaint form or when a complainer decides to withdraw their complaint during investigation.

Mediation

Mediation is where both parties have taken the complaint to an independent mediation and have agreed between themselves on how to resolve it. If the complaint is resolved, it is closed.

Complaint resolved accepting investigation report

At the end of an investigation the SLCC issues a report setting out our findings and recommendations. If the parties agree with the report, it is closed.

Complaint resolved before investigation report issued

Sometimes the complaint is resolved during the investigation and before a report is issued.

Determination

If the findings of the investigation are not accepted by both parties, the complaint is referred to the Members of the Board of the SLCC. Members will determine or decide whether or not to uphold the complaint and what action or compensation is needed to address the consequences of any inadequate service provided. Members make their decisions in determination committees of three, five, seven or nine Members with the majority coming from a lay or non-legal background. The Members' determination is final and if either party disagrees with it, they can appeal to the Court of Session.



Our operational costs

The SLCC's fully audited accounts are available on our website: scottishlegalcomplaints.org.uk/about-the-slcc/annual-reports

The key financial messages emerging from our accounts relate to both the SLCC's business and our supporting corporate policies and procedures.

| Operating costs – x-reference to the accounts | 2010 £'000 | 2009 £'000 |
|---|---------------|----------------|
| Administrative Costs | | |
| Staff Costs | 1,292 | 871 |
| Other Administration Costs | 804 | 703 |
| Depreciation | 3 | - |
| Operating Income | (2,492) | (3,119) |
| Net Administration Income | (393) | (1,545) |
| Pension Interest Cost and Expected Return on Pension Assets | (1) | - |
| Net Operating Income | (394) | (1,545) |

As the figures show, we spent £394,000 less than we received in income; just under 16%. Compared to the previous year, when under-spend against income was over 50%, this is a significant improvement, even taking into account the difference in the length of the operating period (12 months rather than the 9 months of the previous year).

The SLCC set a budget of £2,916,000 which means we under-spent against plan by £817,000; 28%. The reasons for this are a reflection of a combination of the timing of when

the budget was set, the newness of the organisation and the lack of robust planning information because of these.

To comply with the requirements under the Legal Profession and Legal Aid (Scotland) Act 2007 to consult on our budget in January 2009, the budget for 2009/10 was set in January 2009, based on just three months of data. The SLCC did not have definitive planning data either in relation to the operating costs or the core business but was largely reliant on the information used when we were set-up.

The main area where we did not spend as planned was in relation to staffing.

The under spend against plan for staffing was 29%. During the year, the SLCC had the equivalent of 26.5 full time staff (0.5 fewer than the previous year). Based on the information at the time, the assumption had been that we would need 32. This assumption was based on an estimate of complaint numbers based on the Scottish Government's estimates during set-up and the impact of the transitional arrangements. Complaint numbers were lower than anticipated. As can be seen from earlier in the report the number of complaints processed by the SLCC was 1,452. Of these 64% were referred to the professional bodies for investigation under the transitional arrangements. This was a higher proportion than was anticipated; the net result for the SLCC was that it did not need to recruit to the levels planned.

The transitional arrangements also impacted on our oversight function. Because fewer than anticipated complaints were processed under the 2007 Act, there were fewer referrals of conduct complaints to the professional bodies, the knock-on effect being that there were fewer complaints whose handling the SLCC could oversee and so again, fewer staff were needed than we had anticipated.



Expenditure on staffing was also impacted by the completion of contractual arrangements for staff who transferred to the SLCC from the Scottish Legal Services Ombudsman and the Law Society of Scotland. The total cost of this exercise was lower than had been allowed for.

As the year has progressed, the SLCC has actively managed its resources in the context of business risk. Part of this has been to put in place a formal reserves policy to ensure that the SLCC has sufficient resources to manage the impact of risk and to adopt a budget setting

approach that demonstrates the clear link between reserves and the setting of the general levy.

The SLCC's policy is to hold reserves of no less than three months of operating costs and no more than six months. The actual level will be set based on the level of risk. The ultimate aim over the next two years is to reduce the risks and hence the reserves held.

Total reserves held at the end of the year amounted to £2,025,000 but it should be noted that we had anticipated reserves and

ring-fenced £740,000 to underwrite the generally levy in the 2010/11 operating year by transferring it from reserves to income. This leaves an actual reserve of £1.28M (just under five months of operating costs).

As risk is reduced throughout the coming year, the SLCC will consider the impact on reserves and either make funds available to underwrite the general levy next year or discuss with the professional bodies and Scottish government alternative approaches in-year.

Excerpt from the external auditor's report:

"We ... conclude that SLCC's financial statements give a true and fair view of the financial position for the period from 1 July 2009 to 30 June 2010 and that, in all material respects, the expenditure and receipts shown in the accounts were incurred or applied in accordance with applicable enactments and relevant guidance. We confirm that information which comprises the management commentary, included with the Annual Report, is consistent with the financial statements"

Grant Thornton

The SLCC accounts were finalised and signed off by the Acting Chief Executive, Rosemary Agnew, who has also taken on the responsibilities of Accounting Officer during the Chief Executive's absence due to illness.

Developing our Oversight role

The SLCC has a number of roles in relation to oversight.

COMPLAINTS OVERSIGHT

We must monitor the way in which the Professional Bodies investigate complaints about practitioners' conduct. This includes looking at their complaints processes and individual complaints (we do not look again at the original complaint; just the way in which the professional body investigated it). As part of this oversight role, we also monitor and in future years will report on trends and good practice.

The SLCC also has a role in raising general complaint handling standards in the legal profession. To do this, we have the powers to issue guidance on good complaint handling practice and would seek to share the good practice we identify during our own investigations. During the year we issued one piece of guidance under Section 40 of the 2007 Act.

THE MASTER POLICY AND GUARANTEE FUND

The SLCC has the authority to oversee and monitor the Master Policy and Guarantee Fund under the Legal Profession and Legal Aid (Scotland) Act 2007.

The Master Policy is the compulsory Professional Indemnity Insurance which covers all Scottish solicitors working in private practice. Claims

are handled by the Master Policy Insurers and the insurance provides cover of up to £2 million for any one claim.

The Scottish Solicitors' Guarantee Fund protects those who have lost money because of the dishonesty of a solicitor or a member of their staff. It is a fund of last resort, which means it can only compensate those who have exhausted all other options, such as suing the solicitor for professional negligence. Payments are discretionary and all legal firms in Scotland contribute annually to the fund.

SLCC RESEARCH

During 2009, the SLCC commissioned Professor Frank Stephen and Dr Angela Melville from Manchester University School of Law to undertake *research into the purpose and function of the Master Policy and Guarantee Fund.

The research was exploratory in nature due to the short time-span and the small number of claimants and solicitors it was possible to interview. It did however provide guidance to the SLCC as to further research that could be undertaken, although it also highlighted problems in obtaining the necessary data to enable such research to be taken forward.

During the year, the SLCC addressed with the Law Society of Scotland,

the problems associated with the supplying of confidential and commercially sensitive data in relation to the Master Policy and the Guarantee Fund. The upshot was that further data in relation to both these schemes was provided to Professor Stephen to enable him to progress his research which has yet to be concluded.

* The report can be read on the SLCC website: <http://www.scottishlegalcomplaints.org.uk/media/7495/final%20report%20to%20slcc.pdf>

Section 40 guidance

Practitioners should ensure that clients, or others, who may wish to express dissatisfaction with a practitioner or firm, should be advised of the SLCC as the appropriate gateway for complaints at an appropriate time.

Talking to others

At the SLCC, we value our relationships and are in regular contact with our stakeholder groups and continue to develop strong working relationships with others.

We meet regularly with our stakeholders to discuss our work on a range of matters from the monitoring of complaints to consultation about our budget. We continue to build strong working relationships with consumer groups, advocacy groups and information providers.

During the last year, 26 individuals from our Board, Management Team and Gateway Team have delivered training, seminars, addressed conferences or staffed exhibition stands on behalf of the SLCC.

For example, we exhibited at:

- the Edinburgh Sheriff Court Open Doors day
- the Scottish Council for Voluntary Organisations' annual conference
- the Trading Standards Institute's annual conference

We delivered training to:

- branches of Citizens Advice Scotland
- Citizens Advice Direct
- Glasgow Advocacy Centre

We delivered seminars to:

- Legal practitioners across Scotland

We addressed:

- The Faculty of Advocates 'Devils'
- Law students at Glasgow and Edinburgh Universities
- New partners attending the LSS Practice Management Course
- Bavarian Parliament delegates visiting Scotland on a fact-finding tour.



Consulting with others

The SLCC is funded by a levy paid by members of the legal profession operating in Scotland and is collected by the professional bodies; the Law Society of Scotland; Faculty of Advocates and the Association of Commercial Attorneys.

Under the terms of the Legal Profession and Legal Aid (Scotland) Act 2007, we are required to consult with the professional bodies every year on our budget proposals and this happens every January.

When our budget is finally agreed, it is laid before the Scottish Parliament and this must be done before 30 April of each year.



Taking part

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

During the last year we responded to:

- the Review of Rights of Audience in the Supreme Courts;
- the Legal Services Bill;
- the Justice Committee, Stage 1 Scrutiny of the Legal Services (Scotland) Bill



and you can read the responses on our website at:

<http://www.scottishlegalcomplaints.org.uk/about-the-slcc/consultation-responses.aspx>

Helping others



At the end of every financial year, members of staff nominate a charity of their choice and a vote is taken with the winner being the SLCC's Charity of the Year.

Once again, we raised funds for the Children's Hospice Association Scotland or CHAS.

The charity was established to provide hospice services in Scotland for children and young people with life-limiting conditions.



Their annual running costs are over £5 million and this is needed to fund their Rachel House and Robin House Hospices as well as their Home Service.

In the last year, SLCC staff members raised £960 for CHAS.



Children's Hospice Association Scotland

Sharing the Caring

With the environment in mind

WE SAVE RESOURCES
WHEREVER WE CAN.



We recycle:

- Paper
- Metal
- Plastic



We use:

- Fairtrade tea, coffee and sugar.



We save resources:



- by switching off computers at the end of the working day
- lights automatically switch off when an area is empty



We endeavour to use local companies and services to minimise our carbon footprint.



And in our next year

In our next year, we shall work towards achieving our corporate aims by:

- Reviewing and developing our own complaint handling approach in light of experience and lessons learned.
- Promoting the early resolution of complaints ensuring all lessons are learned from them and the quality of legal services in Scotland is enhanced.
- Developing our role in oversight of conduct complaint handling procedures adopted by regulatory bodies responsible for legal service providers.
- Continuing to research professional indemnity arrangements to ensure those adopted by the legal profession are fit for purpose.
- Developing our Board and staff, challenging ourselves to learn and improve as we encourage others to do the same.
- Communicating proactively with our stakeholders to forge effective, beneficial relationships.



Contacting the SLCC

We want to hear from you and welcome your calls, emails, faxes or letters.

Contact us if you require information on how to make or respond to a complaint or if you would like to comment on the service you have received or if you have suggestions on how we can improve our service.

The SLCC can provide speakers for community, consumer and advocacy groups, legal firms and Faculties.

The SLCC is open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training from 10am - 11am.

The Scottish Legal Complaints Commission
The Stamp Office
10 – 14 Waterloo Place
Edinburgh
EH1 3EG

Tel: 0131-528 5111

Fax: 0131-528 5110

Email: enquiries@scottishlegalcomplaints.org.uk

For more information, see our website:
www.scottishlegalcomplaints.org.uk





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