

# HANDLING COMPLAINTS

## policy & procedure manual

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# 1. Introduction

- 1.1. This manual sets out the Scottish Legal Complaints Commission's (**SLCC**) policies and procedures for managing complaints about how a relevant professional organisation (**RPO**) has dealt with a conduct complaint. This includes complaints received which relate to the manner in which a conduct complaint or regulatory complaint has been dealt with by an approved regulator. The approved regulator is to be regarded as the relevant professional organisation for the purposes of this manual.
- 1.2. These types of complaints are referred to as handling complaints in the Legal Profession and Legal Aid (Scotland) Act 2007.
- 1.3. The section numbers quoted in this manual are all from the Legal Profession and Legal Aid (Scotland) Act 2007.
- 1.4. This manual is not legally binding and does not have the same status as the provisions in the 2007 Act or our Rules.
- 1.5. The relevant provisions are set out in Sections 23, 24, 25 and 37, and Schedules 2 and 3 of the 2007 Act (as amended). Rules 16 to 20 of the Rules of the Scottish Legal Complaints Commission 2016 (as amended) also apply.
- 1.6. The RPOs are the Law Society of Scotland, the Faculty of Advocates and the Association of Commercial Attorneys.
- 1.7. The parties involved in a handling investigation are the RPO which investigated the conduct complaint, the original complainer/s and the practitioner.

## 2. Making a handling complaint

- 2.1 Handling complaints can only be made by;
  - The original complainer
  - The practitioner complained about
- 2.2 A handling complaint can be made on behalf of the complainer or practitioner, with their consent.
- 2.3 A handling complaint must be made by either filling in the online handling complaints form or in writing by filling out a handling complaint form. The form must be signed.

### **3. Enquiries**

- 3.1 On receipt of an enquiry about making a handling complaint the Oversight and Assurance Manager (**OAM**) provides information on;
  - how to complete a handling complaint form
  - who is eligible to make a handling complaint
  - the time limits that apply.
- 3.2 If more information is required the OAM contacts the person making the complaint.
- 3.3 If the enquiry is about an on-going investigation, the OAM offers to obtain a status report from the RPO. Once the status report has been received the OAM updates the complainer and provides information on the option of making a midway handling complaint or making a handling complaint when the RPO investigation has concluded.

### **4. Initial checks of handling complaint form**

- 4.1 The OAM checks the personal details and basic information. If the information is incomplete or evidence has not been provided, the OAM must obtain this information /documentation before taking any further action.
- 4.2 If the handling complaint has been made “on behalf of” the original complainer or practitioner, the “on behalf of” section of the form must be completed and supporting documentation provided (e.g. Power of Attorney/letter of authority).
- 4.3 The OAM writes to the original complainer or practitioner to advise that a handling complaint has been made on their behalf and that all future communications will be with the “on behalf of” person.
- 4.4 If the complaint is not from the original complainer or practitioner or a person making the complaint “on behalf of” the original complainer or practitioner, then the handling complaint will be rejected. The OAM issues letters to all parties giving the reasons for the rejection.
- 4.5 The OAM must be able to identify specific handling complaints from the completed form or the supporting evidence. For example: allegations of delay, lack of consideration of the evidence, bias in the report or decision. If more information is required the OAM contacts the person making the complaint before completing the eligibility assessment.

## 5. Eligibility

- 5.1 Handling complaints must be made within 6 months of the date the RPO issues its final decision letter. There are no exemptions to this rule.
- 5.2 If the handling complaint is time barred the OAM refers the complaint to a board member for a decision to be taken under Section 23(4)(b). If the complaint is rejected, the OAM issues rejection letters to all parties.
- 5.3 If the complainer fails to specify their handling complaint the OAM refers the case to a Determination Committee (**DC**) for a decision under Section 23 (2)(a). If the complaint is rejected, the OAM issues rejection letters to all parties.
- 5.4 Making a handling complaint is not an alternative to appealing the RPO's decision. If the handling complaint is only about the decision made by the RPO and not about how the RPO handled the investigation, the OAM refers the complaint to a DC for a decision to be taken under Section 23(2)(a). If the complaint is rejected, the OAM issues rejection letters to all parties.
- 5.5 If the handling complaint is about the conduct of one (or more) of the RPO's employees, the complaint may be rejected on the basis that it should be dealt with by the RPO in accordance with its own internal grievance procedures. The OAM refers the matter to a DC for a decision to be taken under Section 23(2)(a).

### ***“Midway” handling complaints***

- 5.6 If the RPO is still in the process of investigating the conduct complaint, a handling complaint must not be accepted, unless one (or more) of the statutory exceptions under Section 23(5)(a) or (b) applies, which are:
  - The RPO acted unreasonably in failing to start an investigation.
  - The RPO has started but has failed to complete an investigation within a reasonable timescale.
  - It is otherwise justified for the SLCC to intervene.
- 5.7 If the OAM considers that one or more of the exceptions applies, the OAM;
  - Obtains a written status report from the RPO
  - Considers whether the RPO's explanation of failing to start or failing to complete an investigation is reasonable
  - Considers whether there is any other justified reason why the handling complaint should be accepted while the RPO's investigation is on-going.
- 5.8 If the handling complaint is rejected, the OAM tells;
  - the RPO and the other party that a handling complaint has been made, but our decision is not to intervene at this stage.
  - the person making the handling complaint that they still have the right to make a handling complaint once the final decision of the RPO has been issued.

- if they continue to have concerns about the RPO's handling of the complaint they can make another midway handling complaint while the investigation is still ongoing.

### ***Eligible handling complaints***

- 5.9 If a complaint is eligible, the OAM takes the following steps:
- Issues acceptance letters to the RPO and the parties.
  - Sends the handling complaint form and any supporting documentation to the RPO.
  - Requests comments from the RPO on the handling complaint and the RPO's file within 21 days.
  - Sends the handling complaint form and any supporting documentation to the other party, requesting any comments on the handling complaint within 21 days.
- 5.10 The party that did not make the handling complaint is not required to respond to the handling complaint. They must, however, be told that a complaint has been made and be copied into any reports or decisions made about the complaint.

## **6. Investigation**

- 6.1 Once we receive the RPO's comments and its investigation file we write to the parties to tell them;
- we have received the RPO's investigation file and its response to the handling complaint
  - the LSS has confirmed it has sent the parties a copy of its response
  - they have 21 days to make any new comments or submit any additional information in light of the RPO's response to the handling complaint
  - our investigation is starting
  - we will issue a report including recommendations if appropriate
  - our recommendations are final and there is no right of appeal
  - the expected timescales for completing our investigation and issuing the report.
- 6.2 Copies of correspondence and documentation received during a handling investigation will not be automatically copied to all the parties. However, this may be required to aid the investigation. This decision is at the discretion of the person carrying out the investigation.
- 6.3 Any information which has previously been withheld from any of the parties during the original conduct investigation must not be shared. This restriction applies to cross copying documents and avoiding reference to previously withheld information in handling reports.

- 6.4 This will mainly apply in cases where the conduct complaint was made by a third party and information / documentation was withheld by the RPO for reasons of client confidentiality / legal professional privilege.
- 6.5 Once the OAM is satisfied that all relevant information and documentation has been obtained from all the parties, the OAM/ allocated Case Investigator (**CI**) carries out an 'audit' of the RPO's file. Key evidence and information relating to the administration of the RPO's investigation is recorded and any additional observations about how the conduct complaint has been dealt with.
- 6.6 The OAM/CI must consider whether it is necessary to prepare an interim report under Section 23(8). An interim report may be necessary if the handling complaint is particularly complex, or the original conduct complaint involved a significant number of issues, and it is considered that comments would be useful at this stage. A copy is sent to the RPO, the practitioner and the complainer. The parties have 21 days to provide any comments on the interim report.
- 6.7 Once a handling complaint has been accepted as eligible for investigation, the SLCC may suspend the handling complaint, if considered appropriate. At the eligibility or investigation stage the suspension will be authorised by the OAM. If at determination stage the decision to suspend a complaint must be made by a DC.
- 6.8 The SLCC will not normally suspend a handling complaint at the request of a complainer, practitioner or RPO unless there are temporary practical issues which could impact the progress of the handling investigation. For example, the non-availability of any of the parties, or when information or documentation is temporarily unavailable.
- 6.9 The suspension of a handling complaint will be considered on a case-by-case basis, but may include circumstances where:
- (i) the complainer or practitioner has appealed the RPO's decision;
  - (ii) the complainer or practitioner has appealed to the Court of Session;
  - (iii) the solicitor is being prosecuted before the Scottish Solicitors Discipline Tribunal;
  - (iv) the RPO is seeking legal advice or internal advice from one of its Sub Committees on process/policy; or
  - (v) the service aspect of a hybrid complaint is still to be investigated by the SLCC.
- 6.10 If the OAM and Director of Public Policy (**DoPP**) decide that the investigation should be discontinued, the OAM refers the matter to a DC for a decision to be taken under Section 23(2)(b). Situations in which the SLCC may discontinue a handling complaint will be considered on a case-by-case basis, but may include circumstances where:

- (i) it transpires that the complainer is not an eligible person under Section 23(1);
- (ii) the complainer does not have the requisite authority to make the complaint on behalf of the person who made the original conduct complaint;
- (iii) it transpires that the complaint is not an eligible handling complaint;
- (iv) it transpires that the complaint is time-barred;
- (v) a handling complaint was admitted under Section 23(5) whilst the RPOs investigation was still ongoing, but in the intervening period, a final decision has been made by the RPO which resolves the complainer's original concerns;
- (vi) the complainer has successfully appealed the RPO's decision, which resolves the complainer's concerns; or
- (vii) it appears that a complainer has failed to co-operate with the SLCC or engage in the investigation process.

6.11 The SLCC gives written notice to the RPO and the parties of its decision to discontinue a handling investigation and the reasons for its decision.

6.12 If a complainer requests that an investigation be reinstated, and the OAM and DoPP decide the investigation should be reinstated, the OAM refers the matter to a DC for a decision to be taken under Section 23(2)(c).

6.13 In deciding whether to reinstate a handling complaint, consideration will be given to a number of factors including:

- the reasons given by the complainer;
- the time period between the discontinuation and the request to reinstate;
- whether the complaint is time-barred under Section 23(4)(b); and
- any unusual or exceptional circumstances.

6.14 Where a decision is taken to reinstate a handling complaint, the RPO and the parties are notified in writing.

### ***Withdrawing***

6.15 All requests from complainers to withdraw a handling complaint will be considered, and a decision taken in accordance with the SLCC's general policy on withdrawing complaints (see CH035).



## 7. Final report stage

- 7.1 Following receipt of any comments from all parties and review of the RPO files the OAM/CI prepares a draft final report using the report template (adapted as necessary).
- 7.2 The draft final report is reviewed by the OAM (if a CI has prepared the draft final report).
- 7.3 The final report must contain details of the SLCC's reasoning, conclusions and any statutory recommendations in respect of all of the issues relating to the handling complaint.
- 7.4 The SLCC may make one or more of the following statutory recommendations under Section 24(2);
  - (i) the RPO provides the complainer such information about the conduct complaint and how it was dealt with, as considered appropriate;
  - (ii) the RPO investigates the conduct complaint further;
  - (iii) the RPO reconsiders the conduct complaint;
  - (iv) the RPO considers exercising its powers in relation to the practitioner concerned
  - (v) the RPO pays compensation to the complainer not exceeding £5,000 for loss, inconvenience or distress resulting from the way that the conduct complaint was handled;
  - (vi) the RPO reimburses the complainer the cost or part of the cost of making the handling complaint.
- 7.5 Under Section 36 of the Act the SLCC may make recommendations to an RPO about the organisation's procedures for, and methods of dealing with, conduct complaints. The SLCC may also give guidance to the RPO as to the timescales within which it should aim to complete investigations or determine conduct complaints. Any recommendations and guidance may be communicated to the RPO separately from the main handling report sent to all parties.
- 7.6 The RPO must consider any recommendations and notify the SLCC in writing of the results of the consideration and any action the organisation has taken or proposes to take in response to the recommendation. Section 36 recommendations are not enforceable and the RPO cannot be directed to comply.
- 7.7 General observations, comments and informal recommendations may also be included in the report. However, these are not statutory and the RPO cannot be directed to comply with any such recommendations.

## ***Financial element of the recommendation***

- 7.8 The amount of financial settlement is in 2 parts;
- (i) Compensation for loss, inconvenience or distress up to £5,000 (see tariff, Appendix 4)
  - (ii) Reimbursement for the cost or part of the cost of making the handling complaint.
- 7.9 The SLCC may make a recommendation that the RPO should pay to the complainer up to £30 (unless exceptional circumstances require a higher award), in respect of the reasonable costs of making the handling complaint.
- 7.10 A copy of the final report is issued to all parties under Section 24(1).

## **8. Monitoring compliance**

- 8.1 The RPO has 14 days to notify the SLCC, in writing, of its decision not to comply wholly with a recommendation and any reason for that decision under Section 24(5)(b).
- 8.2 If the RPO has not notified the SLCC of its intention not to comply, the RPO has 3 months to fully comply with the SLCC's recommendation.
- 8.3 If the RPO indicates that it does not consider it practicable to comply wholly with the SLCC's recommendation within 3 months, the OAM determines a longer period within which the RPO must comply. Letters are issued to the parties advising of the new date for compliance.
- 8.4 If the OAM is satisfied that the RPO has taken adequate steps to comply with the recommendations, or that no direction is necessary, the OAM writes to all parties to confirm that the SLCC is satisfied that the RPO has complied/no further action is necessary.

## **9. Determination Committees/Directions**

- 9.1 Where the RPO has;
- (a) notified the SLCC of its decision not to comply wholly with the recommendation in the final report, or
  - (b) where the RPO has not complied wholly with a recommendation before the end of the 3 month period (or such longer period as determined by the SLCC),
- the OAM considers whether a DC should be convened to consider making a direction to force the RPO to comply.

- 9.2 If the OAM is not satisfied with the RPO's explanation, or the RPO has not provided any explanation, the OAM prepares the case for a DC to consider whether a direction should be made under Section 24(6).
- 9.3 The OAM writes to all parties to advise the SLCC is arranging for a DC to consider whether a direction should be made.
- 9.4 If the DC makes a direction the RPO must comply with the direction. If the RPO does not comply with the direction, the SLCC will normally take enforcement action under the powers set out in Section 25. Such action needs to be agreed by the Chief Executive Officer (**CEO**) before legal action is instructed.
- 9.5 Where a DC is required to determine whether a complaint should be:  
(a) rejected,  
(b) discontinued, or  
(c) reinstated,  
the OAM follows the steps set out at paragraphs 9.6 – 9.17 below.

### ***Preparing for a Determination Committee meeting***

- 9.6 The OAM liaises with the Secretariat to the Board to ascertain the next available date for a DC and confirm which members will make up the DC. The Secretariat to the Board carries out the appropriate conflict checks with the DC members.
- 9.7 The OAM writes to the parties to advise them of the DC meeting date and prepares the papers for the DC members.
- 9.8 The papers sent to the DC members may include any of the following (depending on the determination being made):
- the handling complaint form (**HCF**)
  - comments on the handling complaint from the RPO/other party
  - an interim report
  - comments on the interim report
  - the final report
  - comments on the final report
  - other relevant supporting documentation.
- 9.9 The OAM provides a briefing note which should contain a summary of:
- the background to the handling complaint;
  - the issues under consideration;
  - any observations/comments contained in the interim/final report;
  - any comments received; and
  - any other information considered necessary.

- 9.10 The OAM will liaise with the DC members in advance of the meeting if required. If any of the DC members wish to see the RPO's file arrangements should be made for the file to be made available.
- 9.11 If any of the parties submit a request for an oral hearing during the course of a handling investigation, the steps contained in the Oral Hearing Policy/Process document should be followed.
- 9.12 The OAM acts as clerk to the DC meeting to assist the DC in its consideration of the handling complaint and the steps required in terms of the 2007 Act.
- 9.13 The DC must agree (by majority if necessary) the terms of the determination/direction. The determination/direction must contain details of the DC's reasons for (a) rejecting the complaint, (b) discontinuing the investigation, (c) reinstating the investigation, or (d) directing compliance. In the case of a direction, a timescale for the RPO to comply with the direction must also be provided.
- 9.14 If the DC decides not to (a) reject the complaint, (b) discontinue the investigation, (c) reinstate the investigation, or (d) direct compliance, full reasons are recorded by the OAM in the minute. It is incumbent on the DC to ensure that sufficient reasoning is provided.
- 9.15 If the DC does not consider that it has sufficient information or documentation to deal with the matter, the OAM must take the appropriate action to obtain any additional information or documentation and return the case back before the same DC as soon as possible. In such circumstances, all parties are advised that the DC has requested additional information/documentation and as a result the issuing of the determination/direction will be delayed.
- 9.16 The OAM is responsible for taking the minutes of the DC meeting. The draft minute and draft determination/direction is sent to the DC Chair for approval in the first instance. Once approved by the Chair, the minute and the determination/direction is copied to all DC members for comment/approval.
- 9.17 A copy of the determination/direction is sent to all parties.

## **10. Obtaining information/documentation**

- 10.1 Where information which is within the knowledge of the RPO or documents which are within the possession of the RPO are required for the purposes of carrying out its functions under Sections 23 or 24, the SLCC may take steps to obtain this from the RPO under Section 37(1) and (2).
- 10.2 Where information or documentation is not held or within the knowledge of the RPO, the SLCC may require the practitioner concerned to provide such information as is

known to the practitioner or documents if in the practitioner's possession under Section 37(3).

10.3 The SLCC will explain to the RPO:

- the function that the SLCC has to carry out;
- the statutory powers enabling the SLCC to carry out that function;
- the documentation/information required; and
- what is expected of the RPO and by when.

10.4 Where the RPO fails or refuses to provide the information or produce the documentation required, the SLCC may either:

- (i) proceed in the absence of the information or documentation; and/or
- (ii) petition the court for an order requiring the production of information or delivery of documentation under Schedule 2 of the 2007 Act.

10.5 Where the practitioner concerned fails or refuses to provide the information or produce the documentation required, the SLCC may:

- (i) proceed in the absence of the information or documentation;
- (ii) petition the court for an order requiring the production of information and/or delivery of documentation under Schedule 2 of the 2007 Act; and/or
- (iii) notify the RPO of the practitioner's failure or refusal to provide information or documentation as a potential conduct matter and inform the practitioner concerned of the SLCC's intention to do so.

10.6 Before making any decision about action to be taken in relation to a failure to provide the information or documentation, the RPO and/or the practitioner concerned will be warned of the consequences of such a failure.

10.7 Where it decides to take action under Schedule 2, the SLCC will write to the RPO/practitioner concerned, advising of the SLCC's intention to raise court proceedings if the RPO/practitioner concerned continues to fail to comply.

10.8 The CEO takes into account the following when deciding whether to take action under Schedule 2:

- the value the information/documentation sought has on the SLCC's function;
- the expense to the SLCC of raising court action and ability to recover costs;
- issues of confidentiality, legal professional privilege and practitioner's lien; and
- proportionality.

10.9 The CEO may obtain legal advice before reaching a decision about raising court action.

10.10 In rare cases, action may be required to be raised at the Court of Session under Section 25, if there has been a failure by the RPO to comply with a direction under Section 24(6). In these circumstances, the OAM liaises with the DoPP and CEO to discuss the next steps to be taken and seek legal advice, if appropriate.

# Appendices

## Appendix 1 - Glossary

The following terms and abbreviations referred to in this document are explained below:

- **The parties** - means the original complainer, the practitioner complained about and the RPO.
- **Complainer** – the person who made the handling complaint. This could be either the original complainer or the practitioner.
- **Determination** – a decision made by a Determination Committee.
- **Direction** – something the Determination Committee orders another organisation to do.
- **2007 Act** – the Legal Profession and Legal Aid (Scotland) Act 2007
- **SLCC** – the Scottish Legal Complaints Commission
- **RPO** – Relevant Professional Organisation
- **SSDT** – Scottish Solicitors’ Discipline Tribunal
- **OAM** – Oversight and Assurance Manager
- **DoPP** – Direction of Public Policy
- **CI** – Case Investigator
- **CEO** – Chief Executive Officer
- **DC** – Determination Committee

## Appendix 2 - Rules and Legislation

- 1.2 The relevant legislation is the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act). The relevant sections of the 2007 Act are:
- (i) Section 23;
  - (ii) Section 24;
  - (iii) Section 25;
  - (iv) Section 37;
  - (v) Schedule 2; and
  - (vi) Schedule 3.
- 1.3 The relevant rules are set out in the Rules of the Scottish Legal Complaints Commission 2015 ('the Rules'). The Rules relating specifically to handling complaints can be found in **Chapter 3: Handling Complaints**:
- (i) Rule 16 – Making a Handling Complaint;
  - (ii) Rule 17 – Obtaining Information;
  - (iii) Rule 18 – Delay in provision of information;
  - (iv) Rule 19 – Power to discontinue and reinstate Handling Complaints; and
  - (v) Rule 20 – Written interim reports.

### Appendix 3 - Tariff for compensation payments

Band	Handling tariff	Range
<b>A</b>	<ul style="list-style-type: none"> <li>• limited avoidable delay</li> <li>• limited effect and duration</li> <li>• caused minimal inconvenience on a single occasion</li> <li>• resulted in irritation and/or minor annoyance</li> <li>• RPO took reasonable steps to put matters right</li> </ul>	<b>Up to £150</b>
<b>B</b>	<ul style="list-style-type: none"> <li>• more serious avoidable delay, possibly over a number of months</li> <li>• limited effect and duration</li> <li>• caused minor inconvenience on a number of occasions</li> <li>• caused some worry and concern</li> <li>• effect was short-term</li> <li>• RPO took reasonable steps to put matters right</li> </ul>	<b>Over £150 up to £750</b>
<b>C</b>	<ul style="list-style-type: none"> <li>• substantial avoidable delay probably over a long period of time</li> <li>• more serious effect over a period of time but not a lasting effect</li> <li>• caused significant inconvenience on several occasions</li> <li>• caused worry, concern, some anxiety and upset</li> <li>• RPO failed to take reasonable steps to put matters right</li> </ul>	<b>Over £750 up to £1,500</b>



Band	Handling tariff	Range
D	<ul style="list-style-type: none"> <li>• very substantial avoidable delay probably over a long period of time</li> <li>• serious effect probably over a long period of time, possibly affecting the complainer's well-being over a long period of time</li> <li>• significant inconvenience over a long period of time or on many occasions</li> <li>• quality of life of complainer (and/or family) considerably and noticeably disrupted</li> <li>• complainer or family member suffered particular difficulties</li> <li>• caused significant distress and upset</li> <li>• RPO failed to take reasonable steps to put matters right</li> </ul>	Over £1,500 up to £5,000