Briefing for the Public Petitions Committee

**Petition Number:** PE01660

**Main Petitioner:** Bill Tait

**Subject:** Complaints against solicitors

Calls on the Parliament to urge the Scottish Government to review the operation of the Scottish Legal Complaints Commission with a view to making the process of legal complaints more transparent and independent.

**Background**

**Scotland – complaints against lawyers**

The SLCC was set up by the Legal Profession and Legal Aid (Scotland) Act 2007 (the Act) to deal with complaints against legal practitioners (primarily solicitors or advocates) in Scotland.

It is an independent body whose Board is appointed by the Scottish Ministers in consultation with the Lord President of the Court of Session. It is supported by a management team and staff who carry out investigations.

The SLCC is funded by a levy paid by legal practitioners and is required to consult with the relevant professional bodies when setting its annual budget. A copy of the finalised budget has to be laid before the Scottish Parliament no later than 30 April in each year (the budget is not, however, subject to parliamentary approval).

The SLCC acts as the initial gateway for complaints. Unresolved complaints have to be made to it in the first instance. Complaints made directly to a professional body (e.g. the Law Society of Scotland (Law Society) or Faculty of Advocates (Faculty)) have to be forwarded by these bodies to the SLCC.

Once the SLCC has received a complaint, it assesses whether it is a:

1. **Service complaint** – i.e. related to the quality of work; or a

2. **Conduct complaint** – i.e. related to a legal practitioner’s fitness to carry out work and behaviour outside of business.

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1 And in addition commercial attorneys – specialists in construction law who are not solicitors – and qualified conveyancers

2 Currently the Board comprises a lay chair, 5 lay members and 3 lawyer members
Cases often involve issues of both service and conduct, with the result that both the SLCC and professional bodies can investigate different aspects of the same complaint.

If the complaint, or part of the complaint, concerns inadequate professional service, the SLCC investigates following procedures laid down in its rules and the Act. The SLCC can ultimately:

- Award the complainer up to £20,000 for any loss, inconvenience or distress resulting from inadequate professional service.
- Require the relevant legal practices/practitioners to reduce fees, re-do work and rectify any mistakes at their own expense.
- Report the matter to the relevant professional body if the practitioner shows a lack of legal competence.

Decisions of the SLCC can be appealed to the Court of Session.

If the complaint, or part of the complaint, concerns the conduct of a legal practitioner, the SLCC passes it on to the relevant professional body to investigate. The SLCC is not permitted to investigate conduct complaints, but it can investigate the way these have been handled by the relevant professional organisation (known as a handling complaint).

The Law Society is able to impose sanctions on solicitors whose conduct has been “unsatisfactory” and can prosecute solicitors before the Scottish Solicitors Discipline Tribunal (SSDT) where behaviour amounts to professional misconduct. The maximum compensation payable to a complainer is £5,000. In the most serious cases, the SSDT can suspend a solicitor’s practising certificate or strike them from the roll of solicitors.

The Faculty deals with conduct complaints through a Complaints Committee comprising an equal number of advocates and lay members. Its decisions can be appealed to the Faculty of Advocates Disciplinary Tribunal – chaired by a retired senior judge and whose members include advocates and lay persons. In September 2016 the SLCC published a report which audited the operation of the Faculty's investigation and disciplinary processes.

For further details on the complaints system see:

- The SLCC’s overview of the process for dealing with service and conduct complaints.
- The Law Society’s overview of how it deals with conduct complaints,
- The Faculty’s overview of how it administers conduct complaints

In recent years there has been a degree of conflict between the SLCC and the Law Society over the operation of the complaints system. For example, in December 2016, the Law Society announced that it had commenced legal

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3 Section 6 of the Act
action against the SLCC over the way in which it categorises complaints as service complaints or conduct complaints. In addition, in April 2017 the Law Society noted in a press release that it was “frustrated and disappointed” about the increase in the SLCC levy to be paid by solicitors. The press release also referred to the complaints system as being “slow, complex, cumbersome and expensive.”

England & Wales – complaints against lawyers

In England & Wales complaints about poor service against legal practitioners are dealt with by the Legal Ombudsman. Issues of professional misconduct are referred to the relevant “approved regulator” – i.e. the Bar Standards Authority (for barristers) and the Solicitors Regulation Authority (for solicitors), who can take disciplinary action. For details see the House of Commons Library’s briefing on complaints against solicitors and other lawyers.

Scottish Parliament Action

In session 4, the SLCC submitted a letter to the Scottish Parliament’s Justice Committee in which it argued that a review of the complaints procedure was needed. In response, the Justice Committee wrote to the Cabinet Secretary for Justice and received a response dated 31 October 2012 indicating that the SLCC and Law Society were, “developing a consensual approach to reach an agreement on the key improvements required.” Regulations amending the powers and duties of the SLCC were subsequently scrutinised by the Justice Committee, which recommended their approval by the Parliament (approval was granted on 13 August 2014).

The adequacy of the complaints system has also been raised in in the current parliamentary session (see for example Motion S5M-05079 lodged by Douglas Ross MSP on 6 April 2017).

Scottish Government Action

On 25 April 2017, the Scottish Government announced the launch of an independent review of the regulation of legal services in Scotland including the complaints system. According to the Scottish Government, the review “…follows concerns that the current legislative framework is not fit for purpose and has not kept up with developments in the legal services market. There are also worries that the current processes for people wishing to make complaints about their solicitor are too slow and too complex.”

The review is expected to report to Scottish Ministers by the end of 2018.

Angus Evans
Senior Researcher
22 May 2017

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4 Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014
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