



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

*Forwarding complaints, advice, monitoring etc.*

#### **33 Duty of relevant professional organisations to forward complaints to Commission**

Where a relevant professional organisation receives a complaint from a person other than the Commission about—

- (a) the conduct of, or any services provided by, a practitioner;
  - (b) its handling of a conduct complaint remitted to it under section 6(a) or 15(5)(a),
- it must without delay send the complaint and any material which accompanies it to the Commission.

#### **34 Commission's duty to provide advice**

- (1) The Commission must, so far as is reasonably practicable, provide advice to any person who requests it as respects the process of making a services complaint or a handling complaint to it.
- (2) Where the Commission receives a complaint suggesting what purports to be professional misconduct or unsatisfactory professional conduct by a practitioner who is a firm of solicitors or an incorporated practice—
  - (a) it must inform the person that a complaint to it suggesting such misconduct or such conduct may be made only against a named practitioner who is an individual;
  - (b) where the complaint received is not about a named practitioner who is an individual, it must so far as is reasonably practicable offer advice to the person with a view to assisting the person to reformulate the complaint so that it is about such a named practitioner.

- (3) Where a person in requesting or being offered such advice expresses a preference for receiving it by a particular means (as, for example, in writing, by telephone, by means of a recording or an explanation in person), the Commission must, so far as is reasonably practicable, give effect to the preference.

### **35 Services complaints: monitoring, reports, protocols and information sharing**

- (1) The Commission must monitor practice and identify any trends in practice as respects the way in which practitioners have dealt with matters that result in services complaints being dealt with by the Commission under sections 8 to 12.
- (2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.
- (3) The Commission must—
- (a) enter into protocols with the relevant professional organisations as respects the sharing of information by it with them in relation to—
    - (i) numbers of services complaints dealt with by it;
    - (ii) such trends as it may identify in relation to such complaints;
    - (iii) settlements proposed by it under section 9(2), which are accepted as mentioned in subsection (4) of that section;
    - (iv) the substance of any services complaints which might be relevant to section 31(3) of the 1986 Act;
    - (v) determinations by it under section 9(1) upholding services complaints;
    - (vi) failure by practitioners to comply with directions by it under section 10(2), notice by it under section 16 or 17(1) or requirements by it under section 37(3);
  - (b) share information with the relevant professional organisations in accordance with the protocols.
- (4) The relevant professional organisations must enter into protocols with the Commission for the purposes of subsection (3)(a).

### **36 Conduct complaints: monitoring, reports, guidance and recommendations**

- (1) The Commission must monitor practice and identify any trends in practice as respects the way in which—
- (a) practitioners have dealt with matters that result in conduct complaints being remitted to the relevant professional organisations under section 6(a) or 15(5)(a);
  - (b) the relevant professional organisations have dealt with conduct complaints so remitted.
- (2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.
- (3) The Commission may—
- (a) give guidance to the relevant professional organisations as to the timescales within which they should aim to complete their investigation of or, as the case may be, determine conduct complaints remitted to them under section 6(a) or 15(5)(a);

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*Status: This is the original version (as it was originally enacted).*

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- (b) make recommendations to any relevant professional organisation about the organisation's procedures for, and methods of dealing with, conduct complaints so remitted to it.
- (4) Each relevant professional organisation to which the Commission makes a recommendation under subsection (3)(b) must—
- (a) consider the recommendation;
  - (b) notify the Commission in writing of—
    - (i) the results of the consideration;
    - (ii) any action the organisation has taken or proposes to take in consequence of the recommendation.
- (5) The Commission may carry out, for any of the purposes of this section, audits of the records held by the relevant professional organisations relating to conduct complaints remitted to them under section 6(a) or 15(5)(a).

### **37 Obtaining of information from relevant professional organisations**

- (1) The Commission may require any relevant professional organisation to—
- (a) provide it with such information, being information which is within the knowledge of the organisation, as the Commission considers relevant for any of the purposes of section 23, 24 or 36;
  - (b) to produce to it such documents, being documents which are within the possession or control of the organisation, as the Commission considers relevant for any of those purposes.
- (2) The information required to be provided or the documents required to be produced under subsection (1) may include information or, as the case may be, documents obtained by the relevant professional organisation from a practitioner while investigating a conduct complaint against the practitioner remitted to it under section 6(a) or 15(5)(a); and the organisation must comply with such a requirement.
- (3) Where any information required by the Commission under subsection (1) is not within the knowledge of the relevant professional organisation, or any documents required to be produced under that subsection are not within the possession or control of the organisation, the Commission may require the practitioner concerned—
- (a) to provide it with that information in so far as it is within the knowledge of the practitioner;
  - (b) to produce to it those documents if they are within the practitioner's possession or control.
- (4) Schedule 2 makes further provision about the powers of the Commission under this section.

### **38 Efficient and effective working**

- (1) In relation to any investigation or report undertaken by it under this Act, the Commission must liaise with the relevant professional organisation with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the relevant professional organisation.
- (2) In relation to any investigation or report undertaken by it under this Act, each relevant professional organisation must liaise with the Commission with a view to minimising

any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the Commission.

### **39 Monitoring effectiveness of guarantee funds etc.**

- (1) The Commission may monitor the effectiveness of—
  - (a) the Scottish Solicitors Guarantee Fund vested in the Society and controlled and managed by the Council under section 43(1) of the 1980 Act (“the Guarantee Fund”);
  - (b) arrangements carried into effect by the Society under section 44(2) of that Act (“the professional indemnity arrangements”);
  - (c) any funds or arrangements maintained by any relevant professional organisation which are for purposes analogous to those of the Guarantee Fund or the professional indemnity arrangements as respects its members.
- (2) The Commission may make recommendations to the relevant professional organisation concerned about the effectiveness (including improvement) of the Guarantee Fund, the professional indemnity arrangements or any such funds or arrangements as are referred to in subsection (1)(c).
- (3) The Commission may request from the relevant professional organisation such information as the Commission considers relevant to its functions under subsections (1) and (2).
- (4) Where a relevant professional organisation fails to provide information requested under subsection (3), it must give reasons to the Commission in respect of that failure.

### **40 How practitioners deal with complaints: best practice notes**

The Commission may issue guidance to the relevant professional organisations or to practitioners as respects how practitioners deal with complaints made to them about—

- (a) their professional conduct or the professional services provided by them;
- (b) the professional conduct of, or professional services provided by, any of their employees who are practitioners,

and any such guidance may recommend or include recommendations as respects standards for systems by practitioners for dealing with such complaints.