



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

#### *Conduct or services complaints against practitioners*

## 2 Receipt of complaints: preliminary steps

(1) [<sup>F1</sup>This section applies where] the Commission receives a complaint by or on behalf of any of the persons mentioned in subsection (2)—

- (a) suggesting—
  - (i) professional misconduct or unsatisfactory professional conduct by a practitioner other than a firm of solicitors or an incorporated practice;
  - (ii) that a conveyancing practitioner or an executry practitioner has been convicted of a criminal offence rendering the practitioner no longer a fit and proper person to provide conveyancing services as a conveyancing practitioner or, as the case may be, executry services as an executry practitioner,(a complaint suggesting any such matter being referred to in this Part as a “conduct complaint”);
- (b) suggesting that professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate (referred to in this Part as a “services complaint”),

<sup>F2</sup> ...

[<sup>F3</sup>(1A) The Commission must, subject to subsection (3) and sections 3 and 4 and any provision in rules made under section 32(1) as to eligibility for making complaints—

- (a) determine whether the complaint constitutes—
  - (i) a conduct complaint,
  - (ii) a services complaint, and then
- (b) take the preliminary steps mentioned in subsection (4).]

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(2) The persons are—

- (a) as respects a conduct complaint, any person;
- (b) as respects a services complaint—
  - (i) any person who appears to the Commission to have been directly affected by the suggested inadequate professional services;
  - (ii) the Lord Advocate;
  - (iii) the Advocate General for Scotland;
  - (iv) any judge (including a sheriff);
  - (v) the Auditor of the Court of Session;
  - [<sup>F4</sup>(va) the auditor of the Sheriff Appeal Court,]
  - (vi) the Auditor of any sheriff court;
  - (vii) the Scottish Legal Aid Board;
  - (viii) any relevant professional organisation.

[<sup>F5</sup>(2A) A determination by the Commission under subsection (1A)(a) must include a determination of whether (and if so to what extent) the complaint constitutes separate complaints falling within more than one of the categories and if so which of the categories.

(2B) Where, for the purposes of subsection (1A)(a), it appears to the Commission that the complaint may constitute both—

- (a) a conduct complaint, and
- (b) a separate services complaint,

it must consult, co-operate and liaise with the relevant professional organisation and have regard to any views expressed by the organisation on the matter before making a determination under subsection (1A)(a) as respects the complaint.

(2C) A relevant professional organisation must co-operate and liaise with the Commission in relation to subsection (2B).]

(3) The Commission is not to take the preliminary steps mentioned in subsection (4), and is not to take any further action under any other provision of this Part, in relation to any element of a conduct complaint which is about a practitioner acting in a judicial capacity in a court or tribunal specified by order by the Scottish Ministers.

(4) The preliminary steps are—

- (a) to determine whether or not the complaint is frivolous, vexatious or totally without merit;
- (b) where the Commission determines that the complaint is any or all of these things, to—
  - (i) reject the complaint;
  - (ii) give notice in writing to the complainer and the practitioner that it has rejected the complaint as frivolous, vexatious or totally without merit (or two or all of these things).

#### Textual Amendments

- F1** Words in s. 2(1) substituted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(2)(a)(i)** (with reg. 4)

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- F2** Words in s. 2(1) omitted (1.1.2015) by virtue of [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(2)(a)(ii)** (with reg. 4)
- F3** S. 2(1A) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(2)(b)** (with reg. 4)
- F4** S. 2(2)(b)(va) inserted (30.1.2019) by [Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Act 2018 \(asp 10\)](#), s. 27(3), **sch. para. 6**; S.S.I. 2018/368, reg. 2(o)
- F5** S. 2(2A)-(2C) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(2)(c)** (with reg. 4)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 2(6)(ba) inserted by [2010 asp 16 s. 118\(4\)](#)