

***Rules of the Scottish Legal
Complaints Commission 2009***



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Rules of the Scottish Legal Complaints Commission 2009

The rules and directions as to procedure

1 The rules

- (1) These rules are made by the Scottish Legal Complaints Commission (in these rules referred to as “the Commission”) under section 32 of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) (in these rules referred to as “the Act”) after consultation under subsection (5) of that section.

2 Directions as to procedure

- (1) The Commission may regulate its own procedure as regards a particular complaint and in particular may give such direction as it thinks fit as to the procedure to be followed at any stage in the complaint (provided the direction is consistent with the Act, with the other rules and with the interests of justice and is made with regard to considerations of proportionality).
- (2) A direction under paragraph (1) is to include, in so far as it is appropriate to the stage in question, provision as to the evidence which may be required or admitted and as to the extent to which any such evidence may be oral or written.

Prospective complainers

3 Guidance and assistance for prospective complainers

- (1) The Commission will, in fulfilling its duty under section 34(1) of the Act to provide advice as respects the process of making a service complaint or a handling complaint to it, also provide such guidance and practical assistance to the person requesting the advice as appears to it to be appropriate in relation to making such a complaint (and, without prejudice to the generality of this paragraph, such assistance may include assistance in formulating a complaint).
- (2) A request under that section by any person may be made in whatever reasonable manner the person thinks fit.

Making a complaint etc.

4 Making a complaint

- (1) A complaint is made when it is on an SLCC complaint form registered as received at the office premises of the Commission at a time when those premises are open for business.
- (2) The Commission is to maintain a register for the purposes of paragraph (1).
- (3) A complaint—
 - (a) must identify the complainer clearly and give a full postal address for communication with the complainer,
 - (b) may include any e-mail address which the complainer has, a telephone number for such communication and a statement as to which means of communication is preferred, and
 - (c) must contain information sufficient to enable the Commission to understand the factual basis upon which the complaint proceeds.

- (4) A complaint may be made by a person (“A”) on behalf of another person (“B”) but only if the Commission is satisfied, as regards the particular complaint, that A has B’s authority to make the complaint on B’s behalf.
- (5) If the complainer is acting in a special capacity the complaint must specify that capacity.
- (6) A complaint will not be accepted (unless the Commission considers that the circumstances are exceptional) if it is made more than 1 year after the professional misconduct, unsatisfactory professional conduct or conviction suggested by it appears to have occurred, or the professional services suggested by it to have been inadequate appear to have been provided.
- (7) In determining whether the period of 1 year mentioned in paragraph (6) has elapsed, there is to be disregarded any time during which the complainer was, in the opinion of the Commission, excusably unaware—
 - (a) of the professional misconduct, unsatisfactory professional conduct or conviction in question, or
 - (b) of the inadequacy of the professional services in question.
- (8) On a complaint being accepted, the Commission is to send a copy of it to each of the parties.

5 Premature complaints

- (1) This rule applies to a complaint registered under rule 4(1) but made prematurely.
- (2) The Commission may at once proceed to take preliminary steps and further action as regards the complaint if the circumstances—
 - (a) are exceptional, or
 - (b) though not exceptional, are such that the Commission considers it to be in the public interest so to proceed.
- (3) Other than in circumstances such as are mentioned in subsection (2), no preliminary steps and further action are to be taken as regards the complaint before the Commission is satisfied—
 - (a) that the substance of the complaint has been duly communicated in accordance with section 4(4)(a) of the Act, and
 - (b) that the person to whom the communication was made has been given a reasonable opportunity to deal with the complaint.
- (4) Without prejudice to the generality of section 4(4)(a) of the Act, a person is not to be considered, for the purposes of that section, to have been given a reasonable opportunity to deal with a complaint unless at least 4 weeks have elapsed since that communication was made.

6 Preliminary steps

- (1) After a complaint is registered under rule 4(1) a committee of the Commission or, if the Commission thinks fit, a single member of the Commission is to determine—
 - (a) under paragraph (a) of section 2(4) of the Act, whether the complaint is frivolous, vexatious or totally without merit,
 - (b) under section 3(1) of the Act, whether any element of the complaint is capable of being dealt with under a specified regulatory scheme.

- (2) A member making, or a committee making, a determination under paragraph (1) is to give reasons for the determination.

Requirement that right of confidentiality be waived

7 Requirement that right of confidentiality be waived

The Commission is not to—

- (a) investigate a services complaint by virtue of section 9 of the Act,
- (b) remit a conduct complaint to a relevant professional organisation under section 6(a) or 15(5)(a) of the Act, or
- (c) investigate a handling complaint by virtue of section 23 of the Act,

unless the complainer has (or, where the complaint is made on behalf of another person who has the capacity to consent, the complainer and that other person have) for the purposes of Parts 1 and 2 of the Act, waived any right of confidentiality in relation to the matters to which the complaint relates.

Mediation

8 Offer of mediation

- (1) In giving notice under section 8(4) of the Act offering mediation in relation to a complaint, the Commission will provide the complainer and practitioner with a written explanation of the nature and purpose of mediation and of the fact that mediation (or mediation in relation to an element of the complaint)—
- (a) will be discontinued—
 - (i) if either the complainer or the practitioner withdraws consent to it, or
 - (ii) if, during it, the Commission comes to the view that it is reasonably likely that the complaint (or as the case may be the element of the complaint) constitutes not a services complaint but a conduct complaint, and
 - (b) may be discontinued in other circumstances if the Commission thinks fit.
- (2) The Commission may give such notice at any time, whether or not it has begun to investigate the complaint (and, where such investigation has begun, whether or not it began by virtue of section 9(1)(c)(ii) of the Act).

9 Continuation of mediation

Even while the Commission is investigating the complaint (provided the investigation did not begin by virtue of section 9(1)(c)(ii) of the Act), mediation taking place in relation to it immediately before the investigation began may, if both the complainer and the practitioner agree, be continued with.

Services complaints: procedure as regards investigation, documents etc.

10 Case investigator

- (1) At the commencement of its investigation of a services complaint the Commission is to allocate to one of its members of staff the tasks of—
- (a) taking charge of the investigation,

- (b) carrying out any inspection, and calling any meeting, which the case investigator considers necessary in relation to the investigation, and
 - (c) liaising with the parties and with the relevant professional organisation as respects the investigation.
- (2) The person to whom the tasks are so allocated is referred to in these rules as “the case investigator”.
- (3) The case investigator is, as soon as practicable after appointment—
- (a) to notify the parties and the relevant professional organisation of the appointment, and
 - (b) to invite the practitioner to make representations to the Commission as regards the complaint.

11 Delays in the provision of information

- (1) Paragraph (2) applies where for the purposes of section 8 or 9 of, and by notice under section 17(1) of, the Act the Commission requires a party to produce or deliver documents or provide an explanation.
- (2) If the time specified in the notice for compliance elapses without such production or delivery having been obtained, or as the case may be without the explanation having been provided, the Commission may—
- (a) inform the relevant professional organisation of the delay and of the relevant circumstances, or
 - (b) in a case where subsection (2) of section 9 of the Act applies, proceed forthwith to make a proposal under that subsection.
- (3) Paragraph (4) applies where for the purposes of section 2, 4, 5, 8, 9, 10 or 15 of, and by notice under section 17(4) of, the Act the Commission requires a complainer to produce or deliver documents or provide an explanation
- (4) If the time specified in the notice for compliance elapses without such production or delivery having been obtained or as the case may be without the explanation having been provided, the Commission may, provided it is satisfied that the complainer’s failure to comply with the requirement has been unreasonable, proceed forthwith to make a determination under section 9(1) of the Act.

12 Copy documents

- (1) If an original document is lost or destroyed, a copy of the document (provided that copy is proved and authenticated to the satisfaction of the Commission) may be substituted for the original; and if so substituted the copy is to be treated as the original for all purposes.
- (2) Where a copy of a document is lodged with the Commission other than under paragraph (1), the Commission may treat it as the original to such extent and for such purposes as it considers appropriate having regard—
- (a) to the nature of the document,
 - (b) to such explanation as there is for failure to produce the original, and
 - (c) to any risk of prejudice to another party.

Settlements, determinations and directions

13 Draft settlement

(1) For the purpose of affording the parties an opportunity to make representations under section 9(1) of the Act, the Commission is before—

- (a) proposing a settlement, or
- (b) making any determination or direction,

to provide each of them with a draft of the proposed settlement or as the case may be of the determination or direction.

(2) To be considered, any such representations must be made in writing within 3 weeks after the draft is so provided.

14 Settlement of services complaint etc.

(1) A settlement proposed under section 9(2) of the Act comes into being if it is accepted by the practitioner and the complainer (whether or not after adjustment by themselves) within 4 weeks after being so proposed.

(2) If not so constituted the proposed settlement ceases to be open for acceptance and the Commission is, under section 9(1) of the Act, to proceed to determine the complaint.

Dealing with complaint in presence of parties

15 Dealing with complaint in presence of parties

(1) At any time after the Commission is required to proceed to determine a complaint the Commission may, at its own instance, decide that the complaint, or any matter in relation to the complaint, is to be dealt with in the presence of the parties.

(2) After such consultation with the parties as the Commission considers appropriate and practicable—

- (a) the place, date and time at which the parties are to be present are to be fixed by the clerk, and
- (b) the question of whether members of the public are also to be permitted to be present is to be decided by the Commission.

(3) Oral evidence may be given, in proceedings under this rule, through a live television link (or through any other electronic means by which a live image is transmitted) if—

- (a) the parties agree, or
- (b) though they do not agree, the Commission is satisfied that its being so given would not prejudice the fairness of those proceedings.

(4) If either of the parties declines or fails (or both decline or fail) to be present at the place, date and time fixed under paragraph (2)(a), the Commission may, but need not, proceed forthwith to make a determination under section 9(1) of the Act.

16 Noting evidence

The clerk may, whether or not at the request of a party, arrange for notes of evidence given in proceedings under rule 15 to be recorded—

- (a) by a shorthand writer appointed by the Commission, or

- (b) by means of an electronic or mechanical device.

Procedural defect, extension of time, deferment etc.

17 Procedural defect

- (1) The Commission may, where it considers it appropriate to do so in the interests of fairness, relieve a party from the consequences of a procedural defect in relation to—

- (a) the making of a complaint under Part 1 of the Act, or
 (b) the Commission dealing with such a complaint,

and may give such procedural directions as it thinks fit to enable the complaint to proceed as if the failure had not occurred.

- (2) In paragraph (1), “procedural defect” includes any failure to comply with a time limit.
 (3) But the period of 1 year mentioned in rule 4(6) is not a time limit for the purposes of this rule.

18 Extension of time etc.

The Commission may if it thinks fit grant a request to it from a party for—

- (a) an extension of time, or
 (b) permission to take a procedural step out of time.

19 Deferment

The Commission may at any time, at its own instance, defer further proceedings in any complaint either indefinitely or to a date or event specified by it.

Additional complaint

20 Matters suggesting professional misconduct etc. distinct from that suggested by the complaint

- (1) Paragraph (2) applies where in the course of proceedings as regards a complaint (the “original complaint”) the Commission becomes aware of matters (the “new matters”) which suggest—

- (a) professional misconduct or unsatisfactory professional conduct by the practitioner which has affected the complainer (and the practitioner is not a firm of solicitors or an incorporated practice), or
 (b) that professional services provided by the practitioner in connection with any matter in which the practitioner has been instructed by the complainer were inadequate.

- (2) If the professional misconduct, unsatisfactory professional conduct or inadequate professional services so suggested are distinct from any suggested by the original complaint, the Commission—

- (a) in a case where inadequate professional services is suggested—
 (i) is to advise the complainer that it may be appropriate, whether or not only in exceptional circumstances, for the Commission to receive an additional complaint, that is to say, a complaint arising out of the new matters, and

- (ii) is to send a copy of that advice to the other parties, and
 - (b) in a case where professional misconduct or unsatisfactory professional conduct is suggested, is to remit the new matters to the relevant professional organisation to deal with (and give to the organisation a copy of any material which relates to the new matters and is in the Commission's possession) and is to advise the parties that it is doing so.
- (3) But paragraph (2)(a) does not apply where—
- (a) it appears to the Commission that any such additional complaint could not be accepted, or
 - (b) the complainer is a person mentioned in any of sub-paragraphs (ii) to (viii) of section 2(2)(b) of the Act.

Determination committees

21 Determination committees

- (1) A determination committee appointed to exercise functions as to the making of a determination or direction under section 9 or 10(2), the making of a decision or publication of a report under section 13 or the making of a decision under section 23(2) or 24(6) of the Act is to consist of 3, 5, 7 or 9 members of the Commission, as the Commission, in establishing it, thinks fit.
- (2) The majority of the members of a determination committee are to be non-lawyer members and the committee is to be chaired by a lawyer member.
- (3) Where the Commission proposes a settlement under section 9(2) of the Act but the settlement is not accepted and it then falls to a determination committee to determine the complaint under section 9(1), or to make a determination or direction under section 10(2), of the Act, the members of the committee are not to include anyone who was involved in any aspect of—
- (a) investigating the complaint (including deciding under section 2(4)(a) of the Act whether the complaint was frivolous, vexatious or totally without merit), or
 - (b) the formulation or making of the proposed settlement.

Miscellaneous and general

22 Admission of evidence

The Commission may in proceedings under these rules admit such evidence, in whatever form—

- (a) as it considers it would be fair to admit, and
- (b) as appears to it to be relevant to the complaint,

whether or not the evidence would be admissible in proceedings in an ordinary civil action in a Scottish civil court.

23 Further provision as respects prior involvement

Where it falls to the Commission itself (and not to a determination committee) to make a determination under section 9(1), or to make a determination or direction under section 10(2), of the Act, the members of the Commission who are involved in doing so are not to include anyone who was involved in any aspect of—

- (a) investigating the complaint (including deciding under section 2(4)(a) of the Act whether the complaint was frivolous, vexatious or totally without merit), or
- (b) the formulation or making of the proposed settlement.

24 Quorum

- (1) A quorum of the Commission is 5 at least 3 of whom are non-lawyer members.
- (2) A quorum of any committee established by the Commission is 3.

25 Standing orders

The Commission is to provide, in the form of Standing Orders, guidance to—

- (a) its committees (including a committee to be known as the Board of Governance), and
 - (b) to any working party or group set up by the Commission,
- as respects the exercise of their respective functions.

26 Reasons for determinations etc.

The Commission is to give reasons in writing, whether or not required to do so by the Act, for any determination, direction, decision or recommendation made by it under Part 1 of the Act.

27 Annual general levy

- (1) The Commission may, if after consultation with the relevant professional organisations (as defined in section 46(1) of the Act) it determines that it should do so, waive a proportion of the annual general levy payable under section 27(1) of the Act.
- (2) A sum falling to be paid under section 27(2)(b) of the Act to the Commission by a relevant professional organisation in respect of a financial year is due on the day before the financial year commences.
- (3) The Commission may charge interest on the sum, at such rate as may be specified by the Scottish Ministers by order under section 27(3)(b) of the Act, from the day on which the sum is due until the sum is paid.
- (4) In this rule, “financial year” means a period of 12 months ending on 30 June.

28 Complaints levy

- (1) The Commission may waive any requirement under section 28 of the Act for a practitioner to pay the complaints levy in part or full
- (2) Any sum falling to be paid to the Commission under section 28(1) of the Act by a practitioner is due on the day 21 days after the sum is demanded by the Commission.
- (3) The Commission may charge interest on the sum, at such rate as may be specified by the Scottish Ministers by order under section 28(3)(b) of the Act, from that day until the sum is paid.

29 Interpretation

In these rules—

“the Act” has the meaning given in rule 1,

“the case investigator” has the meaning given in rule 10,

“the clerk” means the person appointed under paragraph 8(3) of schedule 1 to the Act to be clerk to the Commission,

“the Commission” means the Scottish Legal Complaints Commission and includes, unless the context otherwise requires, a determination committee and, if and in so far as authorised to exercise a function of the Commission, a single member of the Commission,

“determination committee” means a committee of members established under paragraph 11(1)(a) of schedule 1 to the Act,

“the parties” means the complainer, the practitioner, the practitioner’s firm and, where the practitioner is an employee of another practitioner, that other practitioner, and

“person” includes a body of persons (corporate or unincorporate);

and any other expression has the same meaning as it has in Part 1 of the Act.

30 Citation

These rules may be cited as the Rules of the Scottish Legal Complaints Commission 2009.

(Signed)

[] Chairing Member
 [] Members

Edinburgh
 [] 2009.