



**THE LAW SOCIETY  
of SCOTLAND**

[www.lawscot.org.uk](http://www.lawscot.org.uk)

### **How will complaints be dealt with?**

The Commission will be the gateway for all complaints, service and conduct. If a service complaint is not deemed frivolous, vexatious, without merit or premature, the Commission will take it forward for mediation or investigation. Conduct complaints will be passed to the Society.

Hybrid complaints involving elements of both service and conduct are likely to be regulated by a protocol or Memorandum of Understanding between the Commission and the Society, though this has not yet been determined.

The Society will be given wider powers to deal with conduct issues that fall short of professional misconduct, which will be known as “unsatisfactory professional conduct”. In these cases, the Society will be empowered to censure the solicitor and consider other sanctions including a fine, compensation or an order for retraining.

Professional misconduct will continue to be determined by the independent Scottish Solicitors Discipline Tribunal.

The Commission will have “oversight” of conduct complaints, which is expected to mean it will take on the role of the Scottish Legal Services Ombudsman.

### **How will the Commission operate?**

The Commission’s system of investigation is likely to operate in the same way as the Financial Ombudsman Service. In other words, the onus will be on the practitioner to prove what he or she did or did not do, rather than the complainer. It will be an inquisitorial process and live hearings before the Commission are a possibility. Both parties will have a right of appeal to the Court of Session on restricted grounds, with leave from the court.

The amount of compensation the Commission can award will increase from the current £5,000 upper limit to £20,000. This is in addition to any other sanction that may be imposed, such as refund, abatement of fees or rectification.

The Commission’s powers may impact on the Master Policy insurance arrangements. The Society’s insurers are continuing to consider the implications of this.

Oversight of the Guarantee Fund and Master Policy by the Commission may relate to an ability to review the time taken to deal with claims and similar matters, though this has yet to be clarified.

The Commission aims to put the consumer at the heart of the regulation of the legal profession.

### **How much will it cost?**

The legal profession will be responsible for meeting the total cost of the Commission, though its budget will not be set and approved until early 2008.

The cost to solicitors will be covered by two different charges. Firstly, there will be an annual levy on all those who take out practising certificates. No decision on the levy charge will be reached until the Scottish Parliament approves the Commission's business plan and budget.

Solicitors will also have to pay a case fee where a complaint is mediated, resolved or upheld. As with the annual levy, case fees will be set by the Commission at a future date.

The Society will retain a complaints handling structure to deal with conduct matters. The number of these cases is expected to rise in line with the changes in definition outlined above. On behalf of the profession, and to ensure value for money, the Society will also take on the function of reviewing the operation of the Commission, for instance, in relation to its policies, budget, rules and procedures. For these reasons, it will not be possible simply to deduct the equivalent of the Commission's annual levy from future practising certificate fees.