



Law Society
of Scotland

Appendix 1

Pathway to change – a proposed model for
complaints

December 2018



Introduction & background

1. We have considered carefully the recommendations (32 – 35) which relate to restructuring of the complaints process. Having read the Robertson report in detail, we agree that the current complaints system is too complicated and drawn out. We do not believe the failures in the system arise from the fundamental structure. They arise because of lengthy and cumbersome processes, particularly at the eligibility stage. There are a number of aspects of the present legal complaints process which serve as either bottlenecks in the process, or barriers to effective and equitable investigation of complaints.
2. The complaints process has been the subject of many discussions since the introduction of the Legal Profession and Legal Aid (Scotland) Act 2007 and minor amendments of that Act by Regulations in 2014. We have advocated for a more streamlined process that works for both consumers and the legal profession. Our view is that by setting out a process in very prescriptive legislative terms, the risk is that it will never be flexible enough to allow those entrusted to handle a complaint to do so as quickly and effectively as would be possible otherwise.
3. Some of the most important elements of any regulatory system are the processes available for consumer complaints and professional discipline. The current process, and its inherent complexities, impact on both the consumer and those against whom the complaint is made. It is critical that consumers can have confidence that, in the unlikely event that something should go wrong and they do not receive the services expected and deserved, they will have proper recourse. Equally, we believe it is important for professional bodies themselves to have the right to investigate cases of alleged misconduct in a timely and effective manner. Scottish solicitors have a strong personal and professional interest in ensuring that complaints are appropriately handled and dealt with through a robust complaints system, so as to protect the rights and interests of the consumer and the reputation of the solicitor profession.
4. We are committed to developing a complaints process that is robust and handled impartially by staff with the appropriate skills and experience and which reflect the expectations of the consumer. A process which is timely, agile, and proportionate, not prescriptive and detrimental to the consumer interest. In this regard we propose a process which is underpinned by the better regulation

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principles of transparency, accountability, proportionality and consistency, where complaints will be handled sensitively.

Proposed model

5. Over recent months we have given much consideration to the complaints process with the objective of identifying potential changes to simplify the system which was overly complicated by the terms of the 2007 Act. A research visit to the Legal Ombudsman Service (LeO) in Birmingham in August 2017 was undertaken in order to consider the way in which legal complaints are dealt with in another jurisdiction with a particular eye on consumer complaints. This has helped inform our proposed model for service and conduct complaints.
6. LeO was established by the UK Parliament under the Legal Services Act 2007 in order to determine consumer complaints in England and Wales in a fair and independent way. LeO works closely with authorised regulators within the English and Welsh legal sector such as the Solicitors Regulation Authority (SRA). Together they strive to make the complaints journey as transparent, timely and smooth as possible, ensuring that complaints are investigated and addressed in a fair and equitable way and by the appropriate body. LeO has demonstrated that their adopted model for complaint redress works, with 99% of service complaints being completed within 365 days (2016 -17 Annual Report). Their key performance indicators require that 60% of complaints are resolved in 90 days; 90% resolved in 180 days; 100% resolved in 365 days.
7. Complaints relating to breaches of the SRA conduct principles, dishonesty or discrimination and concerning solicitors are either received directly by, or passed to, the SRA, which responds promptly to acknowledge receipt of the complaint therefore immediately managing the complainer's expectations from the outset. The SRA will investigate the complaint and assess the risk. The complainer is considered a witness to the complaint, whom the SRA will liaise with as necessary to obtain a statement and the complainer witness may be called to give evidence before the disciplinary tribunal. Following the tribunal, the SRA will write to the complainer within 14 days to advise of the outcome.

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8. The model works successfully in England and Wales between LeO and the SRA. We believe a similar system could work well here in Scotland too. Our proposed model would be for:

- The replacement of the Scottish Legal Complaints Commission with a Scottish Legal Ombudsman Service (SLOS). The focus of this body would be to handle complaints from consumers and ensure a speedy resolution or if a formal determination is needed, appropriate redress. In line with the recommendations of the Robertson report, we suggest that the Board and the Chair of SLOS be subject to the public appointment process and be required to lay an annual report before the Scottish Parliament. SLOS would be overseen by the Office of the Lord President (see below).
- SLOS would handle service complaints with the Law Society (or respective regulator such as the Faculty of Advocates) handling conduct complaints, as is currently the process. This recognises the differences between consumer redress complaints and those relating to conduct or ethical issues and professional discipline.
- The single gateway function, which the SLCC currently performs, would be abolished. We propose that complaints would be received by either the regulator or SLOS. As with LeO and the SRA, a Memorandum of Understanding would exist whereby each body would have a responsibility to work together and pass the complaint to the appropriate body. This process works well between LeO and the SRA in England and Wales and we believe a similar approach could and would work well in Scotland.
- There would be a speedier process to determine eligibility carried out by the respective organisations, replacing the current 'clunky' process. The removal of detailed process requirements for eligibility would permit a more streamlined, efficient and flexible sifting function, which would still reject complaints which were without merit and which failed to demonstrate sufficient grounds and would therefore be unlikely to succeed.
- Where the complaint relates to a conduct matter, the complaint will be taken forward in the name of the Law Society of Scotland. The complainer will be kept informed as appropriate as the complaint progresses and would be, in effect, a witness. Where the Law Society identifies possible misconduct, it would be able to move to a formal investigation without first seeking

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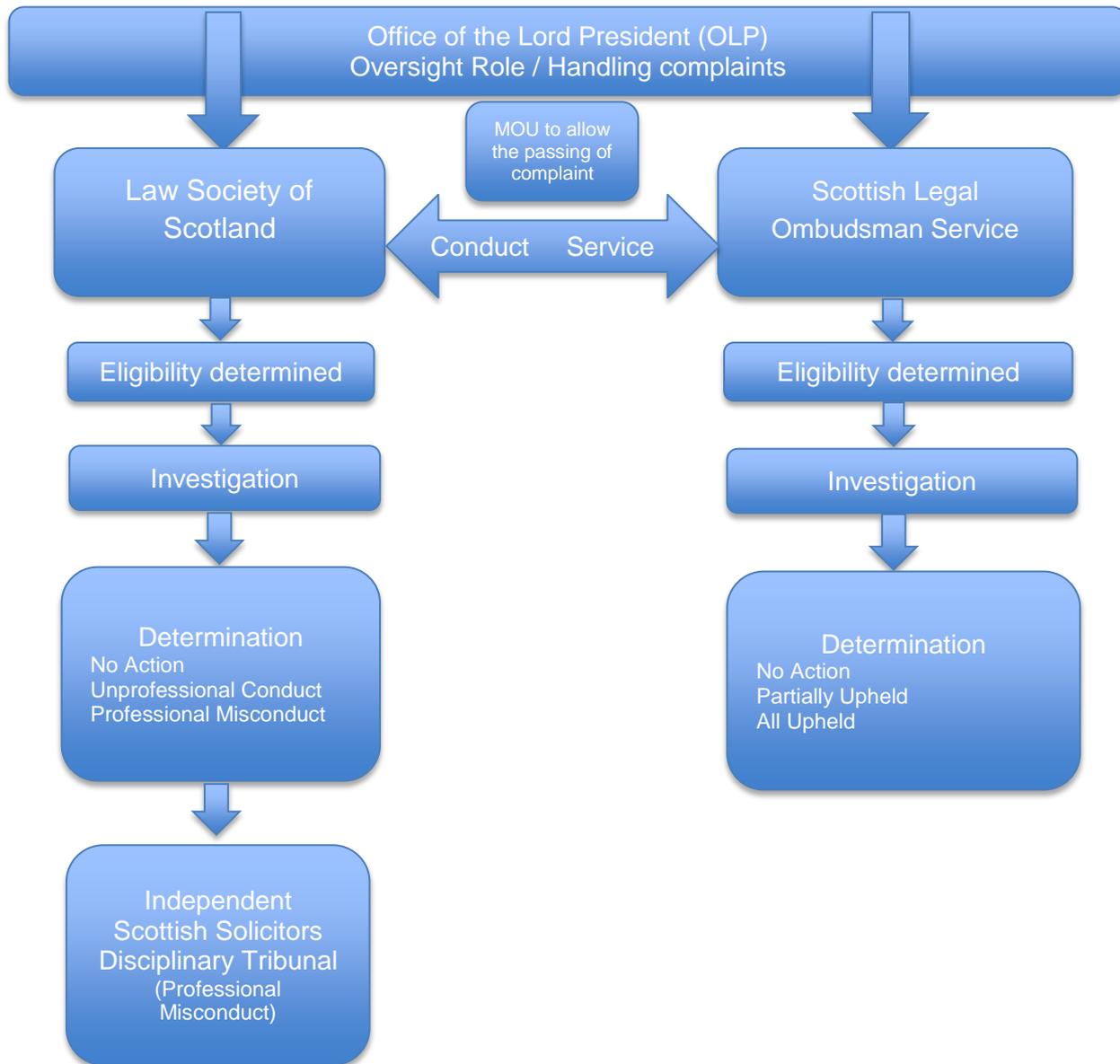
approval from SLOS. This will allow for a speedier determination of conduct issues so as to mitigate any potential future risks to consumer.

- Compensation will only be awarded for service complaints and where it was determined that compensation is appropriate. Compensation would not be awarded for 'pure' conduct complaints.
- Oversight. We believe that the limited size of the Scottish Jurisdiction, and associated costs to establish and resource, would not justify the creation of a new, further statutory body to carry out the function of oversight. Therefore, and with our proposed changes to the SLCC, we suggest that the Office of the Lord President (OLP) should adopt an oversight role over both SLOS and the professional bodies within the legal sector. This would be similar to the role which the OLP currently has in overseeing the Scottish Solicitors' Discipline Tribunal (SSDT). In addition to oversight, we also suggest that the OLP would be responsible for receiving and investigating handling complaints against SLOS or the professional bodies. This reflects the important role of the Lord President as the independent head of the Scottish legal profession and is a system which has been shown to work well elsewhere.
- The complainer would have the right to seek a review of the case by the OLP at various stages of the process. Appeals would be to the Sherriff Court for service complaints, removing the costly need to involve the Court of Session. Appeals relating to conduct matters would be to the SSDT as currently. In relation to the role of the OLP, we have not as yet discussed this with the OLP, but would welcome the opportunity to do so should this model find favour.
- Discipline Tribunal. We support the principle of there being an independent disciplinary tribunal which is separate to professional bodies and takes decisions in the most serious of cases against Scottish solicitors. We believe the current arrangements whereby the Law Society acts as the prosecutor before the SSDT in cases for professional misconduct works effectively. This is evidenced by the number of cases which the Law Society has brought before the SSDT. Since 2012 almost half (48%) of complaints which led to prosecutions (224 cases), arose as a result of complaints raised by the Society.

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We have briefly outlined and summarised our proposed complaints model above. This is also demonstrated in the below flow chart. However, we have given careful consideration as to the detailed steps which would be undertaken in any new process, including appeal routes. We would welcome the opportunity to discuss this further with the Scottish Government and interested stakeholders.



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