

**Title: CH14 Complaints Levy Policy**

**Author: SLCC**

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## 1 Introduction

- 1.1 This document sets out the SLCC's policy on applying the Complaints Levy.
- 1.2 There was extensive consultation prior to the drafting of the relevant legislation. The responses relating to the complaints levy were summarised by the Scottish Government to reflect the support for a "polluter pays" approach. To this extent the levy is punitive.
- 1.3 The Legal Profession and Legal Aid (Scotland) Act 2007 (the Act) provides that a practitioner against whom a services complaint is made must pay to the SLCC a contribution in relation to the complaint ("the Complaints Levy") if
  - (i) a complaint is resolved at mediation; or
  - (ii) a proposed settlement (under section 9(2) of the Act) is accepted; or
  - (iii) The SLCC makes a determination under section 9(1) upholding the complaint.
- 1.4 The relevant sections of the Act are: Sections 28, 29, 46, Schedule 1, section and Schedule 3, sections 1(k) and 2 (f)(g) & (i).
- 1.5 The relevant rules are
  - (i) 28 – the complaint levy, under which the levy may be waived in full or in part
  - (ii) 29 – interpretation
- 1.6 The amounts of the Complaint Levy (the levy) are determined annually and form part of the SLCC budget. These amounts can be set at nil.

## 2 Charging the levy

- 2.1 The levy must be charged when any one of the conditions outlined in s28(2) of the Act is fulfilled. In deciding the amount of the levy the decision maker should also direct to whom the levy should be charged – a firm or an individual.
- 2.2 The due date for payment of the levy is covered by Rule 28(2) - 21 days after the sum is demanded.
- 2.3 When the levy is paid a receipt must be issued.
- 2.4 If the levy is not paid by the due date, interest may become payable. The rate of interest is 4% above Bank of England base rate on the working day following the due date.
- 2.5 The amount of interest is calculated on the following basis
 

$I = P \times R \times (N/365)$  where:

  - I is amount of interest
  - P is the amount of the levy
  - R is the annual rate of interest
  - N is the number of whole or part days from the day following the due date, to the day cleared funds are received by the SLCC

### 3 Amount of levy

3.1 The amount of a complaint levy is determined by the SLCC as part of the budget process. The amounts are set as:

	1 October 2008 – 30 June 2009	1 July 2009 – 30 June 2010	1 July 2010 – 30 June 2012	1 July 2012 – 30 June 2014
Mediation	£200	£0	£0	£0
Settlement proposed and accepted under s9(2)				
<ul style="list-style-type: none"> <li>• No element upheld</li> <li>• First settlement</li> <li>• Each subsequent settlement within 24 months of the first</li> </ul>	<ul style="list-style-type: none"> <li>• £0</li> <li>• £250</li> <li>• £350</li> </ul>	<ul style="list-style-type: none"> <li>• £0</li> <li>• £500</li> <li>• £700</li> </ul>	<ul style="list-style-type: none"> <li>• £0</li> <li>• Up to £500</li> <li>• Up to £700</li> </ul>	£0
Formal determination made under s9(1)				
<ul style="list-style-type: none"> <li>• No element upheld</li> <li>• First determination</li> <li>• Second within 24 months</li> <li>• Third and each subsequent within 24 months</li> </ul>	<ul style="list-style-type: none"> <li>• £0</li> <li>• £400</li> <li>• £600</li> <li>• £1000</li> </ul>	<ul style="list-style-type: none"> <li>• £0</li> <li>• £800</li> <li>• £1,200</li> <li>• £2,000</li> </ul>	<ul style="list-style-type: none"> <li>• £0</li> <li>• Up to £800</li> <li>• Up to £1,200</li> <li>• Up to £2,000</li> </ul>	Up to £3,500

#### Complaints received prior to 1 July 2012

3.2 The rate to use is determined by the date the complaint was made to the SLCC. For example a complaint made and registered on 24 May 2009, but not determined until 15 August 2009 would be charged at the rates applicable up to June 2009 (£400 if upheld at determination). A complaint made to the SLCC and registered on 4 July 2009 would attract the rates applicable from 1 July 2009.

3.3 The SLCC must be mindful of multiple complaints when calculating the amount of the levy. There may be instances where several complaints are made by the same complainer about the same practitioner/firm at the same time (or in close proximity). If these cover separate instructions they are registered as separate complaints which may be resolved or determined at the same time. For these complaints, the levy will be considered for each complaint in turn based on the outcome of the previous complaint, for example:

- Three complaints, one settled at investigation report stage and two upheld at determination. The levy charged will be the rate for the first settlement + rates for the first determination + the rate for the second determination.
- Four complaints, all go to determination and considered in order A, B, C, D. A is upheld, B is not upheld, C is upheld and D is upheld. The levy charged will be first determination rate for A + zero for B + second determination rate for C + third determination rate for D.
- If a complainer makes two complaints, one about the way a divorce is handled and one about conveyancing and both are upheld at determination, the first levy will be £400 and the second levy will be £600.

#### Complaints received after 1 July 2012

3.4 If a complaint is received by the SLCC after 1 July 2012, a complaint levy only applies at the determination stage. The Determination Committee has a discretion to impose a levy up to £3,500.

## 4 Waiver of levy

- 4.1 The 2007 Act and the SLCC's Rules allow for waiver of all or part of the levy.
- 4.2 The decision to waive all or any of the levy is a matter of judgement. The decision to waive all or any of the levy will be made by:
- (i) The Head of Investigations at the Investigation stage if the complaint is received prior to 1 July 2012.
  - (ii) The Determination Committee if the complaint reaches the Determination stage.

## 5 Factors to take into account: all complaints

- 5.1 Proportionality. Balance should be struck between the amount of the levy and the amount of the proposed settlement/determination and/or the amount of input / investigation by the SLCC.
- 5.2 Offers already made by the practitioner. If the practitioner has already made a written offer to settle the complaint which is commensurate with (or more than) the amount the SLCC would recommend/ determine, this should be taken into account along with other factors when setting the amount. The assumption is the SLCC will reduce the levy in full in normal circumstances, depending on the various factors which the SLCC must consider in terms of this policy.
- 5.3 Any offer made by a practitioner must be open and transparent to all parties. If the practitioner made an offer during mediation this cannot be taken into account, but if s/he restated that offer outside mediation it should be taken into account.
- 5.4 The practitioner has agreed to a proposed settlement. If the practitioner agreed to the proposed settlement at investigation stage the Determination Committee should take this into account in directing the amount of the complaint levy. The assumption specified in paragraph 5.2 above applies equally to the terms of this paragraph.

## 6 Additional Factors to take into account: post 1 July 2012 complaints

- 6.1 The Determination Committee has a discretion to impose a levy up to £3,500 for all complaints upheld in full or part at the determination stage. The amount imposed will take into account the circumstances of the case. The Determination Committee shall provide reasons for the levy imposed and consideration should also include but not be limited to the following: -
- 6.2 The complaint history of the practitioner when setting the complaints levy.
- 6.3 Practitioners engagement in the complaints process: The Determination Committee may take into account the following: -
- (i) Whether the practitioners adhered to accepted best practice in complaints handling including following its own internal complaints procedures and the best practice published by the SLCC.
  - (ii) Whether the practitioners made the complainer aware that if they remained dissatisfied with the internal complaints procedure contact should be made with the Scottish Legal Complaints Commission.
  - (iii) Whether there were any unreasonable delays on the part of the practitioners in dealing with the complaint (this applies to both the internal complaints procedure and in dealing with the SLCC)
  - (iv) Whether the practitioner openly accepted any failure in their service and offered a reasonable settlement.

6.4 When setting the complaint levy the Determination Committee should take into account the following tariff as a guideline for setting the appropriate levy. This tariff is a guideline only and the SLCC recognises that the setting of the tariff should be decided on a case-by-case basis taking into account the relevant circumstances of the complaint before the Committee.

<b>Range of Levy</b>	<b>Relevant factors to take into account</b>
£2,250 - £3,500	<p>Firm has 3+complaints upheld over the last 24 months Compensation awarded is in the serious category (or equivalent for abatement of fees)</p> <p><b><u>Factors that would place the levy in the higher end of bracket:-</u></b> No engagement in the complaints process. The SLCC had to take steps to recover the file. The firm delayed in responding to the SLCC or did not provide a full response. No willingness to acknowledge IPS</p>
£1,500 - £2,250	<p>Firm has 3+complaints upheld over the last 24 months Compensation awarded is in the serious category (or equivalent for abatement of fees)</p> <p><b><u>Factors that would place the levy in the higher end of bracket:-</u></b> Limited or no engagement in the complaints process</p>
£750 - £1,500	<p>Firm has a limited complaint history (1-2 complaints in the last 24 months) Compensation in the limited, modest, or significant category (or equivalent for abatement of fees)</p> <p><b><u>Factors that would place the levy in the higher end of bracket:-</u></b> Only limited engagement in the complaints process.</p>
NIL	<p>Firm agreed to settlement proposals. The Committee did not uphold any additional or different issues. The Committee did not award higher compensation or direct a more severe abatement of fees The Committee did not make any additional directions</p> <p><b>(Note: Any decision of the Committee not to impose a Complaints Levy should also depend on the Committee generally being satisfied with the approach and behaviour of the practitioner in respect of the factors set out in paragraph 6.3 (i) to (iv)</b></p>



- 6.5 Some examples of how the Committee's discretion may be applied are as follows:
- (a) The Committee awarded £3,000 compensation and an abatement of fees of £1,500. The Investigation Report recommended compensation of £2,000 and the same level of abatement of fees. The Solicitors accepted the Investigation Report and offered £4,000 to settle at the very start of the complaint. The Solicitors do not have a complaint history.  
This is a serious complaint but the solicitors have been willing to engage in the complaint process and they do not have a record. The levy should, therefore, be set at the lower end of the second highest banding - £1,500 – 2,250 to reflect the seriousness of the complaint but take account of the lack of a complaint history.. Had the Solicitors offer at the very start of the complaint been £4,500 or above the Complaints Levy would have been waived in full in terms of paragraph 5.2 of the Policy
  - (b) The Committee accepted the Case Investigator's recommendation to uphold the complaint and award compensation of £250. The solicitors have had three complaints upheld against them in the last 24 months. However, as this is an award in the modest category of the compensation tariff proportionality is a key consideration. The levy should, therefore, be set at £750 being the first band above the Nil band. . Had the firm offered £250 or more in compensation, the Complaints Levy would have been waived in full in terms of paragraph 5.4 of the Policy.
  - (c) The Committee awarded £1,200 for significant inconvenience, worry, concern and anxiety caused, being the same amount as the recommendation in the Investigation Report. The firm has had 3+ complaints upheld over the last 24 months. The practitioners had failed to respond to the complainer at first tier. Thereafter the practitioners had repeatedly delayed in responding to the Case Investigator's requests for information. 4 days before the date of the Determination Committee the practitioners agreed to pay the recommended amount of compensation, but as the Complainer had not accepted the recommendation the complaint went to determination. The Committee while acknowledging that the practitioners had finally accepted the recommendation had concerns about the practitioners' engagement in the process. Had it not been for those concerns the Complaints Levy would have been Nil. However, in order to reflect those concerns, the Levy should be set at the upper end of the third highest tier of the tariff (£750 - £1,500) which also reflects the significant award and the firm's complaint's record.
- 6.6 The Determination Committee does have discretion to waive all or any of the levy. The decision to waive all or any of the levy is a matter of judgement but, as a guideline, it is envisaged that all of the levy will only be waived in exceptional circumstances, excluding those circumstances specifically identified in paragraphs 5.2 and 5.4 and in the NIL band of the tariff. .

## 7 Appeals

- 7.1 If there is an appeal against the SLCC's decision made within the terms of section 21 of the Act, then no interest is payable until the outcome of the appeal is decided by the Court.
- 7.2 If the appeal is not upheld by the Court, then interest is payable from the original date the levy was due.

## 8 Non-payment of the levy

- 8.1 If the practitioner fails to pay the levy by the due date, this may be treated as a conduct issue under S28 (4) – “(4) If any person who is liable under subsection (1) to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct”.
- 8.2 If the practitioner fails to pay the levy, the Head of Oversight(or a delegated person) will consult with the relevant professional organisation to decide whether the failure should be treated as a conduct issue.
- (i) If it is, the relevant professional organisation will consider whether to raise a conduct complaint which will be recorded by the SLCC then returned to the LSS or FoA for its investigation.
  - (ii) If the debt and any interest are recovered following this investigation, the case is closed.
  - (iii) If the debt and any interest are not recovered, the SLCC may lodge a Small Claims action in the relevant Sheriff Court for all amounts due.
- 8.3 Under the provision of s28(3) the outstanding levy may be recovered as a debt. The decision about whether to take formal action to recover the debt must be taken by the CEO. The SLCC must consider the proportionality of any debt recovery action. The cost of pursuing the debt may be disproportionate to the level of debt. The decision about whether to pursue a debt must be taken on a case-by-case basis taking into account issues such as the amount of the debt, any credit rating obtained on an individual or firm, whether a firm or individual is bankrupt/in receivership, the ease and cost of locating individuals and so on.
- 8.4 If the levy is due to be paid by a practitioner or a firm of practitioners who no longer operate, and the levy is not paid, the SLCC will consult with the relevant professional body to establish the situation of the practitioner or the firm (ie its partners). Action will depend on the information. The underlying principle is that the debt follows the individual practitioner or partners of firm. For example:
- (i) If a practitioner or firm is declared bankrupt, pursue the debt via factor/administrators
  - (ii) If a practitioner has died make claim on the estate
  - (iii) If a sole practitioner who has simply stopped practising or has moved to another firm, pursue the debt with the individual.
  - (iv) If a firm of practitioners/sole practitioner no longer operates and it has not amalgamated with another firm, the individual partners should be pursued.
- 8.5 If a firm of practitioners no longer operates and it has amalgamated with another firm, the individual partners should be pursued.

