



## Briefing for the Public Petitions Committee

**Petition Number:** [PE01479](#)

**Main Petitioner:** Andrew Muir

**Subject:** Complaints against solicitors

Calls on the Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

### Background

The Scottish Legal Complaints Commission (“SLCC”) was set up by the [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (“the Act”) and acts as the initial gateway for complaints against the legal profession in Scotland,<sup>1</sup> with complaints about the conduct of a legal professional being referred by the SLCC to the relevant legal professional body (in the case of solicitors, the Law Society of Scotland).<sup>2</sup>

Section 4(1) of the Act provides that the SLCC is not under an obligation to investigate complaints which are not made “timeously”. Section 4(3)(a) of the Act allows the SLCC to set time limits defining what “timeously” means. On this basis, the SLCC has adopted rules which explain that:

“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”<sup>3</sup>

and that,

“In determining whether the period of 1 year ... has elapsed, there is to be disregarded any time during which the complainer was, in the opinion of the Commission, excusably unaware—

<sup>1</sup> Section 2(4) of the Act. Section 33 of the Act requires professional bodies (i.e. the Law Society of Scotland) to forward any complaints made directly to the SLCC

<sup>2</sup> Section 6 of the Act

<sup>3</sup> Section 4(6) of the [Rules of the Scottish Legal Complaints Commission 2009](#)

- (a) of the professional misconduct, unsatisfactory professional conduct or conviction in question, or
- (b) of the inadequacy of the professional services in question.”<sup>4</sup>

If it thinks fit, the SLCC can also grant a request from a party to extend a time limit.<sup>5</sup>

So in brief, the general rules as regards time-bar are as follows:

- Unless there are exceptional circumstances, or the SLCC accepts a request to extend a time limit, complaints to the SLCC must be made within one year of the professional misconduct/unsatisfactory professional conduct/conviction in question.
- However, if a lawyer’s client is excusably unaware of such conduct, the one year period will not start until the lawyer’s client becomes aware of the issue.

There appears to be little specific public guidance on what is meant by “exceptional circumstances”. However, in a recent case the Court of Session accepted that the SLCC acted legally in arguing that the gravity of the professional misconduct in question (a deficit on the client account of circa £230,000) was an exceptional circumstance which merited investigation even though the complaint was time-barred.<sup>6</sup> The fact that there was only a minor delay in making the complaint was noted by the Court as being a relevant factor.<sup>7</sup>

## **Scottish Government Action**

The Scottish Government is currently considering a suggestion by the SLCC that the Act needs to be reviewed (see below).

## **Scottish Parliament Action**

The Justice Committee is carrying out post-legislative scrutiny into the Act. The SLCC submitted a [letter](#) on 11 September 2012 to the Scottish Parliament’s Justice Committee (“Justice Committee”) in which it argued that the complaints procedure set up by the Act needs to be reviewed as it does not serve the interests of complainers as best as it could. In response the Justice Committee wrote to the Cabinet Secretary for Justice and received a [response dated 31 October 2012](#) indicating that the SLCC and Law Society of Scotland were “developing a consensual approach to reach an agreement on the key improvements required to this legislation.” The Justice Committee [contacted the Cabinet Secretary on 24 April 2013](#) asking for an update on this process by Wednesday 22 May 2013, but as of 17 May 2013 has yet to receive a response.

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<sup>4</sup> Section 4(7) of the Rules of the Scottish Legal Complaints Commission 2009

<sup>5</sup> Section 18 of the Rules of the Scottish Legal Complaints Commission 2009

<sup>6</sup> Murnin v Scottish Legal Complaints Commission, [2012] CSIH 34

<sup>7</sup> Paragraph 32

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