

PE1479/E

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Scottish Parliament
Edinburgh
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PE 1479 Solicitor complaints – reply to responses

Dear Mr Todd,

The Law Society and the Scottish Legal Complaints Commission (SLCC) have stated that there are practical concerns with the Legal Profession and Legal Aid (Scotland) Act 2007.

The Mental Welfare Commission, the Scottish Government and the SLCC state that the SLCC has a wide discretion to investigate complaints not made within the time limit where it considers there were exceptional reasons or if it considers it to be in the public interest. However in practice it seems that they do not use their discretion e.g. they rejected my complaint without a good reason.

The Scottish Government and the SLCC state that if there was no time limit there would be uncertainty for both the legal profession and the public. However if a solicitor is not guilty of malpractice they have certainty anyway. The guilty solicitors, however, can relax when the time bar has been reached. Also this has to be balanced by the sense of injustice suffered by members of the public who have exceeded the time limit and whose complaint will never be investigated. After the Law Society had rejected our complaint, my wife took legal action against her solicitor's employees. However she was unable to obtain the services of a solicitor to represent her or to criticise her previous solicitor. As a result of this and other legal reasons, her action was dismissed at a Debate. The action did not go to Proof and therefore the actions of the solicitor were not investigated. We were also left with considerable legal expenses to pay.

The SLCC states that if there was a longer time limit then evidence would be harder to gather. This is true but if a case has had all the evidence gathered then the complaint should not be rejected.

The SLCC states that other public bodies have a timebar e.g. the Scottish Public Services Ombudsman, the NHS, the prisons and the police. However there is a growing belief that these timebars are unfair and that the complaints system in Scotland is not working. (I am a member of a new group, Accountability Scotland, which is hosting a conference in the Scottish Parliament on the 16th September 2013 entitled "Making Scottish Public Services Accountable".)

The Mental Welfare Commission state that the one-year rule is too short if someone has a serious mental illness and has not recovered in time. It states that exceptions can be made in these cases. An allowance should also be made for the debilitating effect of the impact of the treatments.

Indeed in mental health matters it is not just illness that delays complaint. The Mental Health (Care and Treatment) (Scotland) Act 2003 (the Mental Health Act) is very complex and it can take a long time to understand what precisely to complain about.

Account should also be taken of the following points which derive from my own experiences:

- It is impractical. My wife was treated for 15 months under the Mental Health Act and it could have severely compromised her position if she had complained about the solicitor who represented her whilst still receiving treatment.
- You are too traumatised. If someone is treated under the Mental Health Act it is a life-changing experience and afterwards it is natural to want to relax and recover for a period before you start to complain.
- You are unaware of the complaint procedures. During my wife's treatment neither of us had heard of the Law Society which was the body in charge of solicitor complaints at the time and when we finally found out about it the expiry period for complaints had already lapsed.
- You are awaiting the results from other complaints. Before we complained about a solicitor we first complained about NHS treatment and also about a social worker. This meant getting a copy of the relevant notes and getting a response from the various bodies. This took several months.
- Crucially, the evidence you require to provide the validity of your complaint is not available in time. The court hearings (Mental Health Tribunals) where the solicitor represented my wife were carried out in private. We did not receive the written transcripts of these tribunals till nearly three years after the first hearing.

In practice complaints can take several years, even decades to be resolved e.g. Jimmy Savile, Stuart Hall, abuse in the Catholic Church and the Hillsborough disaster. If a time limit had occurred in these cases then justice would have been denied.

Yours sincerely

Andrew Muir