

*These notes relate to the Legal Profession and Legal Aid  
(Scotland) Act (asp 5) which received Royal Assent on 19 January  
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# **LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT (ASP 5) WHICH RECEIVED ROYAL ASSENT ON 19 JANUARY 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 – the Scottish Legal Complaints Commission**

##### ***Section 9: Services complaint: Commission’s duty to investigate and determine***

21. **Section 9(1)** requires the Commission to investigate a services complaint and, having given the complainer and the practitioner an opportunity to make representations, to determine the complaint by reference to what the Commission considers is fair and reasonable in the circumstances. This requirement applies in circumstances where (a) other forms of resolution (mediation by the Commission or local resolution by practitioner and complainer) have either not been attempted or have been attempted but failed; or (b) where the services complaint is made under section 2(2)(b)(ii) to (viii) by a public body or public office holder or relevant professional organisation.
22. **Section 9(2)** requires the Commission however to propose a settlement to the complainer and practitioner which it considers fair and reasonable in the circumstances. If accepted by both parties, the proposed settlement becomes binding. Where the practitioner is employed by another practitioner (such as a solicitor employed by a firm), section 9(3) requires that the employing practitioner also agrees to the proposed settlement. Section 9(4) requires that where the proposed settlement is accepted, the Commission is not to proceed to formally determine the complaint.
23. The only exception to the requirement for the proposal of a provisional settlement is where the complaint has been made in the public interest by a public body or public officeholder or relevant professional organisation under section 2(2)(b). As there will be no personal dispute between the parties in that type of case, it would not be appropriate for the Commission to propose an informal settlement. In these circumstances the complaint in question will proceed straight to a determination committee of the Commission for formal determination.