



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

#### *Conduct or services complaints against practitioners*

#### **15 Complaint appears during mediation or investigation to fall within different category**

- (1) Where a relevant professional organisation at any time during any mediation by it, or its investigation, of a conduct complaint remitted to it under section 6(a) considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a services complaint, it must—
  - (a) suspend the mediation or, as the case may be, the investigation;
  - (b) consult, co-operate and liaise with the Commission as respects the matter;
  - (c) send the complaint and any material which relates to it and which is in the organisation's possession to the Commission;
  - (d) give notice in writing to the complainer and the practitioner that it so considers and is so doing.
  
- (2) Where the Commission at any time during its mediation by virtue of section 8(5) in relation to, or investigation by virtue of section 9(1) of, a services complaint considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint, it must—
  - (a) suspend the mediation or investigation;
  - (b) send a copy of the complaint and any material which relates to it and which is in the Commission's possession to the relevant professional organisation;
  - (c) consult, co-operate and liaise with the relevant professional organisation as respects the matter;
  - (d) give notice in writing to the complainer, the practitioner and the relevant professional organisation that it so considers and is so doing.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Where, in the circumstances referred to in subsection (1) or (2) the Commission, having regard to the views expressed by the relevant professional organisation as respects the matter, considers that—
- (a) its determination under section 5(1) as respects the complaint should be confirmed (to any extent), it must so determine; and the determination under this paragraph must specify the extent to which the determination under that section is confirmed;
  - (b) a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute—
    - (i) a conduct complaint constitutes instead a services complaint;
    - (ii) a services complaint constitutes instead a conduct complaint,it must determine accordingly.
- (4) Where, or to the extent that, the Commission determines under subsection (3)(a) to confirm to any extent its determination under section 5(1)—
- (a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;
  - (b) any suspension under subsection (1)(a) or (2)(a) ceases.
- (5) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute a services complaint constitutes instead a conduct complaint, it must—
- (a) remit the conduct complaint to the relevant professional organisation to deal with (and give to the organisation any material referred to in section 6(a));
  - (b) give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying—
    - (i) the reasons for the determination;
    - (ii) that the conduct complaint is being remitted under paragraph (a);
    - (iii) the relevant professional organisation to which it is being remitted;
    - (iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.
- (6) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute a conduct complaint constitutes instead a services complaint—
- (a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;
  - (b) sections 8 to 12 apply to the services complaint as they apply where a determination is made under section 5(1) that a complaint constitutes a services complaint.