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Access to Justice Unit
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01 August 2018

Dear Laura,

We are writing to respond to the consultation on the “Complaints Against Approved Regulators (Scotland) Regulations 2018”, “Explanatory Note” and “Complaints against Approved Regulators: Scottish Ministers’ Guidance”. We are happy for the response to be published, to be named, and to be contacted for further discussion.

STRONG SUPPORT FOR NEW BUSINESS MODELS

The SLCC remains of the view that non-lawyer ownership options may bring new investment, enhance consumer choice, and aid innovation and competition in the Legal Services market in Scotland. We strongly support the concept.

CONCERN AT MARKET CHANGE AND LEARNING SINCE 2010

However, our three global concerns in the relation to the further implementation of this Act and the specific regulatory model it contains, which have been communicated previously, remain. Whilst the original approach potentially reflected the best decisions that could be made at the time, the dramatic change in the market and the lessons of attempted implementation over the last eight years do set a very different context.

1. **Concern at financial sustainability** – the legislation places costs onto an Approved Regulator, the SLCC and new market of Licensed Legal Service Providers (LLSPs). There appears to be no work in advance of authorisation to generate a market, as there was in England and Wales (for example, promoting the opportunities of ABS to new entrants to the market or to have a pipeline of businesses part way through the application process ready for immediate approval once the Approved Regulator is authorised). This means it likely that in the early years there are one or two LLSPs who must share all costs of the scheme (or traditional solicitors practices must bear this cost for the new competition). A single appealed complaint, as is common in the current system, could bring a £30,000 cost which then needs split between two or three firms – risking their financial sustainability and that of the overall market. So, for example, the LP levy may shoot from £1,000 to £15,000 in a single year. Likewise, a single Approved Regulator complaint of a high complexity and cost could force a disproportionate fee the following year onto an Ap-

proved Regulator. Such volatility carries significant risks, but if not recovered from this new market will amount to a subsidy, through their levy, by solicitors and advocates of new competing business models. We respect these cannot be resolved in the regulations, but believe the change in market conditions in the last eight years mean the financial model of the Act is no longer fit for purpose.

2. **Concern the proposed ABS model is already being superseded** – there is a risk the current independent review recommends a single simplified scheme of entity regulation. If this is the case, the ABS scheme may be superseded before it has grown to financial stability, especially if businesses may prefer to await the outcome of a less restrictive regime before changing business model. There is significant public cost, cost to the existing profession, and ultimately on client fees in activating an ABS scheme which may never be financially viable before a better replacement is available, and there could then be significant wind up costs (the Approved Regulator could not be dissolved until all possible complaints from former LLSPs would be time barred, or that liability needs passed to another regulator and funded).
3. **Concern the arrangements do not meet the Scottish Government's own better regulation principles** – we do not believe these complex arrangements, layered on top of existing arrangements, meet the government's own better regulation agenda (proportionate, consistent, accountable, transparent and targeted – to which the SLCC adds the need for 'agility'). In our own field, a single complaint now may need to be managed down four statutory channels with different standards of proof and mechanisms (since the 2010 Act added new types of complaint against an ABS, but did not remove the complaints also being progressed against the solicitors within the ABS, which we will be statutorily obliged to still pursue). This further complicates a system already widely recognised as overly complex and lacking proportionality.

We appreciate there is still some interest, but sense a prevailing view that no-one truly believes a new and vibrant market based on this Act is viable, and no-one is actively promoting the model in a way likely to generate such a market. We do, however, understand there is a view that this allows the testing of a different approach, even if a new model from the independent review does rapidly overtake, and recognise others are best placed to judge the cost-benefit of that.

We appreciate that these may not be matters for the SLCC, with its limited role in relation to the complaints aspects. We also understand these issues cannot be resolved in the ABS Regulations. However, we felt it vital we again flag the above, as our best assessment is that there is a high likelihood of issues (especially levy volatility from the statutory model if the market is small) arising from these three sources of concern during implementation.

SUPPORT OF THE REGULATIONS AND GUIDANCE

We have been grateful for the detailed discussion over the last two years with Scottish Government on the potential for draft Regulations. We have raised twenty-five issues of uncertainty, which covered all four new complaint types (Approved Regulator Complaints (ARCs), Regulatory Complaints, Regulatory Handling Complaints and service complaints about a LLSP). We note these Regulations deal only ARCs, and only address two of the issues raised previously.

We recognise that on the other issues raised, the ultimate position, following discussion, was that it was best to leave these to the discretion of the SLCC to manage, rather than prescribing in regulation at this time. We welcome that permissive structure, and now attached a draft model designed on that basis. There was also the feeling that some issues were best left, to return to at a later date, for example the time bar issue, once the ABS regime is embedded and the types of issues amounting to ABS complaints are better known. We expect our own model, and discussion about further regulations, to evolve over time.

We would raise the following specific issues about the draft Regulations and Guidance, as these are areas which we anticipate causing the SLCC and the Approved Regulator some difficulty:

Regulation 5 - this only relates to obtaining information, documentation or explanations from an Approved Regulator. It is possible, in the investigation of an ARC, that the SLCC would wish to obtain information, documents and/or explanations from other parties, including the complainer, an LLSP and/or other non-related third parties. Sections 17 and 19 (and Schedule 2) of the Legal Profession and Legal Aid (Scotland) Act 2007 allow the SLCC to issue notices to the parties involved in the complaint and to other third parties. Sections 48 and 51 (and Schedule 4). We consider that an expansion of this Regulation would assist the SLCC in fully investigating an ARC.

On the **Guidance**, we append some track changes and comments for further consideration (Appendix 1).

We have not been able to comment on any Regulations or Guidance relating to the application of sanctions by Scottish Ministers and whether these might impact the SLCC or its complaint handling processes, as we are yet to have sight of these draft documents.

We understand final Regulations and Guidance will be available in September/October, and will give clarity on the short-term future. We look forward to the simultaneous publication of the independent review of legal regulation to understand the medium and longer term opportunities to develop a system more based on the Scottish Government's Better Regulation Agenda, and taking greater account of the opportunities from the international consumer principles to increase consumer choice and to evolve a sustainable sector.

Yours sincerely,



Neil Stevenson
Chief Executive

Enc:

Appendix 1 – comments on guidance

Appendix 2 – Draft Approved Regulator Complaints Process

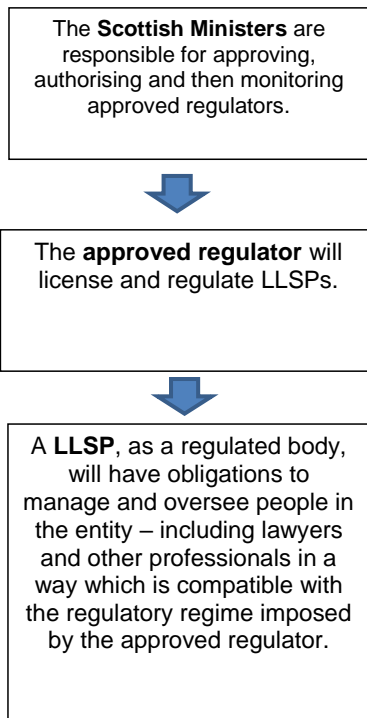
Introduction

This guidance explains the process for handling complaints against approved regulators of Licensed Legal Services Providers (“LLSPs”). Section 79 of the Legal Services (Scotland) Act 2010 (“the 2010 Act”) outlines the process and contains a power to make further provision about complaints by regulations. This guidance should be read with the 2010 Act and Regulations made under that Act and does not replace those statutory provisions.

Legal Services (Scotland) Act 2010

The principal purpose of the 2010 Act is to liberalise the legal services market in Scotland: removing restrictions on solicitors entering into business relationships with non-solicitors, allowing both investment by non-solicitors and external ownership, and creating a regulatory framework in which the new types of business will operate.

The Scottish Ministers are responsible for approving and authorising and then monitoring approved regulators who in turn will regulate LLSPsas follows:



Approved Regulators

Approved Regulators are the bodies that will regulate LLSPs. The 2010 Act allows for up to 3 approved regulators.

The 2010 Act provides the criteria that must be satisfied before the Scottish Ministers can approve an applicant as an approved regulator, including necessary expertise as regards the provision of legal services; a thorough understanding of the application of the regulatory objectives and professional principles; and adequate resources.¹ An approved regulator cannot exercise any of its regulatory functions until it has been approved, as well as authorised, by the Scottish Ministers.²

Licensed Legal Services Providers (LLSPs)

The definition of legal services under the 2010 Act³ is broad, and includes services currently provided by people other than solicitors and advocates (e.g. tax and planning specialists, and voluntary bodies providing advice on social welfare issues). However, an approved regulator only regulates LLSPs. These are entities which provide legal services for a fee, gain or reward under a licence issued by an approved regulator. In order to be eligible to be a LLSP, a body must have within it a solicitor who holds a valid practising certificate (free of conditions).⁴

¹ Section 7.

² Section 10

³ Section 3.

⁴ Section 47. See also sections 48 (eligibility criteria) and 49 (majority ownership).

Complaints-Handling

The 2010 Act introduces 2 new categories of complaints for the Scottish Legal Complaints Commission (“the Commission”) to manage:

- Complaints about approved regulators; and
- Complaints about LLSPs.

This guidance is only concerned with the handling of complaints against approved regulators. Separate guidance will be issued by the Commission on how it will deal with complaints against LLSPs.

Section 79 of the 2010 Act outlines the role of the Commission and the Scottish Ministers in dealing with complaints against an approved regulator.

All complaints against approved regulators start with a complaint being made to the Commission. Thereafter, the Commission has to determine whether the complaint is:

- a complaint about how an approved regulator has dealt with a regulatory complaint about a licensed provider (a **Handling Complaint**);⁵ or
- frivolous, vexatious or totally without merit (a **Vexatious Complaint**).⁶

If the Scottish Legal Complaints Commission determines the complaint is not a Handling Complaint or a Vexatious Complaint, the complaint will be treated as an **Approved Regulator Complaint (ARC)**.⁷

Commented [AM1]: This is not consistent with guidance at page 5 below under the heading “Who can complain about an approved regulator?” which states that a complaint can be made to the SLCC where attempts to directly resolve the complaint with the approved regulator have been unsuccessful. We would suggest that there should be attempted resolution directly with the approved regulator before a complaint is made to the SLCC. This would be akin to the prematurity requirements in the 2007 Act, and fits with the ‘better regulation principles’, which encourage proportionality (there is little point taking a complaint through a costly investigation and determination process if matters can be resolved at first tier). We would suggest a requirement on the approved regulator to keep a log of complaints received, which is to be exhibited to Scottish Ministers and/or the SLCC annually (or on request) for the purpose of monitoring.

Commented [AM2]: The use of the word “vexatious” is too emotive and has been the source of much debate in relation to its use in the 2007 Act. We would suggest reference to a complaint being “without merit” is more appropriate.

⁵ Section 79(2)(a).

⁶ Section 79(2)(b).

⁷ Section 79(3)(c).

Handling Complaints

Section 79 of the 2010 Act provides that the Commission must determine whether a complaint is about the *handling* by the approved regulator of a regulatory complaint made against a LLSP.

If the Commission determine it is a handling complaint, the Commission follows the procedure set out in Parts 1 and 2 of the 2007 Act.⁸ This is the same procedure that applies to a handling complaint made about a relevant professional organisation.⁹

The Commission may provide guidance on the exercise of their investigatory and reporting functions for handling complaints.

Vexatious Complaints

If the complaint is not a handling complaint, the Commission must determine if it is one that is frivolous, vexatious or totally without merit. If it is, the Commission must notify the person who made the complaint (the complainer) and the relevant approved regulator with reasons for reaching that decision. No further action is required.¹⁰

Approved Regulator Complaints (ARCs)

The rest of this guidance applies only to ARCs.

Complaints about regulators

If the Commission determines that the complaint is not a handling complaint or a vexatious complaint, they are directed to refer the complaint to the Scottish Ministers.

The Scottish Ministers must:

- (a) investigate any complaint referred to them by the Commission;
- (b) determine the complaint and advise the complainer and the approved regulator of their decision to uphold, or not, the complaint and give reasons for reaching that decision; and
- (c) where a complaint is upheld, decide whether to proceed under section 38 of the 2010 Act which sets out a range of measures which the Scottish Ministers may take in relation to an approved regulator if they consider it to be appropriate in the circumstances of the case.

Delegation by Scottish Ministers

The function of investigating and determining ARCs can be delegated to the Commission.¹¹ The Scottish Ministers will delegate to the Commission the function of investigating all ARCs and the decision to uphold the ARC and notify the complainer and approved regulators. In conjunction, the requirement on the Commission to refer ARCs to the Scottish Ministers will be waived by the Scottish Ministers.

⁸ Section 57E(1) of the 2007 Act.

⁹ Relevant professional organisation means, in relation to a complaint as respects a practitioner who is—

- (a) an advocate, the Faculty of Advocates;
- (b) a conveyancing practitioner, an executry practitioner, a firm of solicitors or an incorporated practice, the Council;
- (c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, the body which made a successful application under section 25 of that Act and of which the person is a member;
- (d) a solicitor, the Council;
- (e) a registered European or foreign lawyer, the Council.

¹⁰ Section 79(3)(b) of the 2010 Act.

¹¹ Section 79(7) of the 2010 Act.

Commented [AM3]: Could add footnote to Section 57B of 2007 Act

Commented [AM4]: The footnote refers to "the Council" and whilst this might be obvious to some that this is the Council of the Law Society of Scotland, perhaps this would be better referred to simply as the Law Society of Scotland and there should be reference to which Act/Section this definition derives - presumably Section 46 of the 2007 Act

Commented [AM5]: As above re: use of "vexatious"

Commented [AM6]: We do not consider it helpful to have a strict process for the application of the eligibility tests. We anticipate being able to separate an ARC from a handling complaint very easily. Then we envisage dealing with the type of complainer, the timeliness of the complaint and whether it is FVTWM at the same time. There is little point taking steps to ascertain the merits of the complaint if it is out of time and there is no public interest reason to continue with the matter.

Commented [AM7]: As above

Who can complain about an approved regulator?

There are no restrictions on the eligibility of a complainer. It is envisaged that those that are directly affected by an act or omission of the approved regulator will bring a complaint against an approved regulator where attempts to resolve the concern directly with the approved regulator have not been successfully resolved.

What can be complained about?

The 2010 Act provides rights of appeal against various actions by an approved regulator e.g. against the imposition of a financial penalty by an approved regulator on an LLSP.¹² ARCs are not an alternative to those complaints.

The types of ARC we envisage the Commission will investigate are those that allege:

- An act, or failure to act, by the approved regulator has had an adverse impact on the observance of their regulatory objectives unless the act, or failure to act, is consistent with the policy statement issued by the approved regulatory under the Act;
- The approved regulator has failed to comply with a requirement imposed on it under the 2010 Act;
- The approved regulator has failed to adhere to its internal governance arrangements i.e. the approved regulator's own organisational and operational arrangements for its activities.¹³

Time Limit

Complaints against an approved regulator should be raised timeously with the Commission to ensure that the complaint can be investigated promptly and, if upheld, addressed by the Scottish Ministers.

Multiple complaints

The regulations provide that in instances of multiple complaints against an approved regulator or several regulators, the Commission can opt to conduct one single investigation, and provide Scottish Ministers with a single report of the findings resulting from that investigation.

Multiple complaints are those concerning:

- the same alleged action, or inaction, by the approved regulator;
- allegations that the approved regulator has failed to comply with the same requirement imposed on an approved regulator by the 2010 Act.

Investigatory Powers

In investigating a complaint, the Commission¹⁴ may require an approved regulator to provide information, documents and explanations in relation to a complaint about an approved regulator.

Commented [AM8]: Consider rewording to say "There are no restrictions on who can make an ARC". Reference to the word "eligibility" seems out of context and confusing here.

Commented [AM9]: We would also like to see a public interest test being referenced here. We envisage that it is possible that the person who makes the ARC falls by the wayside for some reason. The issue may be so serious, however, that the complaint cannot be ignored once known about and good regulatory practice would determine that the issue raised should continue to be investigated.

Commented [AM10]: We think that the scope of ARCs could be clearer, although we accept that the list cannot and should not be exhaustive - perhaps thought could be given to any issues which Scottish Ministers specifically consider would NOT be an ARC.

Commented [AM11]: We note that in previous discussions with Scottish Government, it has been suggested that the issue of time limits could be reviewed at the end of year 1 or 2. We intend to provide guidance on the application of "timeously", although it is likely to depend on the particular circumstances of the issue raised.

Commented [AM12]: This should be approved regulator - so that this is consistent with the wording of the Regulation

Commented [AM13]: We think that this should be extended to include obtaining documents from other third parties (as stated above)

¹² Section 19.

¹³ Section 29(4) of the 2010 Act.

¹⁴ Or the Scottish Ministers where they have not delegated the function.

Investigation and Determination of a complaint

The process for investigating an ARC will depend on the concerns raised by the complaint. For example, with a particularly complex investigation into multiple complaints, the Commission may produce an interim report.

Once the Commission have investigated a complaint, they must decide whether to uphold the complaint and notify the complainer and approved regulator with reasons.

If the Commission decides to uphold a complaint, it must notify the Scottish Ministers-

- giving reasons for upholding the complaint, and
- providing such other information regarding the complaint that the Commission considers helpful or the Scottish Ministers request, to assist the Scottish Ministers deciding whether to proceed under section 38.¹⁵

The Scottish Ministers will require the notice from the Commission to give sufficient facts and reasons for its decision to uphold. Further, the report from the Commission must provide the Scottish Ministers with information regarding the seriousness and impact of the complaint, and the risks associated with reputational damage to the wider profession and legal sector.

Actions that may be taken by the Scottish Ministers

In the event of a complaint against an approved regulator being upheld, the Scottish Ministers have a discretion as to whether to take one or more of the following measures:

- (a) setting performance targets,
- (b) directing that action be taken,
- (c) publishing a statement of censure,
- (d) imposing a financial penalty,
- (e) amending the approved regulator's authorisation to act,
- (f) rescinding authorisation given to an approved regulator.¹⁶

In determining what action is appropriate, the Scottish Ministers must have regard to the effect that a measure or combination of measures will have on the approved regulator's observance of the regulatory objectives.¹⁷

Before imposing any of the measures, there are specified notification and consultation requirements which must be adhered to.

Commented [AM14]: We think it would be helpful if it could be specifically stated that it is possible as part of an investigation that a complaint can be "conciliated" or "resolved". We consider that there might be circumstances where such an outcome is possible, without the need for a long drawn out investigation and determination. Given the wording of the Act, which states an ARC MUST be investigated and determined, Regulations could provide an option for an ARC to be discontinued or withdrawn on basis that the complaint is resolved (or where the complaint may need to be closed for another reason).

Commented [AM15]: See comment above re: resolution

¹⁵ Regulation 3 of the Licensed Legal Services (Complaints and Compensation Arrangements) (Scotland) Regulations 2012.

¹⁶ Section 38(4) of the 2010 Act.

¹⁷ Section 38(2) of the 2010 Act.

APPROVED REGULATOR COMPLAINTS - INVESTIGATION PROCESS

1. What is an Approved Regulator Complaint (ARC)?

- 1.1 An ARC could be about any aspect of the work the Approved Regulator (AR) does and may specifically relate to a breach of the 'Regulatory Objectives' and 'Professional Principles'¹⁸, but may be wider than just the application of the Regulatory Scheme.
- 1.2 It is likely that ARCs will span a wide range of activity and may relate to, for example, the AR's internal governance and policy arrangements; internal assessment processes, the robustness of governance measures, issues relating to the operation of the compensation fund, managing and dealing with regulatory conflict etc.
- 1.3 Examples of ARCs could be:
 - (1) where a new business wanting to become a Licensed Legal Service Provider (LP), has been refused a license to operate, they might complain that the AR's decision was not fair;
 - (2) a whistleblower might complain there was a bias in a particular AR decision;
 - (3) a member of the public might complain that the AR has not done enough to take 'access to justice' or 'equality' into account in its policy making;
 - (4) where support provided to a none LLSP is complained about as being anti-competitive.
- 1.4 Appendix 1 shows where ARCs sit within the SLCC's current ABS complaints handling processes.

2. How are ARCs dealt with?

- 2.1 Scottish Ministers have delegated responsibility to the SLCC to investigate and determine all ARCs, but the application of sanctions is reserved to Ministers in the 2010 Act.
- 2.2 We have established a process for dealing with ARCs. However, as these are new types of complaints under the ABS regime, the process will be applied flexibly and will be responsive to each individual complaint received. As the SLCC becomes more experienced in dealing with ARCs, we anticipate that the process will become standardized.
- 2.3 The aim of the SLCC in dealing with ARCs is to ensure that these complaints are managed against a fair, transparent and proportionate process which meets with Ministerial approval.

3. What does the ARC process look like?

RESOLUTION

- 3.1 We consider there is merit in a 1st and 2nd tier approach to ARCs. This is supported by the guidance issued in support of the Regulations, which presupposes that anyone who is directly affected by an act or omission of the AR can make an ARC, **where attempts to resolve the concern directly with the AR have not been successful.**

¹⁸ Sections 1 & 2 of the Legal Services (Scotland) Act 2010 ('the 2010 Act')

- 3.2 In most cases, it is expected that the person/body making a complaint about an AR will complain directly to the AR in the first instance. The AR will fully investigate the complaint at the 1st tier stage and write to the complainer advising of the result of its investigations, with a view to rejecting or resolving the issue.

TIMESCALES

- 3.3 Where relevant, the date of the AR's 'decision letter' is likely to start the application of one aspect a 'timeously' test. We would suggest that 6 months from the date of this letter is a reasonable amount of time to make an ARC, although there is discretion in the application of the 6-month time limit.
- 3.4 In cases where an ARC is about an act/omission which took place several months/years prior to the 1st tier meeting with the AR, then the length of time that it has taken that person/body to raise the complaint will also be considered when considering whether the ARC has been brought 'timeously'. Our view is that any complaint about an AR should be made as soon as possible, once the issue is known to the person/body raising it.

PLANNING

- 3.5 There is likely to be an initial planning stage - this will provide an opportunity to set down initial thoughts and proposed approach; assess the seriousness of the complaint; review any steps taken by the AR to deal with matters; consider what information and documentation might be required and from whom; propose a time estimate for dealing with the ARC.
- 3.6 It is envisaged that the plan will be shared with the AR, and an early meeting scheduled to discuss the details of the ARC.
- 3.7 The plan is likely to be revisited and adjusted throughout the investigation of an ARC and may be shared/discussed with the AR as matters progress.
- 3.8 If it appears that the ARC may be capable of being resolved without the need for a 2nd tier investigation, arrangements may be made for some kind of dispute resolution.

ELIGIBILITY

- 3.9 If there is to be an investigation, there will first need to be a '*frivolous, vexatious and totally without merit*'¹⁹ assessment. The main consideration will be if a sanction is likely to be applied if the ARC is upheld. If so, it is likely that the complaint will be accepted for investigation. Consideration will also be given to who it is who is making the complaint, whether there are any public interest issues and when the complaint was made.

INVESTIGATION & REPORTS

- 3.10 The investigation is likely to include a review of the evidence submitted by the complainer and AR, additional information and documentation being requested and reviewed, meetings held with appropriate staff from the relevant function(s) of the AR and consideration of any additional information that we obtain from other relevant sources.
- 3.11 Our aim is to be efficient and proportionate relative to risk in our investigations. We may copy information and documents received to assist us with our investigations, subject to any rules relating to legal professional privilege or confidentiality.

¹⁹ Section 79(2)(b) of the 2010 Act

- 3.12 Depending on the extent of evidence and the complexity of the ARC, we may produce an interim report, which will be shared with the AR and complainer. A face-to-face meeting with the AR will be set up to discuss the interim report. We will explain our initial views and thoughts expressed in that report and all the AR to comment and, where necessary, to challenge the report.
- 3.13 We will prepare a (final) report, based on all the evidence and comments presented. This report will contain our findings and recommendation as to whether the ARC should be upheld or not.
- 3.14 We will share our report with the AR and complainer and allow them to comment. If appropriate, we will prepare an addendum or supplementary report, dealing with any comments received.

DETERMINATION & COMPLAINTS LEVY

- 3.15 We will arrange for a Determination Committee (DC) to consider the ARC. The DC is likely to be made up of at least 5 Members (up to 7). The Chair of the DC may be a legal or a lay member.
- 3.16 The DC must decide whether an ARC is upheld or not upheld.
- 3.17 Where an ARC upheld, the DC must also consider whether the application of a Complaints Levy is necessary. Factors which may be considered are likely to include the amount of time spent dealing with the ARC; resources expended; outsourced activities / experts involved; attempts at resolution and how the ARC has been handled by the AR.
- 3.18 The DC's decision will be sent to the AR and complainer. In the situation where an ARC is upheld, the report(s) and decision will also be sent to Scottish Ministers. We will provide Ministers with information about the seriousness and impact of the complaint and any risks associated with reputational damage to the wider profession and legal sector.

SANCTIONS

- 3.19 It is for Scottish Ministers to decide what sanction should be applied (if any). The full range of sanctions are set out in the 2010 Act²⁰, but may involve imposing a financial penalty, setting performance targets, publishing a censure or if very serious, rescinding an authorization to act as an AR.

PUBLISHING

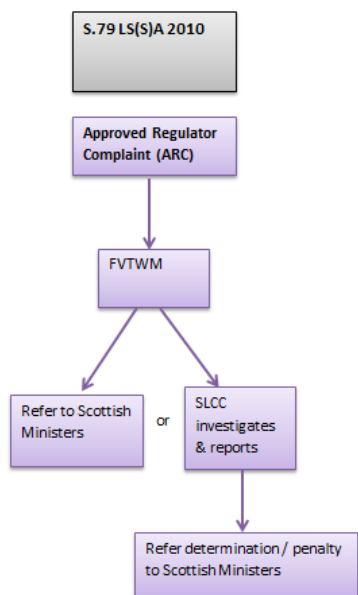
- 3.20 Once Scottish Ministers have decided a sanction (for those ARCs which are upheld), we would expect to publish details of the ARC and the outcome. This may involve publishing our report(s), the DC's decision and details of any sanctions applied by Ministers.
- 3.21 We may also publish details (and associated reports and decisions) of ARCs that are not upheld.
- 3.22 A flow chart setting out the process we are likely to follow can be found at Appendix 2.

²⁰ Section 38 of the 2010 Act

ALTERNATE BUSINESS STRUCTURE - COMPLAINTS

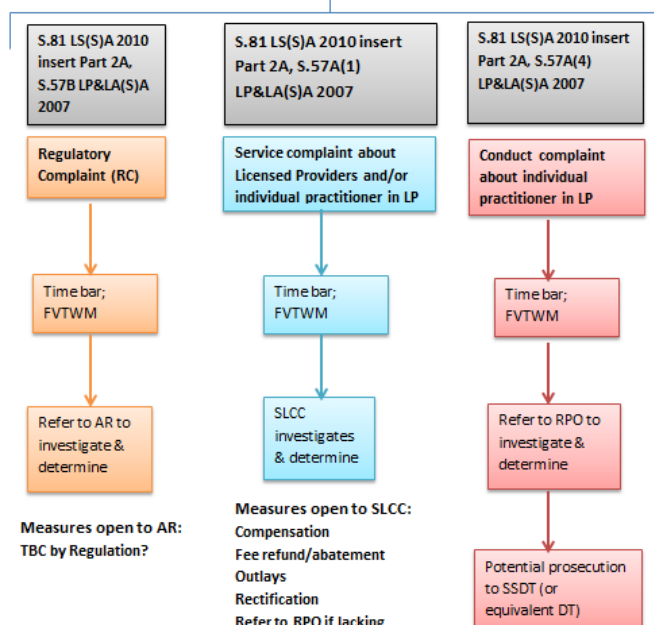
APPENDIX 1

AR complaints



Measures open to Ministers:
 Set performance targets
 Direct action to be taken
 Publish statement of censure
 Impose financial penalty
 Amend authorisation to act
 Rescind authorisation to act

LP complaints

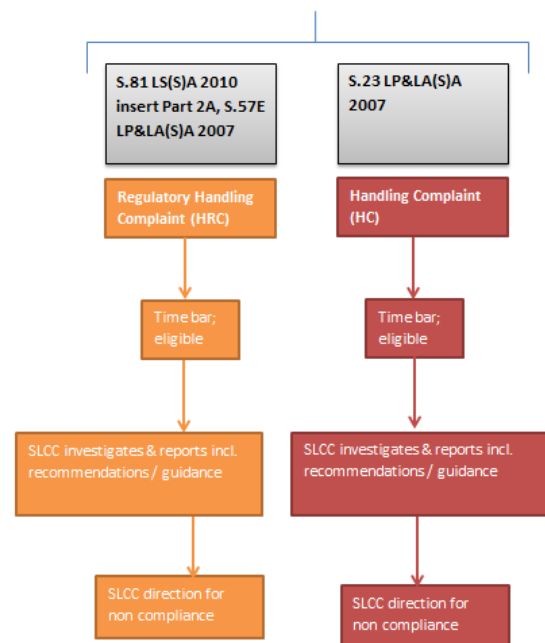


Measures open to AR:
 TBC by Regulation?

Measures open to SLCC:
 Compensation
 Fee refund/abatement
 Outlays
 Rectification
 Refer to RPO if lacking competence

Measures open to RPO/DT:
 Censure Training Order
 Fine Compensation
 Strike Off Suspension
 Restrict PC Reprimand
 Direction

Handling complaints



Measures open to SLCC:
 Investigate further
 Reconsider
 Exercise powers re: practitioner
 Compensation
 Costs of complaint
 S.36 Guidance re: systems for dealing with complaints

APPROVED REGULATOR COMPLAINTS - PROCESS

1st tier – AR's internal audit, attempted resolution & direct response ('decision letter') to complainer (feedback outcome to SLCC - for monitoring purposes)

Encourage self-reflection & more likely to lead to sustained learning & improvement

2nd tier – ARC process

- How serious is the complaint - on the face of it, i.e. initial view/fast-track?
- Can anything be done to resolve/mediate straightaway?
- If upheld, is a sanction likely to be applied?
- How to drive up standards?
- What trends should be reported/published?

Planning phase

Opportunity to set down initial thoughts and proposed approach, time estimate etc. This could be shared with AR. Revisit throughout the process, adjust/update as necessary

Timeous

Resolution attempted

Complaint re: AR

Appropriate

Should this complaint be investigated, i.e. satisfies provisions, public interest

FVTWM

Conciliation

Obtain info/docs

Meeting

Report/s (interim?)

What are the most appropriate methods for dealing with the ARC?

Determination

Likely to be DC of 5 - 7 Committee Members

Sanctions applied

Imposed by Scottish Ministers & outcome fed back to SLCC

Publishing

Oversight in action - driving standards, learning from mistakes, future avoidance, sharing best practice, reporting trends

Where conciliated - report on outcome for publishing to ensure transparency & allows freedom to reach agreement in meetings

