



FACULTY OF ADVOCATES

RESPONSE BY THE FACULTY OF ADVOCATES

IN RELATION TO

THE SCOTTISH LEGAL COMPLAINTS COMMISSION'S CONSULTATION ON RULE CHANGES

INTRODUCTION

This is the response on behalf of the Faculty of Advocates ("the Faculty") to the Scottish Legal Complaints Commission's ("SLCC") consultation regarding proposed changes to their Rules to take account of the changes introduced by the Legal Services (Scotland) Act 2010.

The Faculty considers that the proposed changes to the Rules are largely of a technical nature and simply bring approved regulator complaints into the same regulatory regime as has previously been used for complaints relating to solicitors and advocates. The Faculty's comments are, as a result, limited.

RESPONSE TO PREVIOUS CONSULTATION

There are a number of matters which were raised by the Faculty during the SLCC's recent consultation on proposed changes to its Rules. The Faculty notes that no changes have been made to the draft Rules with regards to the following matters canvassed by Faculty in its previous response: (i) Premature Complaints; (ii) Information in writing; and (iii) Hybrid hearings. The Faculty would adhere to the comments made in its previous consultation on these matters.



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RESOLUTION OF COMPLAINTS

The Faculty notes there appears to be a discrepancy between the approach to resolving service complaints and conduct complaints on one hand, and regulatory complaints on the other.

Rl. 15 (2) provides:

*The Commission **will** seek to resolve services complaints at the earliest stage by encouraging and facilitating an agreed outcome between the parties.*

In contrast, the proposed Rl 21 (1) provides:

*The Commission **may, in circumstances it considers appropriate**, seek to resolve approved regulator complaints by encouraging and facilitating an agreed outcome between the parties.*

It is unclear why this approach is mandatory in relation to certain complaints, but discretionary in relation to approved regulator complaints. If there is a policy justification, that has not been made clear. Similarly, it is unclear why there is no reference to mediation, as there is in Rl. 15 (2).

SERVICES COMPLAINTS ABOUT OTHER PROFESSIONALS WITHIN A LICENCED PROVIDER

We note that the proposed Rl. 10 would provide for a complainer to be informed that the SLCC has decided to refer an element of a service complaint relating to a professional regulated by a different body to that body *once it has decided to make that referral*.

Faculty suggests that it may be more appropriate to inform the complainer of the SLCC's intention to make such a referral *before it decides to make the referral to another regulator*. The complainer is, in most circumstances, unlikely to object to such a referral but, given that they are the initial source of the referral, notice *prior* to onward referral seems to the Faculty to be more in line with the jurisprudence on information-sharing between regulators and other public bodies: *Woolgar v Chief Constable of Sussex Police* [2000] 1 WLR 25 ; *R (Nakash) v*



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Metropolitan Police Service and the General Medical Council [2014] EWHHC 3810 (Admin); General Teaching Council for Scotland v Chief Constable of Police Scotland 2021 SLT 1512.

CONCLUSIONS

The Faculty is grateful for this opportunity to respond to the SLCC's consultation.