

PE1479/C

Justice Directorate

Civil Law and Legal System Division

T: 0131-244 3346 F: 0131-244 8325

E: stella.smith@scotland.gsi.gov.uk



**The Scottish
Government**
Riaghaltas na h-Alba

Stuart Todd
Assistant Clerk to the Public Petitions Committee
T3.40
Scottish Parliament
Edinburgh
EH99 1SP



LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

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Dear Stuart

CONSIDERATION OF PETITION PE1479

Thank you for your letter of 5 June 2013 seeking the Scottish Government's views on the issues raised in Petition PE1479 regarding the complaints procedure under the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act".)

Time limit in relation to complaints

In terms of section 32(1) of the 2007 Act, the Scottish Legal Complaints Commission makes rules as to its own practice and procedure (although the Scottish Ministers are consulted prior to the rules being made.) In terms of Schedule 3 of the 2007 Act, the Commission may include provision fixing time limits for the making of complaints. Under rule 4(6) of the Commission's current rules it has fixed a one year time limit for making complaints. Rule 4(6), however, is qualified by rules 4(7) and 4(8). Rule 4(7) allows the Commission in calculating the one year period to disregard any time in which the complainer was excusably unaware of the misconduct, or inadequate professional services (as the case may be) complained of. Rule 4(8) gives the Commission a wide discretion to investigate complaints not made within the time limit where it considers there are exceptional reasons or circumstances or the Commission considers it to be in the public interest to proceed.

The time limit is therefore a matter primarily for the Scottish Legal Complaints Commission. The Government is, however, supportive of the Commission's current rules on the basis that if there were no time limit at all for making complaints, this would result in uncertainty both for members of the public making complaints and members of the legal profession facing complaints. The 1 year time limit is not a rigid rule and the Commission may consider individual cases in terms of rules 4(7) and (8) and dispense with the time limit if this is justified in terms of a particular case.



Review of complaints procedure in the Legal Profession and Legal Aid (Scotland) Act 2007

The Scottish Government has asked the Scottish Legal Complaints Commission to look into areas of potential improvement in the complaints process. The Commission is currently considering this in conjunction with stakeholders including the Law Society of Scotland, the Faculty of Advocates, the Association of Commercial Attorneys, other practitioner interest groups such as the Legal Defence Union, representatives from consumer organisations, Citizens Advice Scotland and the Office of Fair Trading and this process is still ongoing.

The Commission is due to report to the Scottish Government in the autumn. The Government will consider the Commission's report and any actions that should be taken at that stage.

Yours sincerely

STELLA SMITH
Access to Justice Unit