

PE2061/J: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

Scottish Legal Complaints Commission written submission, 9 December 2024

The Citizen Participation and Public Petitions Committee has requested information from the Scottish Legal Complaints Commission (SLCC) to inform its consideration of the above petition. The Committee is seeking information on the number of complaints the SLCC has received in each of the past 5 years related to concerns about a client's capacity or coercive behaviour by solicitors, and how many of those complaints have been upheld.

We would firstly like to convey our condolences to the petitioner and her family.

The SLCC uses its data on individual complaints to identify trends in complaints and complaint handling. We do not collect specific data against the issues identified by the Committee. However we have conducted a textual search across the issues of complaint made to us to identify potentially relevant cases which relate to concerns about solicitors assessing a client's capacity. Such data should be treated with caution, and we cannot guarantee that they are statistically correct. However, given the Committee's consideration, we thought this data might still be helpful, so we share it below, with the caveat that it should be taken as indicative. We have added total incoming complaint numbers for each year as context.

We were unable to identify a reliable method for identifying cases which alleged coercive behaviour by solicitors. However, the vast majority of cases we identified did not make such an allegation, but simply stated a concern about the steps taken by the solicitor to assess capacity. Some cases specifically referred to whether a solicitor had sought, or taken into account, medical input on capacity. In its response to the Committee of 26 February 2024, the Law Society of Scotland set out the rules and guidance relevant to this issue, which is what we consider when we assess a complaint to see if it is eligible for investigation.

To contextualise the data provided, the SLCC has two main roles in relation to complaints which are relevant here. Firstly, we are the gateway for all legal complaints and we apply a series of legal tests to all complaints we receive to determine if they are eligible for investigation. If so, we decide whether they relate to the service provided by the firm or the conduct of an individual practitioner. Each complaint may have multiple issues which are individually categorised. If the complaint relates to the conduct of an individual practitioner, we pass it to the relevant professional organisation – which for solicitors is the Law Society of Scotland – to investigate and determine. We investigate any issues relating to the service provided.

Year	Total number of complaints received	Complaints with an issue relating to a solicitor's assessment of capacity	Of those, conduct complaints passed to Law Society of Scotland	Of those, complaints investigated as service issues with outcome	Of those, complaints not eligible for investigation or withdrawn or settled prior to a decision
2019/20	1036	11	2	1 (1 settled)	8
2020/21	1054	15	7	4 (1 settled, 3 not upheld)	4
2021/22	1159	18	10	0	8
2022/23	1281	8	4	1 (not upheld)	3
2023/24	1385	8	5	0	3

The data show a small but consistent number of complaints made to the SLCC which raise some manner of concern about the steps taken by the solicitor to assess capacity. The numbers are small and therefore caution should be taken in drawing conclusions.

A number of those complaints are passed each year to the Law Society of Scotland for investigation. They may be able to provide further information on the number of relevant complaints upheld. A very small number are service complaints where we could consider whether the complainer might be awarded any redress for inadequate service by the firm. A number of complaints are not considered eligible for further investigation. That may be because they are time-barred or they are considered to be frivolous, vexatious or totally without merit, which are the legal tests for eligibility. Or in some cases, a complainer may withdraw or agree to settle their complaint with the firm before we reach a decision.

In conclusion, we can confirm that we do receive a small but steady number of complaints each year which raise some manner of concern about the steps taken by the solicitor to assess capacity. Some of those issues have been investigated. None of those investigated by the SLCC have been upheld. The Law Society of Scotland may be able to provide information on the relevant conduct complaints it has investigated.

I hope this is of help to the Committee in its consideration of this petition and we would be happy to provide any further information we can that might be helpful.