



PUBLIC PETITION NO.

PE01479

Name of petitioner

Andrew Muir

Petition title

Complaints about solicitors

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

Action taken to resolve issues of concern before submitting the petition

On 8 December 2012 I wrote to MSP Kenny MacAskill, Cabinet Secretary for Justice. In a letter dated 20 December 2012 he stated that Scottish Ministers and the Government do not have any power to comment on or intervene in individual cases. This is because the process for making complaints against members of the legal profession is independent of the Scottish Government; this is to preserve the independence of the legal system and to protect it from political interference.

On 15 February 2013 I contacted an official at the Scottish Government Justice Directorate. In an email reply he stated that regarding the legal profession, the independence from government of both the Law Society of Scotland and the Scottish Legal Complaints Commission is essential to maintaining a fair and effective system of complaints in these matters, whether it is about the service received or the individual conduct of a solicitor. He also stated that the Legal Profession and Legal Aid (Scotland) Act 2007 creates the operational framework for dealing with such complaints and he appreciates that the timelines sometimes involved may appear protracted. He stated that the Scottish Legal Complaints Commission, the Law Society, and other professional bodies and interests are already considering the scope for change to current arrangements and that it is not certain at this stage the extent of amendment which will be required to the Legal Aid (Scotland) Act 2007 or whether much of the consensus reached can be realised by changes in business processes.

Petition background information

The Legal Profession & Legal Aid (Scotland) Act 2007 establishes the Scottish Legal Complaints Commission.

Section 4(1) of this Act states: Where a complaint ... is not made timeously, the Commission is not to take the preliminary steps ... in relation to it, and is not to take any

further action under any other provision of this Part (except this section), in relation to it.

Section 4(3) states: For the purposes of subsection (1), a complaint is not made timeously where—

- (a) rules made under section 32(1) fix time limits for the making of complaints;
- (b) the complaint is made after the expiry of the time limit applicable to it;
- (c) the Commission does not extend the time limit in accordance with the rules.

Section 32 (1) states: The Commission must make rules as to its practice and procedure and, as soon as practicable after making or varying those rules, publish them and make them available to the public in a form which is readily accessible.

The Rules of the Scottish Legal Complaints Commission 2009 state in 4(6) :

A complaint will not be accepted (unless the Commission considers that the circumstances are exceptional) if it is made more than 1 year after the professional misconduct, unsatisfactory professional conduct or conviction suggested by it appears to have occurred, or the professional services suggested by it to have been inadequate appear to have been provided.

One year is far too short a time in which to complain about a solicitor for two main reasons :

- (a) A person could be very dependent on a solicitor and it might affect their life if they complain about a solicitor soon after the solicitor has represented them.
- (b) The evidence required to justify the complaint may not become available for several years.

A particular example of the above is a detained mental health patient whose only method of gaining his/her liberty is through their solicitor representing them at mental health tribunals. They may obtain the tribunal transcripts some time later which gives them the evidence they require to make the complaint.

The Nursing & Midwifery Council, for example, does not have a time-limit. It states that concerns should be raised promptly since it is much less straightforward to investigate incidents that took place a number of years ago. They also state that in some very serious criminal cases it is necessary to act quickly to stop the nurse or midwife from working until the criminal case is finished.

Several recent news stories e.g. Jimmy Savile, the Hillsborough disaster, abuse in the church show that it can be decades before the truth is revealed.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/Solicitors>

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NO

How many signatures have you collected so far?

1

Closing date for collecting signatures online

N/A

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