

# Five years on - facts and figures

2013 marks the fifth anniversary of the Scottish Legal Complaints Commission.

We have taken this opportunity to look back at the number of legal complaints we have received over that period, and to reflect on what our experience tells us about the areas of law that people complain about most.

We have also included in this report what we have learned about the most common issues and problems that people in Scotland have been complaining about over the past five years.

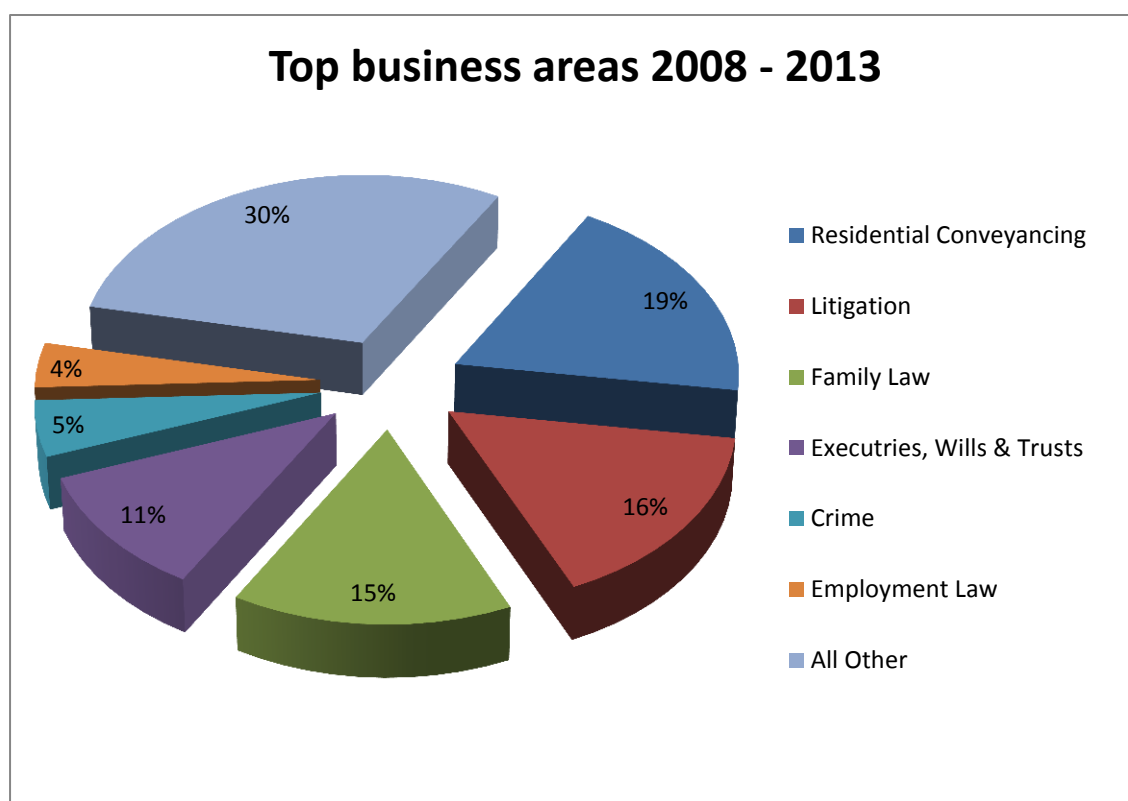
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# Do some types of legal work attract more complaints than others?

It is perhaps to be expected that legal work attracts more than its fair share of complaints, particularly where we are looking at situations and issues which often involve significant life events and about which clients have, understandably, strong emotional involvement.

We carried out some trends analysis work from our five years' worth of complaints data to establish whether some types of legal work generated more complaint issues than others.

The results of that analysis are shown here:



This indicates that almost one out of every five issues we have investigated arises from a residential conveyancing transaction.

For the five year period, complaints arising from litigation and family law business are practically level pegging at 16% and 15% respectively, followed by executries, wills and trusts (11%).

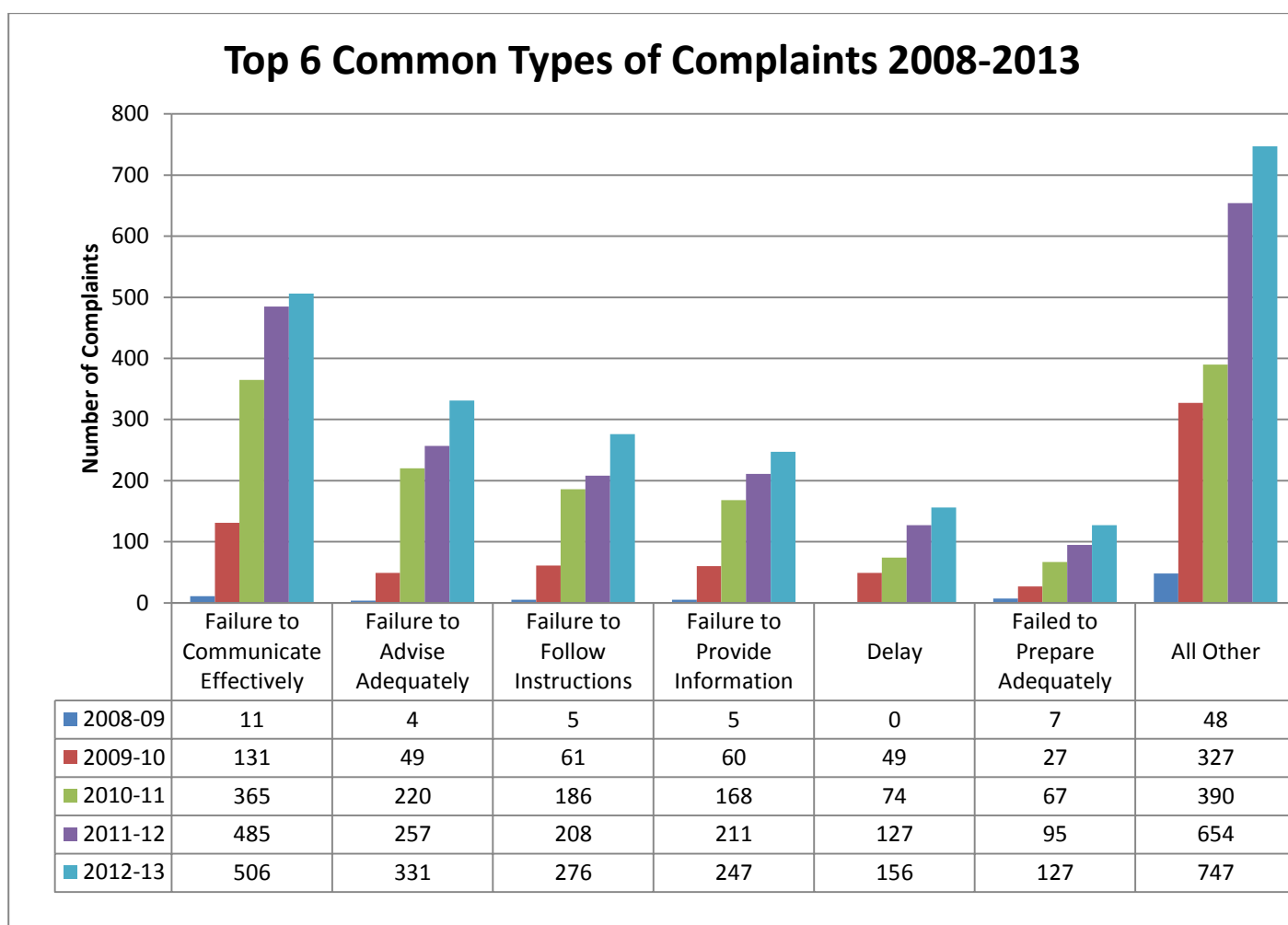
The figures for the most recent year (2012-13) show that this ratio has shifted slightly, however, with litigation and family law complaints (at 18% each) slightly overtaking residential conveyancing (17%).

# What do people complain about?

Having looked at the areas of law which generate the most number of complaints, we turned our attention to the issues which people most frequently complain about.

People generally see a solicitor when they are looking for advice and guidance. In our experience, complaints do not arise from technical legal matters but from situations where there have been shortcomings in the adequacy of that advice, or, more commonly, from failures in how effectively that advice has been communicated to them<sup>1</sup>.

The results of our analysis are shown here:



By far the problem that most people complain about is poor or ineffective communication. As can be seen from the graph above, this has been consistently the most frequent type of complaint over the past five years and,

<sup>1</sup> See also page 8 of “Quality in Legal Services”, Legal Services Consumer Panel, November 2010 which also concluded that consumers are more focussed on service standards rather than the standard of advice.

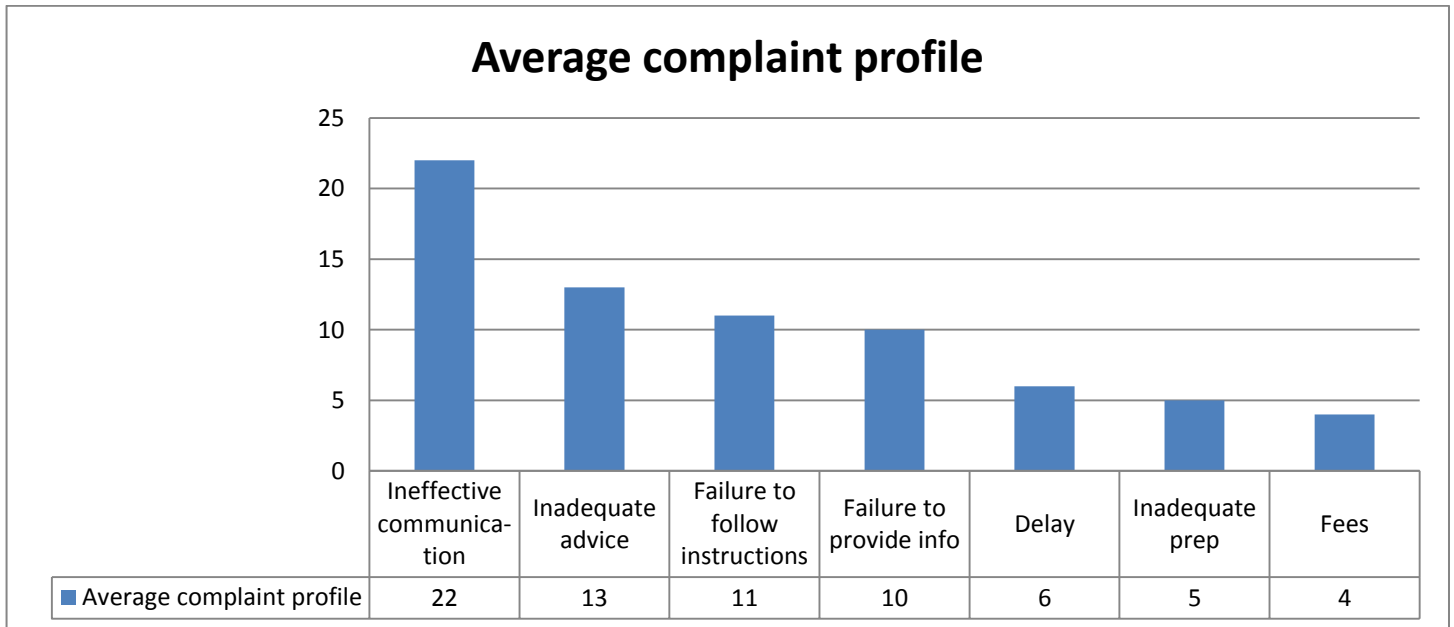
overall, represents 21% of all the complaints which we have received since 2008.

If we take together the top four reasons for people complaining about legal practitioners – as all of these are communication-related – this accounts for a staggering 57% of all complaints.

As already noted, complaints tend to arise not from a practitioner making a technical error in the law but from an inadequate level of service and stem from matters which, in our view, can very often be easily avoided.

# The typical complaint profile

Based on the information in the previous section, we have been able to identify the profile of the typical complaint:



This means that on average 22% of complaints are likely to be about ineffective communication and only 4% about fees.

In the section which follows, we have taken each of the top four business areas and looked firstly at the number of complaint issues we have dealt with over the past three years. We have then gone on to look at the profile of complaints in those categories when compared to the average complaint profile to identify where there might be differences.

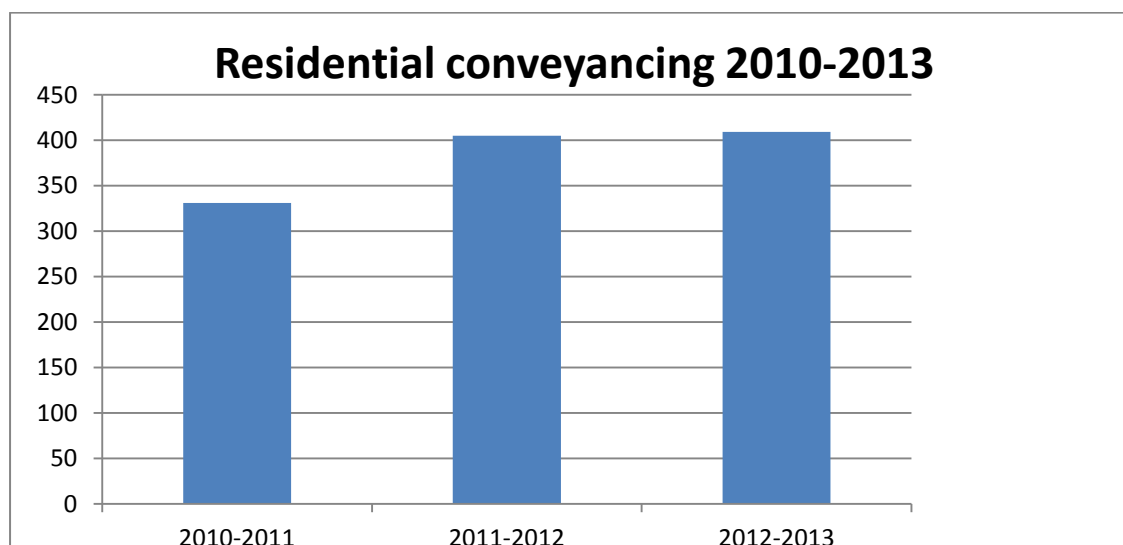
## Complaints in the top four business areas

Complaint numbers in themselves do not tell the whole extent of the story - while one complaint may consist of one particular issue or concern, another might be broken down into ten or more separate issues.

To obtain a more detailed look at the issues people have complained about, the analysis which follows is based on those broken down individual issues rather than whole complaints.

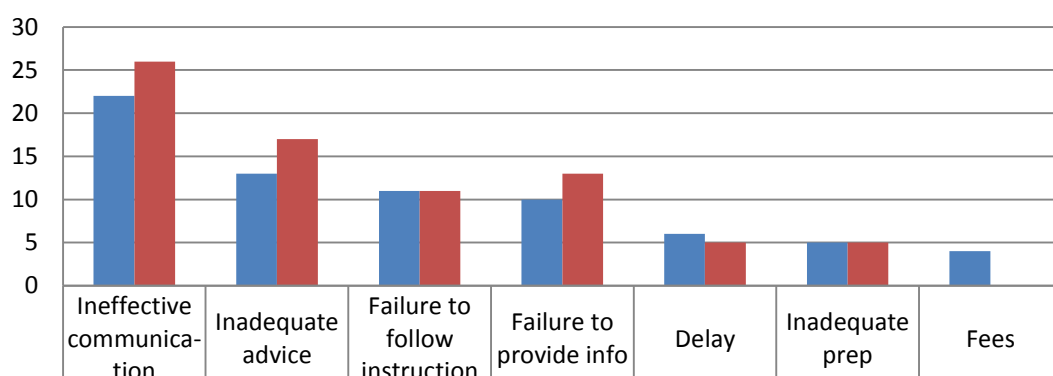
The interesting point to note is that, despite the downward trend in overall complaint numbers, complaint issues arising from each of these top four business areas are increasing.

## 1. Residential conveyancing



The figures indicate that complaints issues arising from residential conveyancing transactions increased significantly between 2010 and 2012 and then showed, for the most recent period, a smaller rate of increase. These figures represent an increase in numbers and proportion, however, when set against the background of fewer house sales<sup>2</sup> and therefore highlight an increasing risk. Recent reports show that house sales are recovering and it will be interesting to see how these figures track as the housing market improves.

### Average complaint profile -v- residential conveyancing complaint

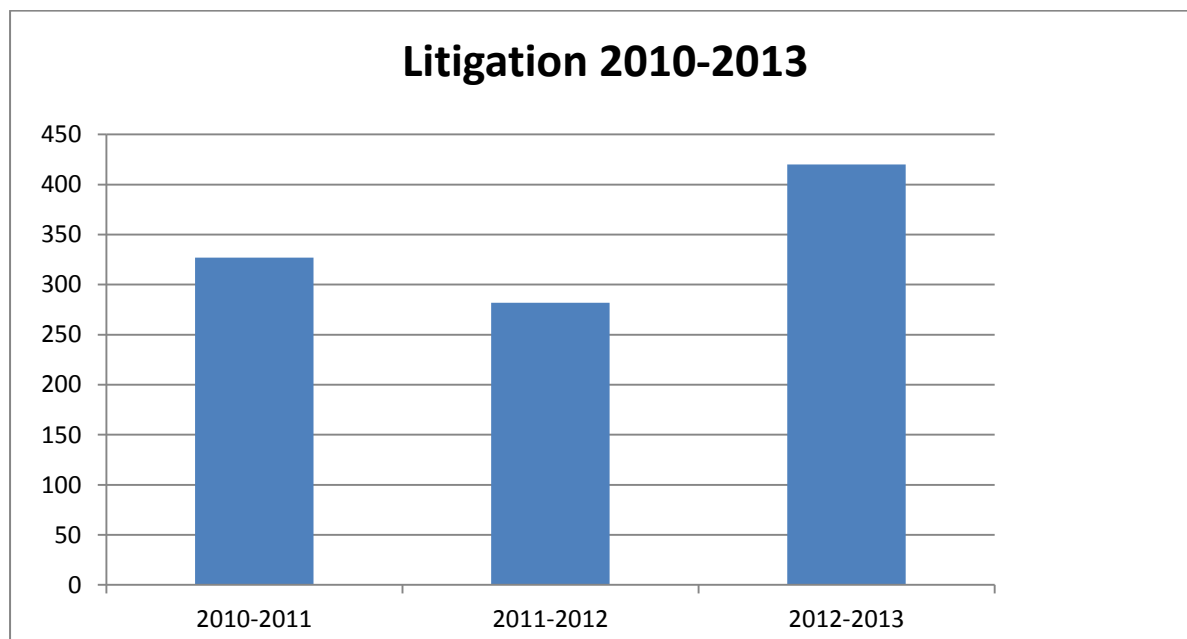


■ Average complaint profile	22	13	11	10	6	5	4
■ Residential conveyancing complaint	26	17	11	13	5	5	0

Areas which are particularly important for residential conveyancing clients, therefore, are effective communication and the provision of adequate advice and information.

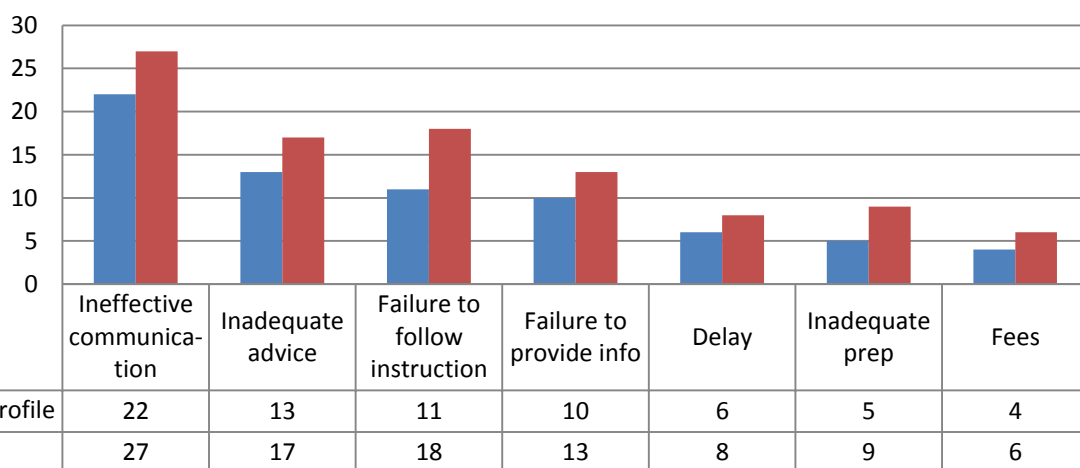
<sup>2</sup> From information available from the Registers of Scotland

## 2. Litigation (non family)



It would appear that, despite a slight dip in levels of complaint issues relating to non-family-related litigation between 2010 and 2012, the past year has seen an increase of around 48%. This is an interesting trend, particularly against the backdrop of economic decline, and one which requires further research.

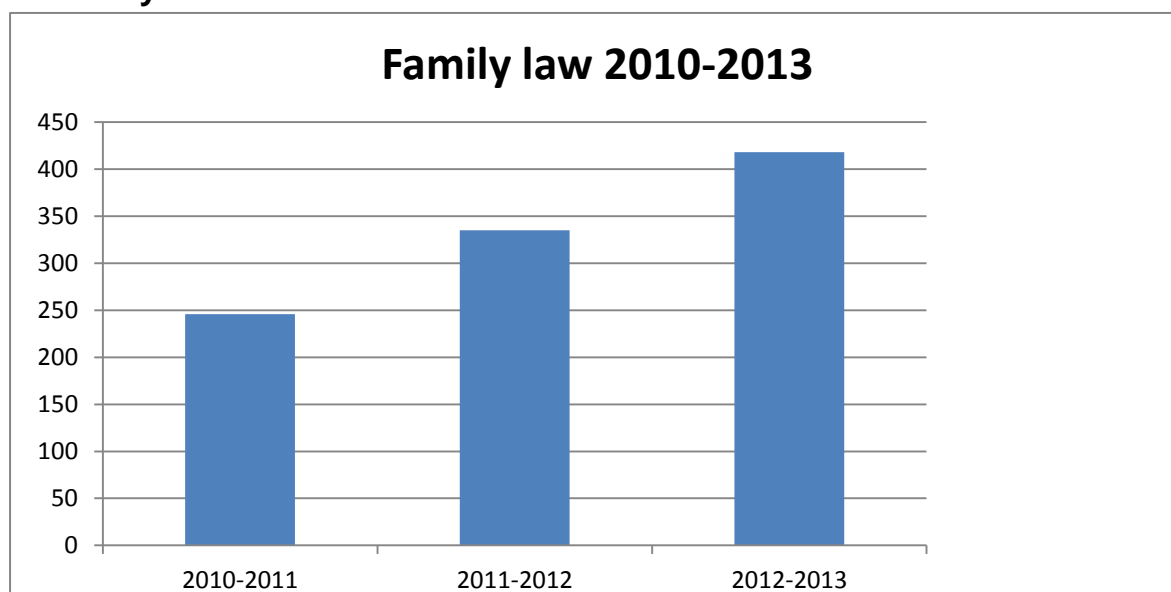
### Average complaint profile -v- litigation (non family) complaint



In terms of the profile of the litigation complaint, all the same issues apply as in the case of the average complaint. However, it would appear that clients in litigation transactions are particularly expecting more effective communication, better advice and for their instructions to be followed.

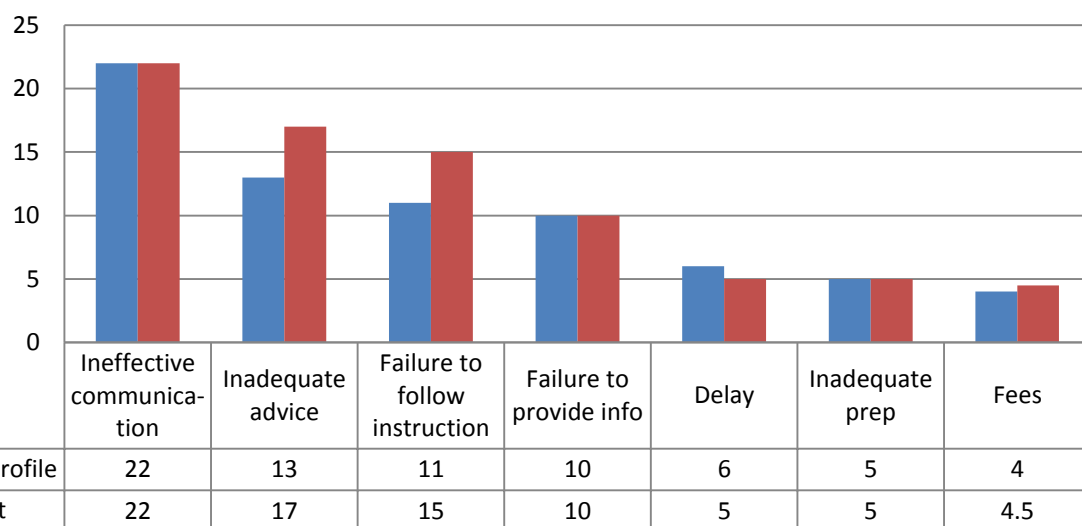


### 3. Family law



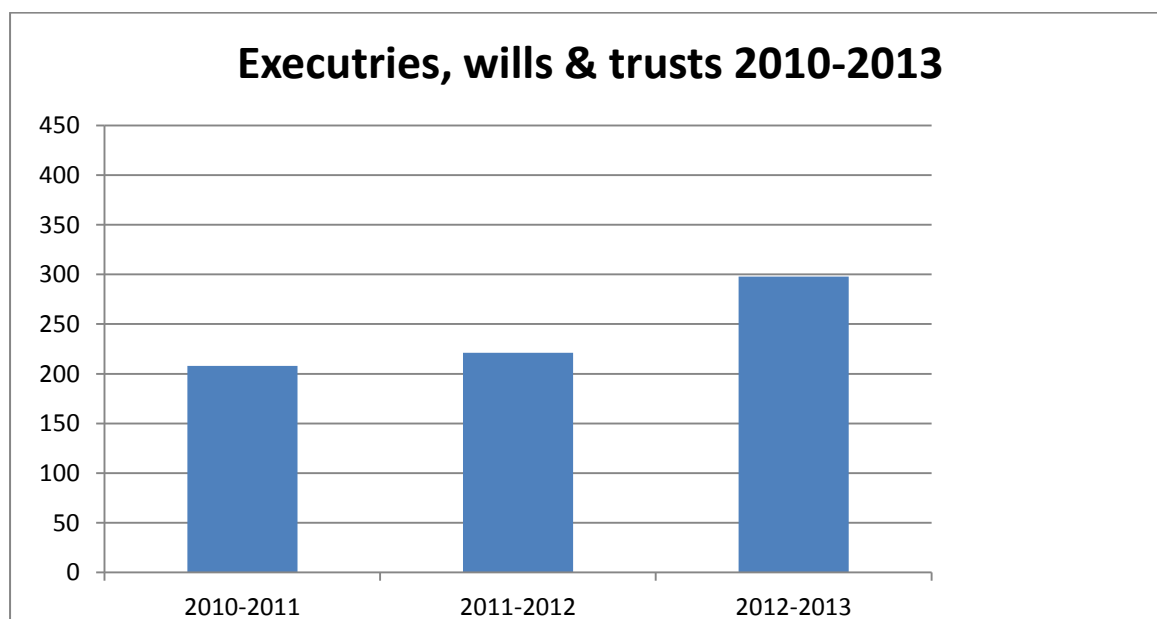
The number of complaint issues arising from family law transactions has seen a gradual but steady increase across the three-year period. This is particularly interesting against a backdrop where the number of divorces in Scotland has dropped to a 30-year low.

#### Average complaint profile -v- family law complaint



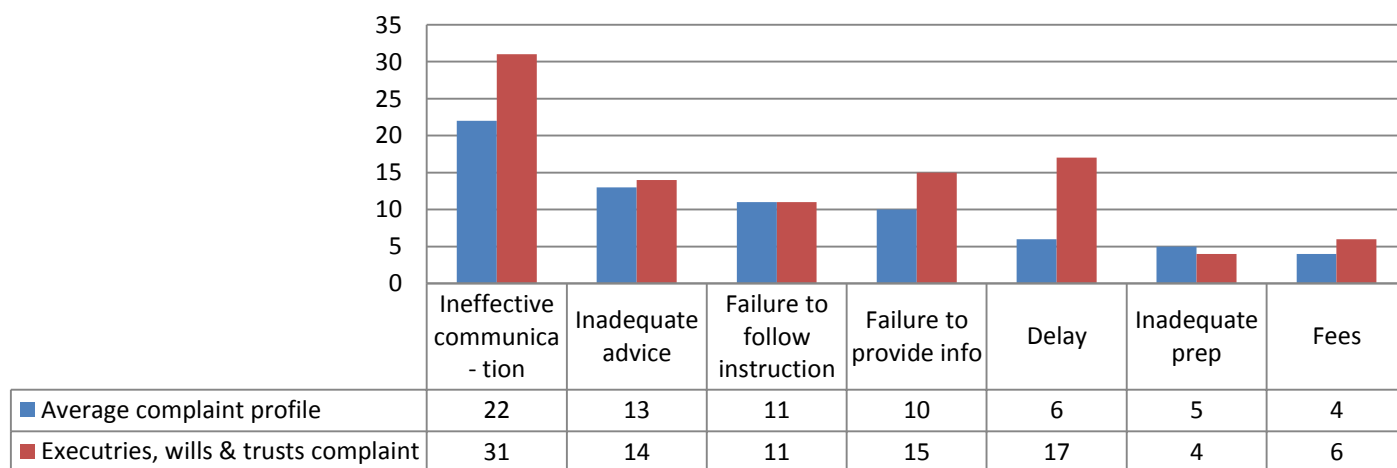
The typical family law complaint tracks most closely to the average complaint. It is, however, more likely to arise from the provision of inadequate advice or a failure by the practitioner to follow instructions.

#### 4. Executries, wills and trusts



Complaint issues arising from executries, wills and trusts are also showing a year-on-year increase across the period, with a marked growth rate. The number of issues rose by 17% between 2010 and 2011; that increase rate doubled the following year.

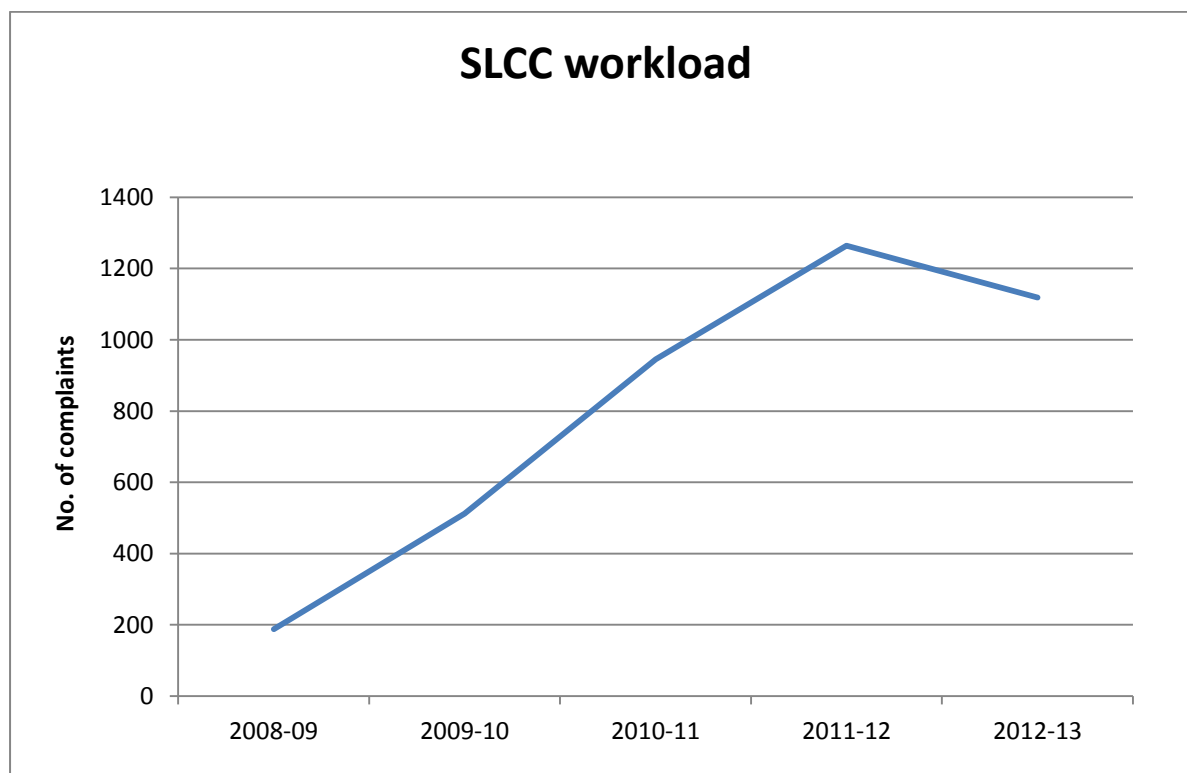
#### Average complaint profile -v- executries, wills & trusts complaint



Complaints arising from executries, wills or trusts transactions are much more likely than the average complaint to be about delay. It is particularly important in this type of work, therefore, that practitioners manage expectations from the start, particularly explaining why this type of work can be complex and time consuming and outlining, where possible, likely timescales.

## Overall legal complaint trends

Taking the information from our annual reports, the numbers of complaints dealt with by the Commission over the past five years are shown below:

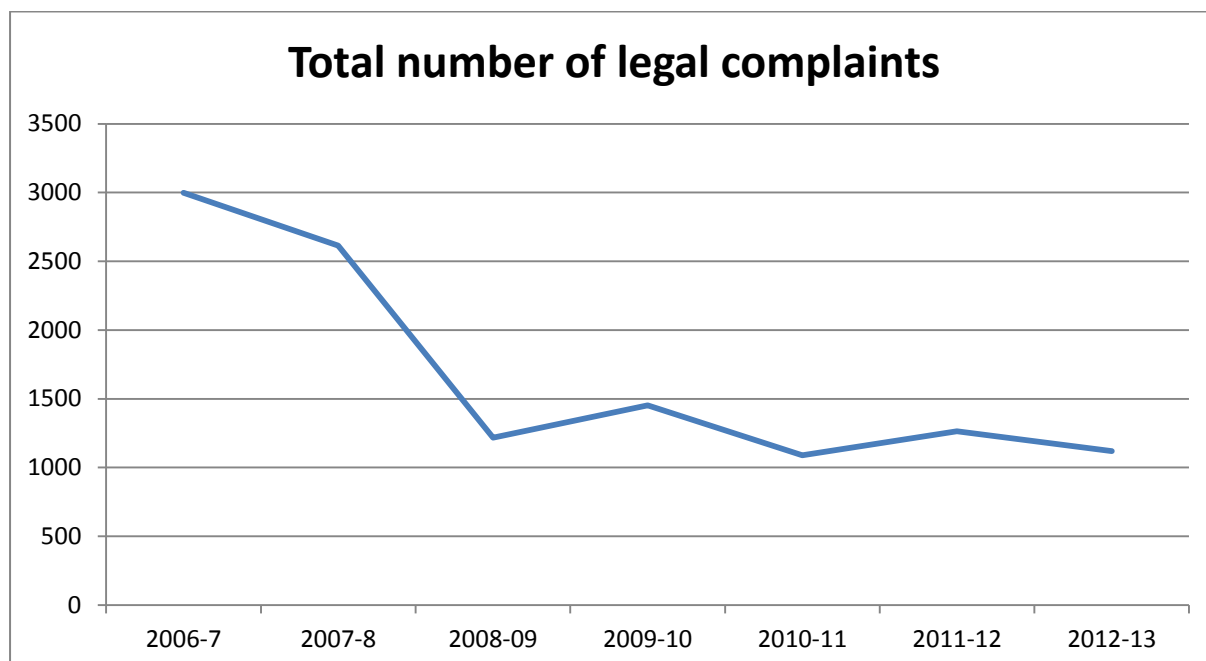


These figures show that from 2008 to 2011/12 the workload of the Commission dramatically increased. The figures would also appear to suggest that there was a dramatic rise in complaint numbers since the Commission was set up until the most recent year, where numbers indicate a slight decline. However, this is not a completely accurate picture for two reasons:

- Until 1 October 2010, all complaints which related to matters before 1 October 2008 continued to be referred to the professional bodies - the Law Society of Scotland and the Faculty of Advocates. These were under what was known as “transitional arrangements”; and
- The first reported figure only covers a nine-month period from October 2008 to June 2009

To obtain a clearer picture of the true number of legal complaints during this five-year period we added in the “transitional” complaints, and extrapolated the figure for the first year to cover a twelve-month period. We also obtained, for comparison purposes, figures from the Law Society of Scotland and the Faculty of Advocates for complaints they had received in the two years prior to

the creation of the SLCC. The revised figures now show a very different picture:



From the above graph it is clear that there was a dramatic drop in complaint numbers in the lead up to the creation of the SLCC in 2008. One reason why the change is so dramatic is that the number of complaints specifically concerning endowments peaked over a period of several years. By the end of 2007-8, this peak was over.

Since 2008, and despite slight increases in 2009/10 and 2011/12, the general trend in relation to legal complaint numbers has continued to be downward, with numbers at the end of the period being almost the same (a variance of only 19 complaints) as that at the lowest point in 2010/11. As at the end of the five year period, complaint numbers were 8% lower than they were at the start of the period.

Undoubtedly the current economic climate will have had some impact on numbers and, as the economy improves, it will be interesting to see whether this trend reverses.

However, a significant factor is that, with the creation of the SLCC, legal complaints are regarded as premature if the practitioner has not been given the opportunity to resolve the complaint him/herself. It may be the case, therefore, that more complaints are now being resolved at that first tier without the need for the SLCC's involvement - research commissioned by the SLCC

in 2011 suggested that, on average, just over 50% of all complaints are being resolved at this stage.<sup>3</sup>

## Conclusions and our next steps

This report highlights three main conclusions:

Firstly, it appears from the complaint figures that the prematurity provision within our legislation is working in promoting the early resolution of complaints. As discussed above, legal complaints are regarded as premature if the practitioner has not first been given the opportunity to resolve the complaint him/herself. It appears that more complaints are now being resolved at that first tier without the need for the SLCC's involvement – a message which ties in with the research we commissioned from TNS BRMB, and which is also reflected south of the border in research commissioned by the Legal Ombudsman<sup>4</sup>. As a resolution-focussed organisation we welcome this factor. We have already produced guidance for practitioners to assist in the early resolution of complaints and we will continue to add to this guidance.

Secondly, while practitioners have a duty to sign-post dissatisfied clients to the SLCC if they are unable to resolve matters themselves, we recognise that general public awareness of the functions and role of the SLCC may not be as clear or as widespread as we would like. The research carried out by TNS BRMB<sup>5</sup> indicated that almost a fifth of practitioners did not refer dissatisfied clients to the SLCC and we are continually finding examples where practitioners have not sign posted dissatisfied clients to us. We are currently working with consumer bodies such as Which?, Citizens Advice Scotland and The Office of Fair Trade to ensure that information about the SLCC is both up-to-date and more widely accessible. At the same time, in guidance which we have produced for practitioners, we have reminded them of their sign posting duties.

Finally, legal complaint numbers are showing a downward trend and, looking back to the date of the SLCC's creation, we find that numbers are just over 8% lower today than they were back in 2008/09. However, while overall legal complaint numbers are reducing, there is clearly no room for complacency as

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<sup>3</sup> "Reports on Complaint Numbers and Complaint Handling amongst Scottish Legal Firms & Advocates" - TNS BRMB

<sup>4</sup> "Consumer experiences of complaint handling in the legal services market – Premature complaints" indicates that over 60% of complainants who were referred back to practitioners reached some form of resolution to their complaint.

<sup>5</sup> Reports on Complaint Numbers and Complaint Handling amongst Scottish Legal Firms & Advocates - TNS BRMB

complaints in the top four business areas are increasing. Ultimately the aim of the SLCC is to reduce complaint numbers and we see ourselves doing this through promoting best practice on the part of the legal profession, to prevent the occurrence of complaint-attracting behaviour, and, as noted above, by encouraging early resolution when things do go wrong.

## Key messages

### For practitioners:

- Be aware of the business areas which generate most dissatisfaction
- Be alert to the common reasons for complaints, paying particular attention to communication
- Be empathetic towards your client's situation, particularly the emotional impact of the matter they have come to see you about

### For consumers:

- Recognise and try to avoid the common problems which people encounter
- Make sure you understand the process you are entering into
- Take responsibility for asking questions about anything which may be unclear or you don't understand

### For the SLCC:

- Further research into the underlying reasons for complaints needs to be undertaken
- We will continue to produce guidance to assist practitioners in complaint prevention and best practice in complaint handling
- We will provide guidance for consumers around the types of legal work which attract most complaints, starting with residential conveyancing

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If you want to find out more about us and what we do, please visit  
<http://www.scottishlegalcomplaints.com/>

We are open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training between 10am and 11am.

If you need information in another language or in large print or on audio CD, please get in touch.