

THE ROLE OF THE LDU

- **WHO ARE WE?**

The Legal Defence Union (LDU) exists for the specific purpose of promoting and protecting the welfare of solicitors in Scotland.

It is committed to protecting the interests of all member solicitors in Scotland, whether engaged in court, conveyancing, or commercial work or other areas of activity, in town or country.

At a wider level, the LDU aims to promote the interests and defence of solicitors in Parliament, in the media and to the general public.

- **A REFUGE FOR SOLICITORS IN TIMES OF TROUBLE**

Lawyers sometimes need lawyers! The LDU offers a refuge to solicitors in times of trouble by providing prompt, expert and wholly confidential professional advice. It has extensive experience in advising on the problems which may affect solicitors. These include the most serious emergencies of professional life, for example:

- threat of contempt of court;
- police contacts with the office-production orders, specifications etc.
- Law Society or Guarantee Fund inspections; or
- a citation to appear before the Discipline Tribunal.

The LDU can also help with the many lesser sanctions facing solicitors, such as the enhanced powers of the SLCC on IPS, problems of conflict, conduct, confidentiality and other risk areas.

For full details of the benefits of membership, see our Policy Document.

- **ADVICE LINE**

As part of membership rights, the LDU members are entitled to expect prompt and wholly confidential advice from the Legal Defence Union on any matter affecting professional judgement. To take advantage of this service, solicitors should telephone our Chief Executive:-

PROFESSOR DAVID O'DONNELL on 01356 648480

- **WEBSITE** www.ldu.org.uk for details of
- Membership categories and application form
- Claims Procedure and claim form
- Policy Document
- LDU Panel Solicitors

AN OVERVIEW OF COMPLAINTS

IPS and Conduct Complaints

1. Since the SLCC was created in 2008 solicitors have to be able to deal with 2 types of Complaint - IPS and Conduct. Definitions are attached. All Complaints now go to the SLCC who act as 'single gateway', but will not deal with conduct issues which are referred on to the Law Society.
2. The SLCC deal with new IPS complaints for work commenced after 1st October 2008, and for older cases which may qualify for examination despite the passage of time.
3. The solicitor therefore may face a list of complaints some of which are identified as 'service only', some as 'conduct only', and some as 'hybrid' i.e. containing both service and conduct issues. There is no fixed protocol as to which will be dealt with first, and early advice is obviously recommended on these potentially complex and threatening situations.
4. Bear in mind that the current IPS limit is now £20,000.00 from 1st October 2008, and in addition the SLCC can waive or cancel Fee Notes so that potentially severe financial sanctions can be inflicted on the practitioner.
5. To reduce IPS complaints we recommend that all firms focus on better file-keeping, [file notes and confirmatory letters essential on all significant problems], early diagnosis and conciliation of client discontent, and taking advice if in doubt as to what to do. The LDU will advise from the earliest stages and many solicitors will acknowledge that a call to the LDU was a life-saver as they were about to set course into troubled waters.

Unsatisfactory Conduct and Professional Misconduct

6. We now face since 2008 a new a category of "Unsatisfactory Professional Conduct" introduced by the Legal Profession and Legal Aid (Sc.) Act 2007. A definition is attached. Such Conduct Complaints are dealt with by a LSS Committee in the first instance.
7. It is not clear where the dividing line lies between Professional Misconduct (PM) and the new category of Unsatisfactory Professional Conduct. Financial penalties plus re-training can be imposed and again independent and expert advice is essential from the outset.
8. Professional Misconduct cases go to the SSDT. A Fiscal is appointed who will be a Court Practitioner chosen by the Law Society, to act *ad hoc i.e.* in that case only. Even if you agree the facts in law which can done on many occasions there will be a need of a plea in mitigation. The costs for the Respondent Solicitor [i.e. the accused] before the SSDT will run to many thousands of pounds, so that the value of LDU cover for your defence costs is manifest.

THIRD PARTY COMPLAINTS

Surprisingly, this is a frequent type of complaint and many are admitted by the SLCC. The LDU has supported the solicitor and successfully appealed the admission of quite a number of such complaints. Accordingly, in the present climate, it is not enough to serve your clients well and keep them happy – the complaint may still come in. With the only available line of appeal being to the Inner House, the capacity to resort to the LDU is a priceless asset to your practice.

DEFINITIONS

Inadequate Professional Service (IPS)

- The definition of IPS is found in s.46(1) of the 2007 Act:-
For a solicitor it means professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor including any element of negligence in respect of or in connection with the services”.

Unsatisfactory Professional Conduct (UPS)

- The 2007 Act from 1st October 2008 introduced a formal category of Unsatisfactory Conduct, [in s.46 defined as...
“conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor.....but which does not amount to professional misconduct”.
- There is now provision for Fines up to £2000, plus compensation to those complainers “...directly affected..” by the conduct failure.

Professional Misconduct

- Definition from the leading case of Sharp -v- the Law Society of Scotland (1984 SLT at 313).
- "There are certain standards of conduct to be expected of competent and reputable solicitors. Any departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.
- Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered, and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made."

Third party Complaints

- Section 2 (2) of the 2007 Act provides:-
- Persons able to make Conduct Complaints “ any person”
- Persons able to make IPS Complaint include “any person who appears to the Commission to have been directly affected by the suggested IPS”