

## **IMPROVE YOUR COMPLAINTS PROCESS SLCC STATUTORY GUIDANCE**

This statutory guidance will help you to:

- Develop - and implement - an effective complaints policy
- Recognise complaints at an earlier stage
- Support your staff in dealing with complaints
- Use complaints as a tool for learning and future improvement

## Introduction to this guidance

This guidance helps you understand what's expected of you when handling complaints. Complaints are a normal business risk - but they can be less daunting if they're well handled. The SLCC has the power to issue statutory (s.40) guidance to the profession. This draws on our learning, both from complaints that we've seen and what helped to resolve them.

Your compliance with the principles in this Guidance will be taken into account when we consider a complaint, and in setting any complaints levy.

The better you can recognise and address any concerns, the better you're managing your risk. Fewer complaints mean less unbillable time needed to answer them and less stress to you and your clients. Good handling of any concerns encourages clients to return to the firm and to recommend you to others.

A sound policy and approach within your firm will help you deal with complaints more quickly and effectively, and hopefully reach resolution without those complaints being referred to the SLCC.

The purpose of having a dedicated Client Relations Manager and complaints handling process is to try to reach a solution acceptable to both parties. A CRM's first thought should not be "Who is right or wrong?" but "What is needed to resolve this complaint?"

We are of course aware that it's not always possible to resolve complaints within the firm and we know that sometimes a complainer will still want to approach the SLCC.

Even if your internal process has not been finalised, the complainer may still complain to the SLCC, provided that they have given you at least 28 days' notice of the complaint. If complaints are made to us, we will work with you wherever possible to try to achieve resolution, right through our process.

### *Tip: Customer expectations*

*Complaints can give you valuable insight into the needs and expectations of your clients, so a positive and flexible approach can help you achieve swifter resolution and improve the service you provide.*

## How do the Law Society Rules and Guidance link together?

These Law Society of Scotland Rules speak about complaints:

- B5.5.2 - all Scottish solicitors must have a written complaints process. Clients should be given information about it, and be provided with copies on request
- B5.5.1 - every firm must appoint a Client Relations Manager, who is responsible for keeping records of complaints
- B4 - clients should be told who to contact with any concerns or complaints
- B4.2 - your Terms of Business must include reference to the client's right to approach the SLCC, whose full contact details must also be included.

## Why use this Guidance?

This Guidance gives some best practice advice on how to implement the Rules. Although this Guidance is not mandatory, compliance with the relevant Law Society Rules, and this Guidance, will be taken into account when we consider the complaint, and in setting any complaints levy for any issues that are upheld.

The SLCC can, and has, upheld complaints about inadequate complaint handling, sometimes even when the main issues of complaint about the work done have not been upheld.

The Law Society of Scotland and Scottish Solicitors' Discipline Tribunal rulings over the last few years have also clarified that:

- Your complaints process should **always** be free to use – it is inappropriate to threaten to, or attempt to charge for your time in answering a complaint
- You should not exclude a client's statutory right to complain from your Terms of Business, nor the right to have your fees assessed independently by the Auditor of Court
- You should not include any provision in a Minute of Agreement, or in a discharge, that seeks to exclude a person's right to make a complaint, or threaten to bring court proceedings if they do not withdraw a complaint
- You need to respond to and investigate third party complaints, although you should tell the complainer that your duty of confidentiality may prevent you from giving a complete response. Third parties do not have to instruct other solicitors to lodge complaints.

## 6 principles of good complaint handling

We recommend that a robust complaints process should cover the following six universally-accepted principles – please read on for more practical tips on how to implement them.

A good complaints process should be:

- Accessible
- User-focused
- Timely
- Objective
- Resolution-focused
- A tool for learning and improvement

### Principle 1 - An accessible process

All your staff should know where to access your complaints policy, and know the correct steps to follow and advice to give to those asking about it.

The Act governing legal complaints [The Legal Profession and Legal Aid (Scotland) Act, 2007] defines a complaint as “any expression of dissatisfaction”. Your complaints process needs to take that into account when setting out what you will regard as “a complaint” that triggers a referral to the CRM.

The Law Society Guidance on Rule B5 sets out the points to include in the complaints procedure document that you provide to clients. Clear communication is as vital to the complaints journey as it is to the work instructed, so this document should be concise, clear, unambiguous and written in plain language.

Remember that the Service Standards refer to communication that “is clear **from the perspective of the client**”. Depending on your clientele, you might want to have your procedure document available in more than one language.

Any complaints procedure should be flexible enough to take account of special needs and circumstances. (The SLCC Consumer Panel’s separate [Guidance](#) may help you reach the right balance).

Although your Terms of Business would already include a reference (and links) to the SLCC, you should also repeat this information in your complaints procedure document.

### *Tip: Third party complaints*

*The Law Society Guidance refers to sending copies of the complaints procedure to your clients. However, since you must also deal with third party complaints, you might consider drafting a separate version that can be sent out when third parties indicate “any expression of dissatisfaction”. This helps to make it clear to third parties how you will be able to handle their complaint, including that you cannot breach the duty of confidentiality towards your own client.*

## **Principle 2 - A User-focused process**

Complaints are stressful for both you and the complainer. Even if your process is clear, many complainers still find it difficult to exercise their right, perhaps because they are worried that:

- their solicitor will stop acting
- their costs will increase
- their complaint might be ignored or not taken seriously
- the process cannot be objective
- they don't know when or how to raise queries and concerns

A good complaints process will address all those points.

### *Tip: “Expressions of dissatisfaction”*

*Your complaints process cannot trump the Act, which allows any person to complain “to the firm”. So even if a complaint hasn't been submitted in the exact format that you may prefer, doesn't refer specifically to a complaint, or hasn't been directed to the CRM, it can still fall within the “expression of dissatisfaction” referred to in the Act.*

Your commitment to a user-focused approach could include:

- An open and non-defensive attitude when you receive a complaint
- Acknowledging that it has been inconvenient or difficult for the complainer to have to make a complaint
- Openly recognising their concerns and committing to a full enquiry in the firm about the concerns
- Using non-emotive, respectful and non-judgmental language in all dealings with the complainer
- Managing expectations about what the complaints process can achieve. For instance, first parties should understand that a complaint cannot reverse a

court decision; third parties should be reminded that a complaint will not change your refusal to release confidential information

- Demonstrating your understanding of the complaint (perhaps by summarising it and agreeing what you will investigate)
- Being prepared to consider any additional documents that explain concerns
- Providing clear explanations and reasons that show how any investigation - and your conclusions - were fair and unbiased
- Signposting the complainers to the next step – which could be when to expect any redress or settlement, the possibility of an internal appeal (if this is your process), and the right to approach the SLCC.

### **Principle 3 - A timely process**

A complainer must allow a firm at least 28 days to consider their complaint, so we suggest that you should plan to complete any internal investigation and report back within that time.

*Tip: It's never too late to resolve*

*Remember that your resolution attempts don't have to end if the complainer approaches the SLCC.*

To ensure a timely process, you should:

- Make sure the timelines you've set are realistic to allow for a proper consideration of the issues raised
- Respond as quickly as possible, within the time you specified *or*
- Immediately let the client know, if you realise you need more time, and set a new date for a response

Demonstrate, in your answer, that you have used the time well to consider all the points made, and any proposed resolution.

### **Principle 4 - An objective process**

We've already emphasised how important it is to be transparent about your firm's policies and how you will look into a complainer's concerns. We recognise that demonstrating objectivity in the process can be even more challenging for small and sole-practitioner practices. You might want to speak to your local Bar Association representative, the LDU, or consider a buddying arrangement for dealing with

complaints.

An objective process could be demonstrated in the following ways:

- A consistent way of recording what needs to be investigated, and how this will be done, including who a complainer should contact
- Accurate notes of all conversations and the actions taken
- Clearly setting out what facts you have found and what you've taken into account, rather than relying on "usual practice" in the firm
- Neutral, respectful and polite language throughout the process
- Recognising whether wording, even if technically correct, could be confusing or offensive to anyone else
- Clear acknowledgment of any shortcomings, including those of communication
- If appropriate, clear explanations why the complainer's viewpoint is not supported by the facts you have found.

## **Principle 5 - Focus on resolution**

When you take the opportunity to summarise how you will look into the complaint, you should explore what could resolve the concerns. That might be an apology, confirmation that you will improve a practice, clearer explanations, or asking another solicitor to complete the work. A complainer expects any actual or emotional loss to be acknowledged and put right.

Whatever your internal processes are for deciding on redress, a user-focused and personalised process should allow you to explore different options that will satisfy the complainer. Even if you were not able to control a situation, such as a delay, think about whether you had properly managed the complainer's expectations and kept them advised.

A focus on resolution could incorporate the following steps:

- Assure the complainer that their complaints have been taken seriously
- Explain your decision in clear, neutral and respectful language. The complainer might not have understood the original correspondence, so it can help to paraphrase or explain any quotations that you include
- Be prepared to explore resolution opportunities even if you don't fully agree with the complainer; in most cases a situation could have been better managed
- Set out any resolution proposals clearly, making any conditions and dates for acceptance very clear

- Action any resolution agreements promptly
- If you don't think that resolution is appropriate, explain why, keeping the language neutral and respectful
- Signpost the complainer to the SLCC

Remember that even if the complaint is referred to the SLCC, you can continue to discuss resolution directly with the complainer, or via the SLCC staff.

## **Principle 6 - Learning from complaints**

Complaints are a positive tool to drive improvement, not only in regard to specific issues raised by complainers directly, but also because complaints can highlight an underlying or systemic problem. That's the reason why an accurate complaints log is such a powerful tool for reflection.

You can find an example of a complaints log [here](#).

We also have a complaints analysis tool to help you manage future risk. You can read about it, and access the tool, [here](#).

The following steps will maximise your learning from complaints:

- Keep any file notes about the conversations with the complainer, and the process you followed to look into their concerns
- An up-to-date and searchable complaints log will help you to track any trends and pinpoint any recurring issues so you can take steps to prevent them in future
- Support any individual or unit that receives a complaint, both on the current matter and for future improvement
- Incorporate your conclusions into complaints discussions and training in the firm
- Regularly review and critique your complaints policy and the process that you follow, building on any observations by the CRM
- Ask for feedback on the way the firm has handled complaints.



## The Complaints Levy

A mandatory complaints levy will be imposed on a firm by the SLCC if one or more service issues of complaint are upheld at the final stage of Determination.

A complaint will only be referred for Determination if no resolution is reached and the practitioner and/or complainer disagree with the recommendations made by the SLCC's investigator.

The levy follows the "polluter pays" principle, and represents a small percentage of the resources that SLCC has expended when a complaint has reached this far.

A Determination Committee may take any or all of the following factors into account when deciding on a complaints levy:

- Did the practitioner adhere to their own complaints handling policy?
- Did the practitioner follow the best practice principles in this Guide? This would include accepting and responding to the complaint, enquiring fully into the circumstances giving rise to the complaint, and reporting back in an appropriate way on all issues raised to the complainer.
- Did the practitioner signpost the complainer to the SLCC?
- Did the practitioner delay unreasonably in providing any new points or justification or reasoning to the complainer, until after the complaint had been made to the SLCC?
- Did the practitioner respond and report thoroughly, promptly and fully to the SLCC, at every stage of the process?
- Did the practitioner concede any shortcoming and offer an appropriate and reasonable settlement?
- Have there been other issues upheld against the firm in the previous two years that are an aggravating factor

We have other resources available on our [website](#), and our staff are always happy to assist with any queries.