

Faculty of Advocates:

Review of conduct complaints handling processes



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Contents

1	Introduction	5
2	Update & discussions	6
3	Action taken by SLCC	8
4	Conclusions and recommendations	8
5	Acknowledgment	11
	Appendix 1	12
	Appendix 2	13

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1 INTRODUCTION

- 1.1 In September 2016, we concluded a review of the Faculty of Advocate’s (FA) complaints handling systems and its Disciplinary Rules 2015 (the Rules), which govern the process.
- 1.2 The aim of the review was to provide a benchmark for future audits and handling complaints investigations.
- 1.3 The FA welcomed the review, commenting that it *“is pleased to have been able to engage in constructive discussions with the SLCC within the audit process and has valued the opportunity to discuss and consider its own functions...”*
- 1.4 Guided by our discussions, various changes were made by the FA to improve and update its methods and systems for dealing with complaints, including the creation of new information leaflets, updating its website and an internal review of the Rules.
- 1.5 Although no formal recommendations were made, we did identify various opportunities for improvements to be made to the FA’s complaints process. Comments on the current Rules were provided. We recognised that any changes to the Rules would require approval by Faculty Council, followed by the Lord President. Accordingly, it was acknowledged that this process could take time.
- 1.6 We identified the following potential improvements:
- Prepare and promote a set of consumer-friendly Service Standards for advocates;
 - Create and publicise guidance and/or a tariff regarding the application of disciplinary sanctions;
 - Publish disciplinary findings on the FA’s website;
 - Advertise the dates of Disciplinary Tribunal hearings on the FA’s website, including the name of the advocate appearing before the Tribunal; and
 - Put in place regular complaints handling training for advocates.
- 1.7 It was agreed that there would be an update audit the next year, to follow up on the suggestions made and to monitor progress of the changes to the Rules.
- 1.8 In June 2017, having reviewed the actions taken by the FA following publication of our benchmarking report, the following findings were made:
- Many of the suggested changes to the Rules had been drafted, but were still waiting finalisation;
 - A draft set of Service Standards had been prepared and comments sought from the SLCC, but these remain in draft form and a date for completion and publication of these has not yet been set.
 - IT systems were in the process of being updated and a document management project was underway to cover all aspects of the FA’s work, including complaints and disciplinary matters, with a view to improving record keeping functions. This project is mainly complete.

- From time to time, training takes place in-house for legal and lay members of the Complaints Committees and the Disciplinary Tribunal. We work together with the FA to deliver training on an annual basis for (a) Faculty Devils, and (b) Advocate’s Clerks. We also jointly deliver *ad hoc* seminars on excellence in complaint handling for advocates. We put together a jointly agreed guide for advocates about best practice in dealing with complaints, which is available online.
- An information leaflet ‘A practical guide for complainers and counsel’, which provides a simple outline of the complaints process, is now available. The leaflet is issued to the parties at the outset of an investigation and is available online.
- A draft leaflet ‘Why instruct an Advocate?’, which provides information on the role of an advocate, was sent to us to review. Various suggested changes and additions were provided. The document required finalisation and publication.

1.9 As part of our Operational Plan for 2018/2019, a Priority Objective was set to ensure conduct complaints are properly dealt with by the Relevant Professional Organisations (of which the FA is one) through Handling Complaints and oversight of their process (Sections 23-25, 35 and 36). The plan required an audit of the implementation of our previous recommendations.

2 UPDATE & DISCUSSIONS

- 2.1 In March 2019, we contacted the FA to advise that the audit reporting would take place in the final quarter of our operating year (April - June 2019). The FA was asked to provide up to date documentation and information on the action(s) taken since the follow-up audit, particularly since we were aware that there had been no change to the Rules since our discussions in 2017.
- 2.2 Copies of various template letters, guidance and a summary of the process (for internal use) were provided, as well as a general update on the present position regarding the changes to the Rules.
- 2.3 On 23 April 2019, our Oversight Manager, Alison Marron, met with the FA’s Chief Executive, Iain Reid, and Secretariat Executive, Gaynor Adam, to discuss the progress made and whether there was anything that we could do in terms of offering assistance to the FA in terms of its complaints handling procedures and implementation of the changes to the Rules.
- 2.4 We found the discussions extremely helpful, to assist in ascertaining the priority of issues which remained outstanding following the earlier audits. For us, the main points arising were as follows:
- There had been further changes made to the redrafted Rules, building on the suggestions which we had made in our earlier audits. The FA and Lord President’s office had been communicating back and forth for a period, trying to reach agreement on a final version. It was noted that they were nearly at the point of agreeing the changes, although no actual date for authorisation had been reached. The SLCC had not been involved in that process and it was agreed that the most recent draft version of the Rules would be sent to the Oversight Manager for her consideration [which has now been done].
 - There had been no movement regarding the creation of Service Standards for advocates. The Oversight Manager reiterated the position reached back in 2016/2017 (stated above). It was

agreed that we would forward the draft version of the Service Standards and associated correspondence which we had previously provided, so the FA could consider finalising and publishing this information.

- No further action had been taken regarding the creation of a tariff or guidance relating to the application of sanctions in disciplinary proceedings. It was acknowledged that the FA's stated position in 2016 had been that such a document could hamper the Committee's/Tribunal's discretion in applying disciplinary sanctions and as full reasoning was provided in the decision, that this was unnecessary. Our position remained that guidance on the application of sanctions was helpful in managing the expectations of those involved in the complaints process, as well as the decision-makers (this will be of particular use to newly recruited lay Committee/Tribunal members). We indicated that we had produced guidance back in 2016, which was aimed at the professional bodies, to assist them in putting together their own guidance on sanctions: https://www.scottishlegalcomplaints.org.uk/media/65343/160518_final_sanctions_guidance.pdf
- The FA's position on the publication of disciplinary findings remained the same, i.e. that there was a written register held in Parliament House which recorded all upheld Tribunal findings. Only in cases where the Disciplinary Tribunal directed wider publicity would details of the finding appear more publicly. We reiterated our view that the FA could be more transparent in its publication of conduct findings, even if this was only on the FA's website. We stated our concerns about the accessibility of this information, not only for the general public (who are likely to be unaware of the Register, as the only explicit reference to the keeping of the Register is embedded in the Rules), but also for people with incapacities or geographical constraints. It was acknowledged that there was no obvious reference on the FA's website to the fact that findings are available to view at Parliament House, although it was noted that this information is contained in Rules 71 - 73 of the current Rules.
- In terms of the publication of future dates of disciplinary hearings on the FA's website, it was noted that this had been happening as per our previous agreement, although this was not being actively managed, i.e. there were historic dates still appearing on the FA's complaints webpage. It was also noted that the venue and name of the advocate did not appear on the website, which was what we had understood would be happening. Again, we stated that in our view, the FA needs to be more open and transparent about its complaints processes, particularly considering the Rules, which state that disciplinary hearings should be held in public (unless privacy is specifically ordered by the Tribunal). It was noted that the current complaints webpage was in the process of being reviewed, and that the FA's Director of PR could potentially assist in updating the format of the information, to make it more accessible and up to date.
- It was noted that arrangements are being made for another member of staff to be trained in dealing with complaints, to assist the Secretariat Executive, which will ensure that some of the more administrative tasks are being followed, including file and document retention and destruction, data protection issues (including appropriate Privacy Notices) and review of the current template letters and information, with a view to making these clearer and accessible.
- It was noted that the FA is shortly to embark on a recruitment exercise for new lay members, as the numbers on the panel are relatively low and therefore there is greater potential for a

conflict of interest situation to arise. It was accepted that there would be the need for specialist induction training once the new members were in place. We highlighted that this was a potential opportunity for all members (legal and lay) to receive specific complaints handling training, as well as other, independent training, which might assist them in their decision-making function. We offered to provide / co-produce specific complaints handling training for FA's Members and advocates more generally, if this would be helpful. It was suggested that this could potentially coincide with proposed changes to the 2007 Act (and the Rules), but it was acknowledged that it could take some time for those changes to be made, due to the necessity of the approval by Scottish Government, and that some interim training arrangements may require to be made. It was agreed that we would be in touch with the FA's training department, to discuss this matter further.

3 ACTION TAKEN BY SLCC

3.1 Since the meeting in April, we have taken the following action:

- Reviewed the redrafted Rules, providing the FA with our comments and making further suggestions for amendments / identifying potential drafting errors;
- Prepared and shared an infographic, which illustrates the FA's complaints handling / disciplinary process. We suggested that something of this kind could be a valuable visual aid for use on the FA's website;
- Resent the draft document and associated communications regarding the Service Standards for advocates, with a view to the FA finalising this document, publishing and offering appropriate training for advocates.
- Reviewed the template letters, internal process document, leaflet and information on the FA's website. We have identified certain improvements which could be made to this information, which we would be happy to share / discuss further with the FA as follow-up to this audit and as part of our ongoing general liaison.
- Shared our 2016 sanctions guidance, which should assist in further internal discussions regarding the possible creation / use of a tariff or guidance on the FA's Complaints Committee and Disciplinary Tribunal applying financial and disciplinary penalties.

3.2 A further meeting with the FA took place on 6 June 2019. A copy of the FA's initial response to this report can be found at Appendix 2.

4 CONCLUSIONS AND RECOMMENDATIONS

4.1 We acknowledge that since the follow-up audit in 2017, there has continued to be a very low number of complaints remitted to the FA for investigation. The necessity for the FA to make changes to its complaints process has, therefore, been considered in this context. We accept that changes need to

be proportionate, but there is also the need for an effective, efficient, accessible and transparent complaints handling process, which meets the needs of all the FA's stakeholders.

- 4.2 In 2017, the FA agreed that the Rules required updating. It undertook to make changes to the Rules, along the lines of our discussions, which we set out in our 2016 and 2017 benchmarking reports. Although it is disappointing that this exercise has not been completed in the last 18 months, we are extremely pleased to note that the FA and Lord President's Office have managed to push this forward to the point of nearing approval.

RECOMMENDATION 1:

Prioritise finalisation of the Rules and action proposed in terms of publishing and roll out training, with an update to be provided to the SLCC by mid-July 2019.

- 4.3 If the Lord President refuses the proposed Rule changes, further discussions will have to take place between us.
- 4.4 Once the Rule changes have been made, we will need to amend our 'Overview of the FA's conduct investigation process', to reflect the changes made to the FA's complaints process. The Overview is available on our Handling Complaints webpage and sent to the parties with Handling Complaint reports. The Overview informs those involved in handling investigations what they should expect from the FA's complaints and disciplinary processes. It is vital, therefore, that this document is up to date and agreed, particularly regarding timescales and procedures that are operated as standard and may (or may not) be specified in the Rules.

RECOMMENDATION 2:

Within 2 weeks of publication of the amended Rules, the FA should liaise with the SLCC regarding the revisions required to the SLCC's 'Overview' document.

- 4.5 The drafting and publication of Service Standards for advocates is incomplete. No further action has been taken since the discussions which took place in 2016 / 2017.

RECOMMENDATION 3:

Finalise and publish a consumer-friendly set of Service Standards, rolling out appropriate training to advocates by end August 2019.

- 4.6 We look forward to receiving confirmation from the FA that the work has been resurrected and is in progress. It is intended that we will use the new Service Standards when assessing the eligibility of complaints alleging Inadequate Professional Service by advocates.

- 4.7 The style and information contained in the FA's template letters would benefit from being reviewed and updated. The letters could be clearer, perhaps by adopting some of the Plain English principles. It has been noted that one of the template letters provided refers to the "Scottish Legal Services Ombudsman", which was abolished at the time of the creation of the SLCC, over 10 years ago.
- 4.8 The internal process document and information leaflets would also benefit from being reviewed and updated, to reflect the changes made to the Rules.
- 4.9 The complaints information page on the FA's website may also need to be updated, and could be more accessible, with graphics and visuals being used to explain the complaints handling processes.

RECOMMENDATION 4:

Review and update all complaint related template letters, information leaflets and relevant webpage(s) as soon as possible, and in any event, within 4 weeks of the amended Rules coming into force.

- 4.10 We are more than happy to assist the FA with the review, and make any suggestions for change / improvements, if the FA would find this helpful.
- 4.11 The publication of discipline hearing dates is not being kept up to date on the FA's website. The venue and name of the advocate is not currently appearing on the webpage, as previously agreed.

RECOMMENDATION 5:

Disciplinary hearing information, including the venue and name of the advocate, should appear prominently on the FA's website and should be managed appropriately, so that the information is relevant, clear and up to date.

- 4.12 The FA has confirmed that it has not altered its position on the publication of conduct findings on its website, and the creation of a sanction's tariff / guidance.

RECOMMENDATION 6:

- a) Publish disciplinary findings on the FA's website from 01 August 2019.**
- b) Review the data management arrangements for published findings.**
- c) Create and publish a tariff / guidance on the application of sanctions in conduct complaints by end September 2019.**

- 4.13 We will re-establish the liaison arrangements with the FA, to assist in the implementation of the outstanding matters arising from this review and to provide reassurance that any ongoing and future issues will be addressed as these arise.

- 4.14 We will continue to monitor all decisions being made by both the SLCC and the FA in respect of complaints against advocates, and any complaints made to us about how complaints are being dealt with by the FA.

5 ACKNOWLEDGMENT

- 5.1 The SLCC would like to thank the FA and its Chief Executive, the Secretariat Executive and staff for their time and co-operation during this review.

Our Complaints Process

After the SLCC has accepted a complaint, we are sent all the information to investigate. A Committee or Tribunal will make the decision. More details are in the Disciplinary Rules, which can be found on our website.

Gathering information

We gather all relevant responses and information and prepare for Committee

STEP
01



Complaints Committee

Reads evidence and decides
(1) can a decision be made,
(2) is more information needed, or
(3) serious to refer straight to Tribunal?

STEP
02



More investigation

IF NECESSARY, report prepared by "Investigating Committee" before returning to Complaints Committee

STEP
03



Committee decision

Decision made and powers exercised, or refer to Tribunal where more serious

STEP
04



Disciplinary Tribunal

Decides serious complaints and deals with appeals* from Complaints Committee

STEP
05



* There is also a right to appeal the Tribunal's decision. How to do so is explained in the decision and Rules



FACULTY OF ADVOCATES

10th June 2019

Alison Marron
Oversight Manager
Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
Edinburgh
EH1 3EG

Dear Alison,

Draft Process Review Report

Thank you coming in to see Gaynor Adam and myself last week to discuss your draft process review report.

As we explained at the meeting a further revised version of our disciplinary rules, incorporating many of the changes you suggested, has been submitted to the Lord President's office and we are hopeful that we will receive approval for these shortly. Against that background I can provide the following initial responses to the recommendations in your report.

Recommendation 1

Agreed although the precise timing will depend on receiving approval for the rules from the Lord President's office. We will let you know as soon as this is received.

Recommendation 2

Agreed

Recommendation 3

The Faculty's office-bearers have asked to review the draft service standards again in light of your earlier comments on the draft. Gaynor and I will try and complete this

before the end of June and will send you the revised version as soon as it has been approved by the office-bearers.

Recommendation 4

Agreed and some work on this has already started. Given that we are entering the summer holiday period it may take us longer than two weeks from the date of publication of the revised disciplinary rules but, again, we will keep you up to date with progress.

Recommendation 5

We will find a more appropriate location on our website for the publication of hearing information and will keep this part of the site up to date. We are still not in favour however of naming the Advocates involved at this stage. We feel that, given the size of the Bar and the operation of referrals from solicitors the naming of an Advocate at this stage could have an unnecessary and severely prejudicial impact on their career.

Recommendation 6

The office-bearers have asked me to explore whether we can give the Complaints Committee and the Disciplinary Tribunal a discretion as to whether or not to publish their decisions. I plan to review how other professions approach this issue before making a recommendation to the office-bearers and we will then review the data management implications of whatever they decide. We do not however believe that a tariff for the applications of sanctions is necessary at this stage. We would prefer to maintain the current discretion available to our disciplinary bodies particularly as we have not received any handling complaints from consumers in respect of sanctions issued by the Faculty.

We will be in touch again shortly on the above points.

Yours sincerely,



Iain Reid
Chief Executive Officer

