

Preventing complaints

Steps you can take to prevent
complaints



Introduction

It was 2013 when we last published guidance on preventing complaints.

Fast forward five years and a lot has changed in the provision of legal services.

Our message however remains the same, "prevention is better than cure."

Our statistics show that the 'average' legal practitioner in Scotland is likely to be named in two formal complaints to the SLCC over a 40 year period.

Complaints do happen - but no one wants it to happen to them.

This guide - based on our experience of real cases - sets out 10 steps which should help you to avoid the most common complaint scenarios.

“

...80% of lawyers think they're delivering 'above average' service...[but] only 40% of clients say they are receiving it."

LexisNexis 2015

”



“

The single most common issue we see is about communication.

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Evidence suggests that it costs six to seven times more to acquire a new client than to retain one. That means it's just good business sense to look at ways of working which can reduce the likelihood of complaints - which can lead to client loss.

While some of the guidance which follows may seem very obvious, the tips we have included are all based on the most common issues we see in real complaints.

It might surprise you to know that the single most common issue we see is communication.

For that reason, many of the steps we outline in this guide are about different aspects of communication - from the wording of your terms of business letter to the tone of correspondence with third parties.



Step 1

Taking on new work

Consumer expectations are at their highest - people have come to expect a high quality service at a competitive price.

We all have our limits. Before you agree to take on new work, ask yourself;

- Do I have capacity to deliver within a reasonable timescale?
- Do I have the necessary skills and experience to carry out the work?
- Do I have the option to say no to new work?

We know that you can't always say no to new work but be aware of your own capabilities and know your own limits.

Don't be tempted to take on work in an area of law in which you are not confident, or take on more work than you can realistically manage.

Excessive work loads are a breeding ground for mistakes, which can lead not only to complaints but to health problems.

If you do find yourself struggling, you can always seek support from LawCare, an independent charity set up to promote and support mental health and well being in the legal community.



Saying no to new work may be easier than having to withdraw from acting without a valid reason after you have agreed to act for a client.



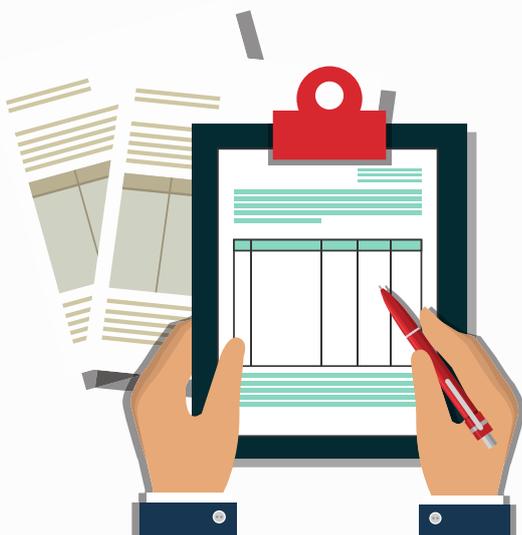
Step 2

Terms of business

Terms of business letters can make the difference between a complaint being upheld or not - as you can see in the case example opposite. They also help to manage clients' expectations from the outset.

Spending time on your firm's terms of business letter and regularly reviewing it will be time and money well spent. Your starting point should be the mandatory rules set out by the Law Society of Scotland.

Problems can be avoided if the client knows what to expect from their solicitor. Information should be clear and transparent.



Case example

Complaint:

The solicitor instructed a local agent to attend the first trial diet, despite the fact that the only reason he was instructed was because of his expertise in road traffic cases.

Outcome:

In the firm's terms of business letter, it stated that the solicitor who was appointed would aim to represent the client in Court. In the event that that solicitor was unable to appear personally, another senior solicitor from the firm's panel would be fully instructed to represent them.

It is often the case that solicitors, particularly in criminal practice, will appoint representatives to appear on their behalf if they are not available, due to other trial commitments. In this case good practice had been followed, as the solicitor had made it clear in his terms of business letter what would happen if he wasn't available.

The complaint was rejected as being Totally without Merit.

Examples of good and bad practice, lifted from real examples of terms of business letters.



Make your terms of business accessible. It should be easy to read, without jargon and as concise as you can make it.



Shrink font size to squeeze everything into two sides of an A4 page.



Tailor your terms of business rather than sending the same letter to every client.



Place restrictive conditions on clients e.g. insisting they attend the office in person to discuss concerns.



Let people know of their right to complain and signpost correctly.



Tell clients you will bill them for for dealing with their complaint if it is not upheld.



Regularly review and update your terms of business, especially when new rules come into force.



Threaten a defamation action unless a person withdraws their complaint.



Provide information on fee charging, costs and outlays in a simple and transparent manner.



Include unrealistic timescales regarding communication that you know your firm can't achieve.

Step 3

Keeping file notes

We often see cases where transactions start well but then something changes and there is confusion about why things took a different direction.

When we start investigating a complaint we will normally ask for the case file.

It is important, therefore, that you keep accurate, clear and legible file notes of meetings and telephone conversations. It is easy to forget to do this, or to put it off, particularly when you are busy.

Should any questions or disputes arise over what happened and when it happened, your file is your fallback.

It is also worth remembering that for business instructed on or after 1 April 2017, the time limit to make a complaint to us is 3 years. Although human memory can be amazing, it should never be relied on as the sole safeguard against a complaint - so record it!



Case example

Complaint:

The solicitor inappropriately accepted instructions in relation to the setting up of a Trust and failed to return 16 telephone calls over a 6 week period.

Outcome:

During the investigation there was evidence on the file that the firm had a) fully file noted relevant conversations, b) employed the advice of a consultant, and c) twice asked the client to formally sign documents confirming that he understood and was aware of the risk.

The firm's file also contained supporting evidence demonstrating that the level of communication with the complainer throughout was appropriate and proportionate in the circumstances.

The complaint was not upheld. The Committee stated that it was impressed by how well the firm had everything backed up and thought it was worth highlighting what a difference having the file in good order can make.

Step 4

Language and tone

For a layperson, law can be a mysterious business, with its own language and traditions. The language adopted by firms can be the difference between a good and bad experience for a client.

The average reading age in Scotland is 11. That means that the use of legal jargon and complex language is most likely going to result in a confused, unhappy client. Or a complaint.

The Law Society's Service Standards talk about the use of clear language, explaining things from the

perspective of the client and the need for clarity in terms of business letters (or their equivalent).

Be conscious of your tone in all correspondence and remember that anyone (not just your own client) can make a complaint.

Finally, empathise with your client and their situation. Ask yourself if you were them, is there anything that you could do to ensure that the information being provided is clear, accurate and easy to understand?



The SLCC Consumer Panel's 'Consumer Principles' guide includes useful tips on how to adopt a more consumer-focused approach.



Step 5

Quality control

No service is ever perfect and in the rush to meet deadlines, errors can (and will) happen - particularly in this era of instant communication.

Some clients have an expectation of instant responses to emails etc, but responding in haste can lead to errors.

Auto-correct and auto-fill in emails is also something to be wary of.

Although helpful tools, these can increase the likelihood of confidentiality and data breaches - for which the repercussions may be significant.

Simple things like turning your auto-fill off and having someone proof-read important, sensitive documents before they are sent, will minimise the risk of complaints being made.

Case example

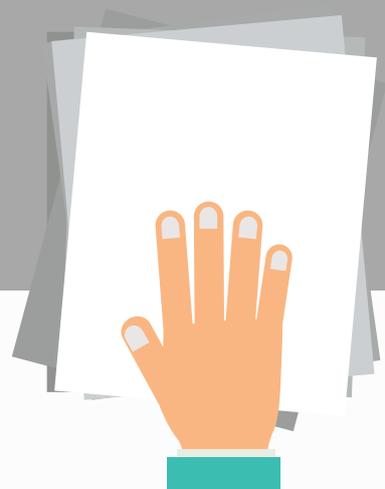
Complaint:

The firm failed to identify errors contained in a draft Joint Minute of Agreement. This resulted in the complainer signing an inaccurate version resulting in the Court issuing an inaccurate Decree.

Outcome:

The investigation revealed evidence on the firm's file that the solicitor had not cross checked the terms of the draft Minute against the relevant Court papers.

The complaint was upheld. The Committee directed that an overall fee reduction of 100% and £5000 compensation for inconvenience and distress would be appropriate.



Step 6

Effective supervision

Delegation is very important to any business as it empowers employees and can lead to a more efficient way of working.

Where work is delegated, ensure that there is a suitable supervision mechanism in place.

Before you delegate ask yourself:

- Does the person you are delegating to have the competence and skills to carry out the work?
- Are you confident that the person you are delegating to understands your instructions and their remit in relation to the work being undertaken?
- Do you have a system in place which allows adequate supervision (and support if needed)?
- Is this the best option for the client?

To ensure the task is delegated effectively, it requires continuous supervision to ensure it is completed and the results reported back.



Consider using peer-review more widely within your firm. Everyone is capable of error.



Step 7

Avoiding delay

A significant proportion of the complaints we see are about delay. By its very nature, legal work can be subject to delays which are beyond your control. However, communicating that delay is something that is within your control.

You may know that everything is going according to plan and understand the reason for any delays, but problems can arise if you don't communicate this to your client.

To avoid this type of scenario from turning into a complaint, be sure to update your client if things are taking a little longer than expected. Or if the transaction is not going as planned, don't delay in delivering bad news.

The key is to communicate- don't keep quiet in the hope that things will naturally correct themselves and that you will somehow catch up.

Case example

Complaint:

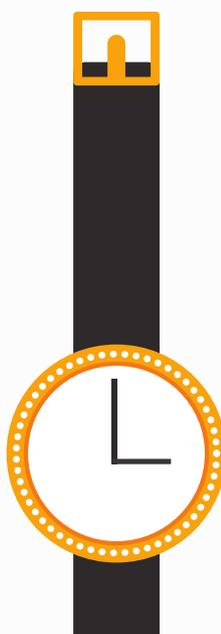
The firm failed to update the client regarding important aspects of their house purchase.

Outcome:

There was evidence on the firm's file that the complainer had expressed concerns, a week prior to settlement, that missives had not been concluded.

The Investigation Report noted that it was not unusual for missives to conclude on the day of settlement. The Investigator stated it was understandable that the firm thought at that stage, matters were not of sufficient concern to highlight this position to the complainer.

Although the complaint was not upheld, it was noted that had the firm explained this to the complainer at the time, it would have provided reassurance and could potentially have avoided a complaint.

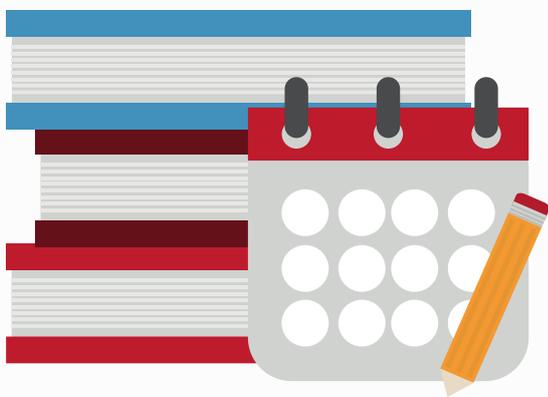


Step 8

Time management

From our experience of dealing with complaints, we can see that one of the biggest difficulties facing a solicitor is time management, thanks to competing priorities, short timescales and unexpected interruptions or emergencies.

The following information may help you to manage your case load more effectively and hopefully avoid complaints.



- Know when you are most productive and set aside time to tackle the important tasks during that period
- Don't over commit- allow yourself time to focus on the task. Quality is better than quantity. Even if that means saying no to new work at times
- Build in time for interruptions and unexpected emergencies
- Develop the habit of using planners, calendars and electronic reminders for better time management.

Step 9

Third parties

When writing to a third party, clearly state that you are conveying your client's position or understanding, rather than your own.

You are entitled to accept at face value what your client tells you, unless you know it is false. To avoid a complaint, ensure that the third party knows you are not making your own accusations or stating your personal views.

You should always respond to a complaint, even from third parties. But be aware that your duty to respond does not override the duty of client confidentiality and legal professional privilege.

Explain to third parties that a full response to all of the issues they have raised might not be possible due to client confidentiality, unless your client consents to release the information.

Although you may need to treat these types of complaints differently to a complaint from your own client, don't ignore them. Not responding to a third party could, of itself, result in a further complaint.

Case example

Complaint:

The firm failed to communicate effectively with the complainer's solicitor in that they failed to respond to emails, telephone calls and letters over a 5 month period.

Outcome:

The evidence showed that the firm had failed to communicate effectively with the complainer's solicitors during a 3 month period.

The Committee decided that this failure to communicate was a failure to act in the best interests of the firm's own clients. There was evidence that an inadequate professional service had been provided to the firm's own client and that the complainer was directly affected by this failure.

The Committee directed the firm to pay £500 in compensation to the complainer for inconvenience and distress.

It is worth having a separate written complaints process in place for third parties. Many firms also find it helpful to keep a separate file relating only to complaints.

You must also make sure that ALL complaints are recorded in your firm's complaints log.



Step 10

Feedback



Seeking feedback from clients is the best way to find out if you are meeting their expectations and identifying areas where you can improve your service. It is also a good tool for spotting the early warnings of a complaint.

When you're looking at feedback, don't limit this to your own feedback forms. You also need to take into account what people are saying on Google Business Reviews and other online forums such as Twitter and Facebook- as this is what your future (and current) clients may be reading.

Ensure all of these things are monitored and that all comments are responded to appropriately. If you don't respond you run the risk of giving the impression that you don't care.

Don't limit yourself to collecting feedback at the end of the transaction. Getting feedback throughout is a great way to understand customers' experiences (and spot early warning signs for complaints).



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