

# **CONSULTATION RESPONSE**

**Response to the Law Society of Scotland's Practice Rules  
Consultation 2019**

*28<sup>th</sup> March 2019*

## A. INTRODUCTION

The SLCC welcomes the opportunity to respond to the LSS Consultation on the Proposed Amendment to Rules B4 and B5.

## B. ABOUT US

The Scottish Legal Complaints Commission (SLCC) is an independent statutory public body providing a single point of contact for all complaints against legal practitioners operating in Scotland. The SLCC investigates and resolves complaints about inadequate professional services; refers conduct complaints to the relevant professional body and has oversight of complaint handling across the legal profession.

Our [annual report](#)<sup>1</sup> and [website](#)<sup>2</sup> have more information on our work.

The SLCC is a key stakeholder in the context of rules B4 and B5 and our report "[First Tier Complaint Handling](#)"<sup>3</sup> from June 2017 was mentioned as encouraging further work by the Law Society of Scotland's Regulatory Committee, leading to the proposed amendments to the Society rules.

We comment only on issues within our direct interest and experience. Our [strategy](#)<sup>4</sup>, which guides all our work, contextualises our recommendations on first-tier complaint handling in the light of rising complaint numbers and increasing complexity of individual complaints.

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<sup>1</sup> <https://www.scottishlegalcomplaints.org.uk/media/95109/slcc-annual-report-2017-18.pdf>

<sup>2</sup> <http://www.scottishlegalcomplaints.org.uk>

<sup>3</sup> <https://www.scottishlegalcomplaints.org.uk/for-practitioners/guidance-advice/formal-guidance.aspx>

<sup>4</sup> [https://www.scottishlegalcomplaints.org.uk/media/65532/slcc\\_strategy\\_2016-2020.pdf](https://www.scottishlegalcomplaints.org.uk/media/65532/slcc_strategy_2016-2020.pdf)

## C. OUR RESPONSE

### ***Our Views on Signposting to the SLCC (Amendments to Rule B4)***

We welcome the Society's proposed addition of section B4.2f, which would require firms to provide to their clients in writing:

*(f) confirmation that the client may make a complaint to the Scottish Legal Complaints Commission about the manner in which the work is being carried out, or the conduct of the person or persons carrying out the work; and its current contact details.*

This is again in line with our earlier recommendations and we strongly believe it should be a mandatory requirement to advise clients of their statutory right to complaint to the SLCC.

We are increasingly seeing other sectors requiring businesses that have websites to also display complaints mechanisms on these. To future-proof these rules, the Society may want to consider this move.

**We therefore recommend:**

- **that the amendment is accepted as proposed.**

### ***Our Views on Best Practice in First-Tier Complaint Handling (Rule B5.5.1)***

We welcome the Society's response to our suggestion to provide a clearer structure to the first-tier complaints recording practice and require regulatory access, proposed in the First Tier Complaint Handling report but also across our [#ReimagineRegulation](https://www.scottishlegalcomplaints.org.uk/reimagine-regulation)<sup>5</sup> work and our outreach work. Making information on how complaints are dealt with at first-tier level available is an important step in understanding common sources of complaints and how they arise, where we can find particular problem areas, and how the profession can be best supported in addressing root causes of complaints.

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<sup>5</sup> <https://www.scottishlegalcomplaints.org.uk/reimagine-regulation>

We therefore support the overall intention of Rule B5.5.1.1 (i). which would require Client Relations Managers or Managers to:

*(i) maintain(s) a central record of each complaint and the way it is dealt with, which record shall include, as a minimum for each complaint, the data fields described at 1 to 13 in rule 5.5.1.2*

We also welcome the minimum data fields listed in rule 5.5.1.2, which include:

- 1. File reference*
- 2. Complainer name and contact details;*
- 3. Date the complaint was made;*
- 4. Method by which the complaint was made;*
- 5. Description of the substance of the complaint;*
- 6. Identity of the person responsible for dealing with the complaint;*
- 7. Identity of the person against whom the complaint was directed;*
- 8. Type of business in respect of which the complaint was made;*
- 9. Action taken by the practice unit in relation to the complaint;*
- 10. Date the complaint was closed;*
- 11. Whether or not the complaint was resolved;*
- 12. Whether or not the complainer was directed to the SLCC;*
- 13. Whether or not any feedback was obtained from the complainer (and, if so, the nature of that feedback).*

These fields emanate from recommendations in our 2017 report, referenced by the Society, and are linking back to our experience of best practice in complaints handling. Yet, we feel that the amendment could go even further: In our best practice and outreach work, we rarely encounter any issues regarding the content of the log – it is their use as *learning tools* rather than checklists that we need to promote. The rules and guidance have always been quite clear on what information should be captured but they stop short on what to do with them. We acknowledge that the list is already long but in order for the log to really have meaning, it should document the learning outcomes from a complaint. This includes, for instance:

- how the complaint was resolved;
- what learning or training took place to prevent a similar situation from arising again,
- and what feedback was obtained.

**We therefore recommend:**

- **the inclusion of a learning/outcomes column (which includes all the feedback and the additional points noted above) instead of a feedback column.**

However, we **strongly question** the rationale of the LSS's decision to amend rule B5.5.1.1 (ii), which would require that CRMs/Managers

*(ii) shall deliver to the Society on request, provided that not less than one year has elapsed since any previous request, a copy of the said central record within a period not exceeding 21 days from the date on which the request is made, which copy shall include, as a minimum, the data fields described at 1, 3 to 6 and 8 to 13 in rule 5.5.1.2.*

No reasoning is provided for substituting a reporting duty to the SLCC, which was recommended in our report and would be in line with the statutory position, for a reporting duty to the LSS only. The SLCC has a statutory role to support best practice in complaints handling, based on s. 40 of the Legal Profession and Legal Aid (Scotland) Act 2007 (henceforth referred to as the "2007 Act"). Following s. 35 (1) and (2), as well as s. 36 (1) and (2), we also have statutory duties around reporting trend information on complaints (both service and conduct). We have been persistently and consistently arguing – as the Society acknowledge by quoting our report – that access to first-tier complaints is crucial to inform our best practice role for the sector and help practitioners to prevent complaints from arising in the first place. In the absence of better root-cause analysis, there is a risk that complaints and costs continue to rise and only reactive interventions are possible. It has always been unclear how we ought to fully deliver this statutory role without having access to the biggest source of insight in this regard – first-tier complaints – but the situation would become even more bizarre

if the Society were to duplicate issues by providing access to first-tier complaints for itself but not the SLCC.

It is of concern that this rule change also seems contrary to the statutory intention that service complaints were dealt with entirely independently from the professional body. If the Society have this power, and not the SLCC, they may become aware of service complaints before they are intimated to the SLCC and may take actions based on issues they see in complaints logs.

Under s. 33 of the Act, if the Society become aware of an expression of dissatisfaction they must pass the material to the SLCC. This means that when the Society access a complaints record and there are unresolved issues on the complaint log, they will be under a duty to pass these to the SLCC. As with the recent concerns about the Society's whistleblowing scheme, the implications of creating access to first-tier complaints for the Society but not the SLCC seem not to have been thought through and the consultation does not acknowledge how the Society would follow its s. 33 duty.

Moreover, it is not apparent why the Society decided to propose an amendment to rule B5.5.1.1 (ii) that would exclude the SLCC in the first place, contrary to our recommendation in our 2017 report. The SLCC has a statutory power under s. 37 of the 2007 Act to obtain information from relevant professional organisations and could therefore require the Society to share first-tier information to support the delivery of our role to report on best practice under s.40. This would also seem to contravene s. 38 of the 2007 Act, which suggests that "relevant professional organisations must liaise with the Commission with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the Commission" (s.38 (2)). Again, this would suggest that where they investigate an issue by accessing the complaints log, the data must be shared with the SLCC.

Finally, the consultation itself does not specify the Society's intended use of the data, in particular as the best practice role for complaints remains one of the SLCC's rather than the Society's statutory roles.

We note that the Lord President has final sign off of the rules and would intend to raise these concerns at that stage should they not be addressed at an earlier stage.

**We therefore recommend:**

- **the inclusion of the SLCC as primary recipient of the central first-tier complaints record, as originally recommended in our report;**
- **greater clarity on the rationale for including the Law Society of Scotland as a recipient, let alone sole recipient, of these data (e.g. intended analysis and use), in particular in relation to service issues.**
- **Greater clarity on how the Society will meet its s. 33 and s. 38 duties when it has access to complaints log data.**

### ***Our Views on Third Party Complaints (Amendments to Rule B5.5.2 and B5.5.3)***

We welcome the Society's proposal to amend rules B5.5.2 and B5.5.3 to include third party complaints. Our experience would suggest that third party complaints may need to be treated differently to client complaints, for instance in terms of client confidentiality and the extent of a detailed response. Yet, we agree that this should not be a reason to ignore third party complaints at the first-tier stage.

**We therefore recommend:**

- **that the amendments are accepted as proposed;**
- **the Society consider a requirement for firms to maintain a separate section for third party complaints in their complaints procedure.**

### ***Conclusions***

We hope these observations facilitate useful further discussion and are grateful for the opportunity to contribute to the consultation. As always, we would welcome further dialogue on the matters put to us for consultation and can be contacted at [consult@scottishlegalcomplaints.org.uk](mailto:consult@scottishlegalcomplaints.org.uk).