

Best practice in complaint handling – a guide for Advocates

Complaints are a feature of professional life, and arise just as commonly for the legal profession as for other professions.

Members of the Faculty of Advocates do not generate a large number of complaints. However when a complaint is made against an advocate, it is important that the advocate handles it appropriately.

If you have given consideration in advance to how you should deal with any complaint which might be made, this is likely to make it easier to resolve a complaint at the earliest possible opportunity.

Good complaints handling reflects well on the professional concerned and contributes to better client relations.

If approached correctly, complaints can provide an insight into the needs and expectations of clients and, where a complaint is justified, can be used to improve aspects of your practice at the bar.

Principles of good complaint handling

In this guide we suggest that a good complaints system should include six basic principles. It should be:

- Accessible
- Timely
- User-oriented
- Resolution-focussed
- Objective
- Geared towards continuous improvement

We also believe that, in practical terms, there are three basic steps to effective complaint handling. These are:

- Engage
- Explain
- Respond

In the first section of this guide, we look at each of the six principles in more detail. We then go on to provide practical day-to-day guidance based on the three complaint handling steps, together with a specimen complaints policy which you may find useful.

1. The principles

A complaints process should be accessible

The process should be open and simple, easy to access, and described in clear and understandable terms. Ideally it should be explained to clients in a complaints policy. The policy should include a clear description of what constitutes a complaint, how a complaint will be handled, and should manage expectations, for example in terms of likely timescales. It should also include reference to the SLCC's role in dealing with the complaint should the complaint not be resolved. The process should be made known to your Clerk and any other relevant staff who may be asked about it.

While it is the case that there are only a small number of complaints against advocates every year, it is important to have a process in place rather than wait until a complaint arises (see next paragraph re timescales).

Complaints should be dealt with in a timely manner

Complainers want their concerns to be addressed quickly, and dealing with a complaint promptly can prevent it escalating. It is important therefore that complaints are dealt with timeously and without avoidable delay. The SLCC allows 4 weeks for a complaint to be resolved before it accepts the complaint. To that end, it is important that the process is simple, avoiding complex and unnecessary steps which can hinder early resolution. While having standard timescales can serve as useful targets, bear in mind that the timeframe for dealing adequately with a complaint may vary due to the scope and extent of the matters complained of and whether it is necessary to obtain relevant papers from the solicitor. Where it appears that a complaint may take longer than initially expected to investigate and/or resolve, ensure that the client is kept up to date with developments.

A complaints process should be user-oriented

At the outset, the approach to the complainer should be empathetic and not defensive – a defensive response will usually prove counter-productive. Try to see the complaint from the client's perspective and engage openly, demonstrating an understanding of the issues which the complainer has raised.

Bear in mind that it may have been difficult for the complainer to raise the matter by way of a complaint, particularly where they are emotionally involved.

Summarise back to the complainer, for agreement, what the issues appear to be. At the conclusion of the investigation, explain the outcome openly providing reasons for any conclusions drawn. In all communications, use language which is non-emotive and in terms which the complainer will readily understand.

The complaint investigation should be resolution-focussed

In understanding the nature of the complaint, explore what the complainer wants to resolve matters and, if you accept that the complaint has validity, consider potential ways to put matters right and/or offer redress at the earliest opportunity. In research undertaken by the SLCC in 2012¹, respondents indicated that over a quarter of all complaints were resolved by way of an apology, removing the need for those complaints to be escalated to the SLCC. Bear in mind, therefore that an early simple apology may often resolve matters. Before issuing any apology you should, however, confirm with your professional indemnity insurers that they are content. Where resolution is agreed with the complainer, ensure that this is carried out promptly.

The complaints process should be objective

To achieve and maintain credibility it is important that the complaints process is transparent and fair. Complaints should be dealt with in a consistent approach which is, at the same time, proportionate to the complaint. The response to the complaint should be based on the facts surrounding the matter complained of rather than on assumptions. Each individual advocate is responsible for handling any complaint against him or her, but communications may be passed through Counsel's Clerk. Guidance can also be obtained from a Faculty Office Bearer or from the Dean's Secretariat.

Complaints data should be used for continuous improvement

For a complaints process to be fully effective it is important to use any complaint as a learning opportunity. Reflecting on a complaint may suggest areas for improvement in practice and service levels. Also reflect on the way in which the complaint was handled and use that as a basis for reviewing the complaints handling process itself.

¹ Report on Complaint Numbers and Complaint Handling.

2. Guidance on complaint handling

Engage

Engaging with the complainer should be the first step in complaint handling, both to understand the issue and its impact from the complainer's perspective and to identify, wherever possible from the outset, where matters might be resolved.

After concluding a case in the Court of Session, Mr X was shocked to receive a bill which was double the fee quote which his solicitor had obtained from Counsel's Clerk in advance.

He initially complained to his solicitor by telephone but, when he did not receive a response, he followed this up with a letter to Counsel's Clerk, requesting a meeting to discuss his concerns, which was similarly ignored.

Some useful dos and don'ts:

- Be alert to any expression of dissatisfaction which should be regarded as a complaint, or at least a potential complaint, and treat it as such. Remember that this could be received by your Clerk or a member of FSL staff dealing with an outstanding fee.
- Engage with the client to understand the issue at hand. Do this through your Clerk if you wish to maintain some distance.
- Be empathetic with the complainer, be aware of the impact which the issue may have had on the complainer, including the emotional impact of bringing the matter to your attention.
- Don't avoid the problem or hope that it will go away; always respond to a complaint.
- Don't delay dealing with the complaint – the last thing you want is an additional complaint about concerns not being dealt with in good time.
- Finally, don't ignore complaints from third parties – the SLCC can accept complaints from parties other than a practitioner's own clients and you need to treat these as seriously as a complaint from your own client, although it is important to bear in mind any confidentiality issues.

Explain

The way in which you communicate with the complainer is the second key step in the complaint handling process. This applies equally to information you provide about how a complaint will be dealt with and also to how you communicate your findings as you investigate the complaint.

Mrs D had concerns over delays in the finalisation of the settlement of her personal injury claim.

Although in two letters to Counsel's Clerk Mrs D had expressly asked the Clerk to provide a copy of Counsel's complaints handling procedure they did not do so. When she subsequently raised further concerns over this the Clerk said he had no record of Mrs D's previous request – yet still failed to provide the information.

- Make sure that you communicate your complaints process in a clear and understandable way and at the earliest opportunity.
- Throughout your investigation of the complaint, look for opportunities and different options to resolve the complaint.
- Ensure that accurate records of the administration and investigation of the complaint are kept, including notes of meetings and telephone conversations about the complaint.
- When updating the complainer, use clear language and a neutral tone.

Respond

Once you have investigated the complaint it is important that you communicate your conclusions effectively and timeously with the complainer. This is equally important whether your conclusion is that the complaint is justified or not.

Ms L complained to her Advocate about the way in which he had handled her divorce proceedings. She asked for a number of specific explanations about the way the case had been conducted on her behalf.

When she raised her concerns with Counsel's Clerk, she was told that they would provide a detailed response within 10 working days.

The response which was eventually received – some seven weeks later – did not address the issues which Ms L had raised which remained unanswered when she made her complaint to the SLCC.

- Provide your response to the complainer in good time and within any timescales which have been given to the complainer.
- Give reasons and explanations, again adopting a neutral and non-defensive tone.
- Respond as fully as you can, given any restrictions in terms of confidentiality (particularly if it is a third party complaint).
- Acknowledge if something went wrong (though make sure that your professional indemnity insurer is content with the terms of any acknowledgment)
- Signpost that, if the complainer remains dissatisfied with the outcome, the matter can be taken to the SLCC.
- Cooperate with the SLCC if it decides to investigate the complaint.
- Consider taking advantage of the SLCC's free mediation service.

3. Specimen complaints handling policy

In the fulfillment of the professional obligations of Counsel, the commitment to the provision of high quality legal services is paramount.

Where a complaint is made, Counsel's clerk may assist in dealing with the matter and may enter into correspondence on Counsel's behalf. Where Counsel's clerk adopts such a role, the primary responsibility in dealing with the complaint and in implementing this policy rests with Counsel.

The complaint will be dealt with as follows:

1. A letter of acknowledgement of the complaint, enclosing a copy of this policy, will be sent within three days of its receipt.
2. Counsel will consider the complaint fully. That may involve obtaining documentation which pertains to the subject matter of the case from the instructing solicitor who retains the case papers.
3. Counsel will provide a full written response to the complaint. Where that is not possible, Counsel will provide a full explanation. Counsel will provide the written response within 21 days of receipt of the complaint. In the event that further time is required in order to provide a full response, Counsel will provide an explanation as to why that is the case.
4. In the event that the response does not resolve the matter, Counsel will review the response if requested to do so.
5. Counsel will confirm the final response to the complaint with reasons, as appropriate, within 14 days of receipt of a request for a review.
6. If the matter remains unresolved, it should be referred by the complainer to:

Scottish Legal Complaints Commission, The Stamp Office, 10 - 14 Waterloo Place, EDINBURGH, EH1 3EG

Email: enquiries@scottishlegalcomplaints.org.uk

Phone: 0131 201 2130

7. Counsel will acknowledge correspondence received from the Scottish Legal Complaints Commission within three working days of its receipt and will reply to it within fourteen days of receipt.

Remember also that you can contact the SLCC at any stage for help and advice. Our contact details are below:

Scottish Legal Complaints Commission
The Stamp Office
10 - 14 Waterloo Place
EDINBURGH
EH1 3EG

Tel 0131 201 2130

Fax 0131 201 2131

Email enquiries@scottishlegalcomplaints.org.uk

If you want to find out more about us and what we do, please visit <http://www.scottishlegalcomplaints.com/>

We are open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training between 10am and 11am.

If you need information in another language or in large print or on audio CD, please get in touch.

Publication Date: 09/01/2015

Updated: 09/06/2020