



Newly Qualified Solicitors: Improving Complaints Handling

to provide information for newly qualified solicitors once restrictions are lifted from their practising certificates.

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Introduction

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

Even if you have not been personally involved in a complaint, you should be adequately equipped to deal with one. Having an awareness of how a complaint should be dealt with, and what your responsibilities are when faced with even the threat of a complaint, is likely to make it easier to resolve a complaint at the earliest possible opportunity.

Not only does good complaint handling reflect well on the professional concerned, and contribute to better client relations, it also makes good business sense.

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 drive up standards of service delivery.

1. Background & Objectives

- 1.1. The SLCC undertook some research to establish what information was available to individuals once restrictions had been lifted from their practising certificates, how much they knew about the complaints system, and what further information and training they would like to see in this area. A questionnaire was also circulated amongst newly qualified solicitors in Scotland by the Scottish Young Lawyers Association (SYLA) about their experience in complaints handling and prevention.
- 1.2. Once your traineeship has been discharged, you are issued with a full, unrestricted practising certificate. No information regarding liability for complaints is issued alongside your practising certificate. There is also no compulsory requirement for newly qualified solicitors to undertake any CPD course on specific complaint handling/prevention.
- 1.3. From the survey that was carried out, 40% of young lawyers stated that it had been more than two years since they had undergone complaints handling training. It is likely therefore, that this training was provided during their Diploma year, prior to the commencement of their traineeships, and prior to any real exposure to the realities of practice.
- 1.4. So are newly qualified solicitors fully aware of their responsibilities in relation to complaints? The answer largely depends on the amount of in-house training given by firms and how long the time period has passed between completing the Diploma and finishing a traineeship.
- 1.5. In terms of further information and training about complaints, 74% of those who were surveyed stated that they would like to see a best practice note on complaints handling and prevention. With

that in mind, the SLCC has created a dedicated note not only for newly qualified solicitors on complaint handling and prevention, but also a separate guide for Client Relation Managers whose role it is to deliver training about complaints handling and avoidance. It is hoped that this will provide individuals with a better insight into what people typically complain about. This will not only help avoid the common pitfalls which tend to lead to complaints, but should also make you better equipped to deal with a complaint, should one be made.

2. Who is liable for complaints?

- 2.1. Once you are issued with a full practising certificate you are subject to the complaints regime in the same way as a solicitor who has been qualified for a longer period of time. Complaints can be made against individual solicitors within the firm and/or the firm as an entity.
- 2.2. In the early years post qualification, solicitors are likely to be more closely supervised within their firm, but they are not exempt or protected from a complaint being made against them.
- 2.3. This is quite distinct from the protection awarded to a trainee, where any formal complaint about them could be against the supervising partner and/or the firm. It is possible, in some circumstances, for trainees who have completed their first year of training to be admitted to the Roll of Scottish Solicitors with a restricted practising certificate ¹. For these trainees, once admitted, they are liable for service and conduct complaints in the same way as fully qualified solicitors.

¹ Part 6 ADMISSION AS SOLICITOR (SCOTLAND) REGULATIONS 2011
<http://www.lawscot.org.uk/media/342962/admission-regulations-2011.pdf>

2.4. The table below illustrates who is liable under the disciplinary and complaints procedures:

	Service complaints	Conduct complaints	Hybrid complaints
Trainees (years 1-2)	<p>Complaint can be about supervising solicitor and/or firm</p> <p>*Complaints about trainee solicitors are reported to the Law Society's Education, Training and Qualifications Team and the Society's Complaints Investigation Team</p>	<p>Complaint can be about supervising solicitor</p> <p>Complaints about trainee solicitors are reported to the Law Society's Education, Training and Qualifications Team and the Society's Complaints Investigation Team</p>	<p>Complaint can be about supervising solicitor (for conduct element)</p> <p>Complaint can be about supervising solicitor and/or firm (for service element)</p> <p>Complaints about trainee solicitors are reported to the Law Society's Education, Training and Qualifications Team and the Society's Complaints Investigation Team</p>
Trainee admitted on roll in year 2	<p>Complaint can be about trainee, supervising solicitor and/or firm</p>	<p>Complaint can be about trainee and/or supervising solicitor</p> <p>Complaints are reported to the Law Society's Education, Training and Qualifications Team and the Society's Complaints Investigation Team</p>	<p>Both trainee and possibly supervising solicitor (for conduct element)</p> <p>Trainee, supervising solicitor and/or firm (for service element)</p> <p>Conduct complaints about trainee solicitors are reported to the Law Society's Education, Training and Qualifications Team and the Society's Complaints Investigation Team</p>
Newly qualified solicitors (and beyond)	<p>Complaint can be about solicitor and or/firm</p>	<p>Complaint can be about solicitor</p>	<p>Solicitor (for conduct element)</p> <p>Solicitor and/or firm (for service element)</p>

*The Law Society's Education, Training and Qualifications Team will refer complaints about trainees to its Admissions Sub Committee. The Committee will decide whether the matter gives rise to concerns about the trainee's fitness and properness to be a solicitor and to take any necessary action.

Assumed knowledge

- 2.5. There is an element of assumed knowledge that a solicitor who is new to the profession will know what to do, who to go to, and who is responsible when a complaint is received. It may be the case that your understanding of what should happen when a complaint is received is very different from your colleague's or your firm's own internal complaints handling process.
- 2.6. If a solicitor receives a services complaint, they along with the Client Relations Manager, any supervising partner and the partners or directors of the firm are responsible for the complaint. For complaints about an individual solicitor's conduct, primarily it is the responsibility of the individual complained of to deal with the complaint, although they are usually assisted by the firm's Client Relations Manager.
- 2.7. In terms of personal and professional development, the importance of taking responsibility for one's actions should therefore not be overlooked.

3. Identifying a complaint

- 3.1. Section 46(1) Legal Profession & Legal Aid (Scotland) Act 2007 defines a complaint as:

“any expression of dissatisfaction”

- 3.2. The definition of a complaint is very broad. It can be a challenge to recognise when someone is raising a query or concern and when a complaint is actually being made, especially for someone new to the profession. It is important therefore, that everyone who works within the firm knows the statutory definition.

4. Dealing with complaints

- 4.1. Complaints are either received directly from the person complaining or via the SLCC.
- 4.2. Although written complaints are generally encouraged by complaints handling organisations, more often than not, concerns are raised orally with the solicitor in the first instance. Oral complaints are an acceptable form of communicating concerns, although the SLCC would usually expect to see written confirmation that a complaint has been made, and so it would be a good idea to ask for any oral complaints to be put in writing if possible.
- 4.3. Here are some tips which can help you should you be faced with a complaint:

Do not ignore a complaint

- 4.4. The most important thing to do when you receive a complaint is not to ignore it and hope that it will go away. You should try and be engaging with your client as early as possible to flush out the issues.
- 4.5. Be alive to the fact that complaints can be made by anyone, not just your clients.

Know and follow your firm's complaints process

- 4.6. Rule B 5.5.2 of the Solicitors (Scotland) Practice Rules 2011 states that all firms must have a written procedure for dealing with complaints. 46% of the young lawyers who were surveyed admitted to either not being familiar with their firm's own complaint process, or were not aware of their firm even having one.
- 4.7. It is essential that the firm's internal process of complaint handling is known by all staff so that anyone who receives a complaint knows the correct steps to follow. **If you are not familiar with your firm's complaint handling process, ask the Client Relations Manager in your firm to see it.**

- 4.8. It goes without saying that complaints should be dealt with in accordance with the firm's process. Make sure that the person who is complaining is also aware of the complaints process and has easy access to it. Under Rule B 5.5.3 of the Solicitors (Scotland) Practice Rules 2011, any client or former client of the firm who requests a copy of the written complaints process must be provided with it, within 28 days of the request being made.

Be open and honest

- 4.9. If you are uncertain about how to proceed with a complaint, don't be afraid to say or seek the help of others – don't feel that you have to struggle with it on your own. For many newly qualified solicitors there may be an understandable reluctance to admit that you have done something wrong which has resulted in a complaint. Don't worry - we all make mistakes!
- 4.10. It is important to remember that no matter how good a service you provide, or aim to provide, there will always be instances where you will not be able to avoid a complaint being made. That includes the possibility of a complaint from a third party which, like any other complaint, should not be ignored.

Speak to the Client Relations Manager

- 4.11. You should speak to the Client Relations Manager about any complaint, even a potential one. They will be able to advise on how to proceed and may decide to contact the complainer directly themselves to try and resolve matters early on.

Keep records and learn from mistakes

- 4.12. Not only is a firm under a professional obligation to keep their files in good order, good file keeping can also prove an important defence against complaints. In particular, make sure that you record instructions received from, and advice given to, clients.
- 4.13. Rule B 5.5.1 of the Solicitors (Scotland) Practice Rules 2011 also requires firms to ensure that a central record of each complaint and the way it is dealt with is kept. Given that the definition of a complaint is very broad, this is a good way of logging any expressions of dissatisfaction which may come your way.
- 4.14. Experience shows that keeping records of complaints received can help identify common themes to complaints being made and areas of service delivery which can be improved upon.

5. Best practice in complaints handling

- 5.1. In the SLCC's five year review ² we stated that, more often than not, complaints did not arise from technical legal matters but from situations where there had been shortcomings in the adequacy of the advice, or more commonly, from failures in how effectively advice had been communicated to the complainers.
- 5.2. It is a hard balance to strike - that of mastering the technical matters whilst effectively managing the expectations of the client. This is especially true for those new to the profession. Both skills however are vitally important for the delivery of good service and complaint prevention.

² https://www.scottishlegalcomplaints.org.uk/media/47440/five_years_on_-_facts_and_figures.pdf

- 5.3. The most common types of complaint received by the SLCC are about ineffective communication, and failures to advise adequately, follow instructions and provide information. Having an insight into what people typically complain about is a helpful tool in complaint prevention.
- 5.4 The SLCC’s guidance on “Best practice in complaint handling – a guide for solicitors” (available from our website) clearly sets out what we consider to be the principles of a good complaint handling process. The document also outlines what the SLCC considers to be best practice for solicitors to adopt when dealing with a complaint.

 [Best practice in complaint handling- solicitors](#) (PDF, 572 KB)

6. Who can help?

- 6.1. As stated earlier, if you find yourself subject to a complaint, or even the threat of one, you should speak to your Manager/ Client Relations Manager in the first instance. They may be able to offer advice or may choose to respond directly to the complainer. Early intervention can often be the most effective tool in complaint handling.
- 6.2. In addition to speaking to the Client Relations Manager, you can also seek advice from the Oversight Team at the SLCC on how to deal with complaints. You may also wish to speak to someone in the Law Society of Scotland’s Professional Practice Department, if you would like advice on a particular transaction or area of law/business that you are currently dealing with (rather than about how to deal with a complaint).

- 6.3. Even if a complaint is lodged against you and/or your firm with the SLCC, all is not lost. One of the core aims of the SLCC is to achieve early resolution of complaints. In addition to offering a free mediation service, there is scope for resolution of the service complaint throughout the investigation process, prior to a formal determination being made.
- 6.4. There is a lot more information on our website including a short video on our mediation process, case study examples, best practice notes and published decisions.
- 6.5. And remember, you can always contact LawCare, who offer a completely confidential service run by a network of volunteers, themselves solicitors, to help you to cope with the increasing number of problems facing legal professional today, at:

<http://www.lawcare.org.uk/contact-us/>

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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.

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