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FAMILY LAW

AVOIDING COMPLAINTS: A GUIDE FOR
LEGAL PRACTITIONERS

scottish legal
complaints commission **slcc**

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introduction

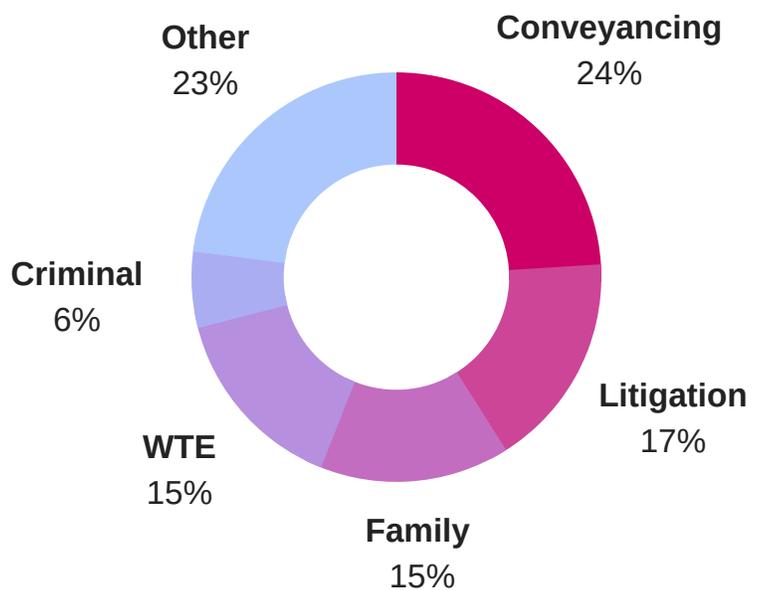
complaints about family law

When we published our first family law consumer guide in 2015, family law was the second biggest business area which produced most complaints.

Three years on, although complaints about family law have dropped to third place alongside complaints about wills, trusts and executries, it still features in the top four business areas.

Even if you strip back the emotions and in a lot of cases the lengthy history between the parties, you are still left with an area of law which is in a constant state of transition. With more complicated family and relationship set ups, each one bringing its own legal complexities, it is not surprising that family law attracts a higher number of complaints.

With anonymised case examples and best practice guidance throughout, we hope you will find this guide useful in helping to avoid complaints in the field of family law.



*stats have been rounded up to nearest figure

what do people complain about?

34%

ineffective communication

21%

lack of/inadequate advice

18%

failure to carry out/obtain instructions

16%

lack of information

10%

delay

*figures based on top 5
complaint types in family
cases

terms of business

make the right impression

Given that your terms of business letter sets the tone for the rest of the business relationship, spend time on it and make the right impression.

It's an opportunity not only to manage expectations but to clearly set out the responsibilities of both you and the client. Keeping your terms of business letter clear, easily understandable, and issuing it at the earliest opportunity will minimise the risk of complaints.

best practice

Rule B4 of the Law Society of Scotland Practice Rules 2011 requires a terms of business letter to be issued. The Rule is also supplemented with guidance. In terms of best practice, a good terms of business letter will be:

- Accessible, easy to read and concise;
- Clear in terms of method and frequency of communication and charging practices;
- Informative in terms of the work that will be carried out and how long it may take;
- Tailored to fit the individual client where possible; and
- Reviewed regularly and updated.

terms of business



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signposting

Terms of business letters are taken into consideration during the course of a complaints investigation which is why we will usually ask for a copy. We also ask for a copy to establish if the complaint has been made within the relevant time limits.

We don't expect every firm to have the same terms of business letter. BUT we do expect every firm to signpost their own written complaints process, including signposting to us where complaints are not resolved at first tier.

Despite changing our telephone number in May 2013 we still see our old telephone number appearing in recent terms of business letters. Likewise, we still from time to time see firms signposting complaints to the Law Society of Scotland or the now abolished Scottish Legal Services Ombudsman.

communication

what is effective communication?

By far the most common complaint we see is about ineffective communication. When we talk of effective communication, what we really mean is using language which everyone understands and delivering information at a time and in a format which is acceptable to both parties.

best practice

- Agree suitable methods of communication and stick to the arrangement;
- Let your client know that you are not always able to immediately respond. If you are regularly out of the office/attending court, provide contact details of the person they should contact when you are not available;
- Empathise with your client and their situation. Some people need more support than others. You should know your client well enough to provide the reassurance that they need;
- Ask questions, listen, discuss options, explain legal processes and qualify any advice given where it is necessary to do so; and
- Keep notes of all instructions received and advice given.

communication

case example

The complaint:

The solicitor failed to return the complainer's 8 calls made over 4 days about contact arrangements for the coming weekend.

The outcome:

The SLCC determined that although the failure to return the complainer's calls was over a period of less than a week, there was a degree of urgency in finalising contact arrangements for that weekend.

The complaint was upheld and the firm was ordered to pay £500 compensation.

perceived intimidation

In 2017, the Legal Ombudsman for England and Wales commissioned a study on the language of complaints. The research centred around how the language used by professionals over complaints can affect consumer decisions. Those who were interviewed raised the point that if the language used was full of jargon or just complex, it left them feeling alienated and in some cases intimidated.

Clear communication not only helps people understand matters at a time when they can be at their most vulnerable, it can also help build mutual trust between a solicitor and their client.

client updates

regular check-ins

Lack of updates/information is a common issue of complaint. For some clients, they feel that they haven't received enough updates, and for others, they don't believe they have been given clear enough information to allow them to make informed decisions about their case.

More often than not family law cases involve trying to negotiate fair outcomes for clients and avoiding the need for court. For many clients going through the process, they may not realise the amount of "behind the scenes" work that is involved. Check in regularly with your client, keep them informed and check they understand what is happening, or the reasons why matters aren't advancing.

best practice

- Clients should be advised of the key stages of the case and when they can expect to be updated;
- If you personally are not able to attend court or a children's hearing, ensure that your client is given as much notice as possible of this and knows who is attending in your place;
- Update your clients if things are taking a little or a lot longer than expected, and explain why; and
- If clients' expectations are becoming unreasonable (usually evidenced by excessive telephone calls or emails), explain to them again, in writing preferably, when they should expect to be updated and any consequences of over-communicating with the firm.

client updates

case example

The complaint:

The solicitor failed to provide updates between July 2014 and February 2015.

The outcome:

While the evidence did not support the position that there was absolutely no contact, the file showed that the solicitor failed to contact/update the client between October 2014 and February 2015.

The complaint was upheld in part, and compensation of £1,000 was directed to be paid by the firm to the complainer. This sum was part of an overall award of compensation for three issues which were upheld.

the price of updates

Given the unpredictable nature of family law, a firm is less likely to be instructed on a fixed fee basis.

Does your client know that a quick call/email to the office may be chargeable? Explain that charges can be made for responding to requests for updates, even if you have nothing new to report. For those in receipt of legal aid, it may also be worth explaining that fee arrangements will usually not cover for work that does not advance the cause of the action. This should be clearly explained to the client so that expectations can be managed.

manage expectations

know your client's expectations

The first step to meeting expectations is to know what your client expects and needs.

The overriding common theme with family law clients' characteristics is that a person is under a lot of stress and anxiety. It is important therefore, to engage with your client to understand what their expectations are. Be wary of bold assurances. Be open and honest with your advice and if you don't know it, don't bluff it!

best practice

- Be open and firm in the advice that you provide and the options open to the client;
- Explain when circumstances have changed and how this alters the position or advice given previously;
- Be honest. Don't put off bad news;
- Do not be tempted to give any absolute guarantees. You are expressing your professional opinion on the best and worst case scenarios; and
- Define the boundaries. Be clear on what you will do and what you won't do. If you are unable to carry out instructions, explain why.

manage expectations

case example

The complaint:

The solicitor failed to follow instructions to lodge an appeal against the Sheriff's decision.

The outcome:

The SLCC was satisfied that although the complainer had clearly set out their instructions, the solicitor sent the complainer a very clear email explaining why they would not carry out their instructions. In the email, the solicitor explained that in their professional opinion, there was no grounds for an appeal.

The SLCC determined that there was no evidence of inadequate professional service as a solicitor is not obliged to act upon the instructions of a client if they do not consider those instructions to be appropriate or necessary.

The complaint was rejected as being totally without merit.

changing expectations

Managing expectations starts at the beginning, but it doesn't end there. Expectations may have to be adjusted in light of changing circumstances throughout the relationship.

Difficulties arise when there is a misunderstanding, or a lack of communication, about how a case is progressing, or when circumstances change. Be proactive - regularly check in with your clients and communicate any potential issues.

timescales

preconceived expectations

The unfortunate truth is that delays are commonplace in family law cases. A lot of these delays can be outwith your control - but does your client know this? By ensuring that clients understand the potential for delays, future frustration and potential dissatisfaction can be avoided.

You may not be able to give accurate timescales when you start out, but your client will expect to be given some sort of timeframe. If you don't, your client is likely to have their own preconceived timescales which may be unrealistic.

best practice

- Ensure that you provide information on timescales in your terms of business letters;
- Where delay is likely, ensure that you communicate this to the client and refresh any previous timescales given;
- Clearly set out the stages of the process and where delays are likely to occur, e.g. waiting on replies from the other side, court timetables, expert witness reports etc; and
- It is vital that SLAB applications are completed and evidence on behalf of applicants is submitted to SLAB in good time.

timescales

case example

The complaint:

The solicitor failed to respond to requests for information about when the court hearings were due to take place, and why they were continued.

The outcome:

The SLCC was satisfied that although the continuations were standard court practice, there was a failure to respond to the complainer's requests for information and explain why the case was continued.

The SLCC determined that the solicitor's inactions amounted to inadequate professional service, and ordered the firm to pay £200 compensation to the complainer.

client responsibility

Many clients may not know that they also have responsibilities to ensure that their case goes well. It is a good idea therefore to set out exactly what is expected of them. You may wish to highlight to them, the importance of:

- Giving instructions and providing information in good time;
- Answering questions as openly and honestly as possible;
- Advising of any change of contact details or change in circumstance;
- Asking questions if clients don't understand; and
- Making full and frank disclosure in applications for Legal Aid and Legal Advice and Assistance.

funding

price transparency

In our experience, firms almost always provide an estimate of fees and information on how they will be calculated. Complaints tend to arise, however, when the fee increases above the estimate and/or have not been explained or have been misunderstood. Feeing regularly, and on an interim basis is a good way to reduce risks of fee related complaints.

According to the Competitions and Market Authority, "Price information should ultimately provide consumers with (i) an understanding of the total price of their legal service; and (ii) what services are included in that price."

best practice

- Use Rule B4 of the Law Society of Scotland Practice Rules 2011, and associated guidance, as your starting point when providing information on fees;
- Ensure that fee notes are clear and contain sufficient information, including VAT charged and any outlays;
- Be clear on liability for outlays, and include information about awards of expenses in litigation (if necessary);
- Be clear on what services are not included in any fee estimates/notes;
- Discuss what will happen in the event of a dispute about the amount of the fee and how this might be resolved;
- Make sure that clients know to keep their finances under review and to advise of any significant financial changes; and
- Revise and reissue your terms of business letter when funding or feeing arrangements change.

funding

case example

The complaint:

The solicitor incorrectly advised the complainer at the initial meeting what the likely costs would be for his divorce case, then later charged four times the estimate.

The outcome:

The SLCC was satisfied that the estimate was based on the information supplied by the complainer at that time. Evidence showed that the matter became increasingly complex and that the firm advised the complainer that costs were going to exceed the estimate. The firm provided a new estimate of costs and advice to allow the complainer to make an informed decision on how to proceed.

The SLCC determined that the complaint should not be upheld.

Legal Aid

Legal Aid and Legal Advice and Assistance remains one of the most important resources for the most vulnerable in our society. For some it can be their only means to access justice. It is, however, a complex process. Quite often clients won't be aware of/understand all the rules surrounding it.

Equally, there may be some parts which you are unsure of. Don't try and second guess the Legal Aid position - contact SLAB directly if you have any areas of uncertainty.

To help avoid complaints arising, explain to clients;

- What evidence is needed to obtain Legal Aid, and why;
- That they may have to pay some money towards costs, either during the case, or later;
- That there are cost limits in place for each grant of Legal Aid, if the client wants more work to be done which is unreasonable or unnecessary, then additional funding may not be approved by SLAB; and
- That prior authority may be needed to carry out instructions, and that this can take time e.g. obtaining reports or instructing agents/experts etc.

third parties

opposing views

You have a duty to act in the best interests of your clients and in doing so you may send correspondence and do things to which third parties object. While you are entitled to act upon the information and instructions given to you by your clients, this can in some cases lead to a complaint from a third party.

While it is not possible to avoid complaints from third parties entirely, there are steps you can take to reduce the chances of receiving one.

best practice

- Respond to correspondence from the other party's solicitor or unrepresented third parties to the action;
- Ensure that you observe and adhere to all deadlines and timescales to avoid delays which impact on third parties;
- When writing to a third party, clearly state that you are conveying your client's position and understanding rather than your own;
- Have a separate written complaints process for third parties;
- Keep a separate file for third party complaints; and
- Explain that a full response may not be possible due to client confidentiality.

third parties

case example

The complaint:

The solicitors acting for the complainer's former partner had failed to obtemper an interlocutor advising the complainer of a peremptory diet hearing date, instead sending it to an address the complainer had not resided at for 4 years.

The outcome:

Evidence showed the firm served papers on the complainer at an incorrect address and submitted a Certificate of Service to the Court with an address which did not match the Court Record for that action. The Committee determined that the firm's actions amounted to an inadequate professional service to their own client which, in turn, had directly affected the complainer.

The complaint was upheld and the firm was ordered to pay £750 compensation to the complainer.

responding to third party complaints

If you find yourself faced with a third party complaint, don't ignore it. A formal response, preferably in writing, should be provided in accordance with your firm's published timescales.

Where a third party complaint has not been dealt with appropriately, this could result in further complaints.

internal complaint handling

why bother?

A good complaints handling system not only contributes to better client retention, but allows complaints to be looked at positively rather than defensively.

If approached correctly, complaints can provide a better insight into the needs and expectations of clients (and third parties) and can be used to improve the service you provide.

best practice

Every firm must have a clear written complaints process and an up-to-date complaints log. Make the most of these tools. Ensure they are known by all staff and that any lessons learned from complaints are disseminated. Also remember to:

- Explain who clients should contact in the event of a complaint in your terms of business;
- Be open to discussing concerns as soon as possible after they arise;
- Signpost the complainer to the SLCC, as the 'Gateway' for all legal complaints if matters cannot be resolved;
- Have accessible information on your complaints process that is freely available to staff and complainers; and
- Have procedures in place to deal with all kinds of complaints and complainers, bearing in mind that complaints can come from anyone, not just your own client.

internal complaint handling

example of how the SLCC applies s40 guidance

The Determination Committee met to decide on a service complaint. The Committee agreed with the findings and recommendations made within the report to uphold 2 of 3 issues relating to the transaction. The Committee also agreed with the level of compensation recommended within the report.

The Committee then went on to decide the complaints levy. They noted that the firm had failed to respond to the complainer's initial complaint. The firm also failed to respond to the intimation of the complaint by the SLCC, and to the recommendations in the investigation report.

The Committee was of the view that the firm's failure to engage with, and respond to, the complaint at both first tier and with the SLCC warranted a high levy. The Committee decided that a levy of £1,700 was appropriate in this complaint.

section 40 guidance on first tier complaint handling

Under Section 40 of the Legal Profession and Legal Aid (Scotland) Act 2007, the SLCC may issue guidance in the form of "Best Practice Notes". The notes make specific recommendations about standards expected in relation to systems operated by practitioners for dealing with complaints.

All practitioners, not just Client Relations Managers, should ensure that they are aware of the guidance, advice and information issued by both the SLCC and the Law Society of Scotland when dealing with all expressions of dissatisfaction.

The SLCC has published [First tier complaint handling - a guide to effective and efficient complaint handling for Scottish solicitors](#).

While this guidance is not mandatory, non-compliance will be taken into account where a complaint has been made. Any alleged failure to follow the guidance may result in an additional service or conduct complaint being admitted for investigation.

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