



Faculty of Advocates:

*Benchmark report on the operation of the Faculty of Advocate's
conduct complaints investigation & disciplinary processes*

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1 Introduction

- 1.1 Under Section 36(5) of the Legal Profession and Legal Aid (Scotland) Act 2007 ('the 2007 Act'), the Scottish Legal Complaints Commission ('the SLCC') has the power to audit the relevant professional organisations' ('the RPOs') records regarding conduct complaints remitted to them for investigation and determination. The Faculty of Advocates ('the FA') is one of the RPOs named in the Act.
- 1.2 The SLCC has statutory oversight and trend monitoring functions to perform, which permit the SLCC to provide guidance and make recommendations to the RPOs about their systems for dealing with conduct complaints. The SLCC also has the responsibility of investigating 'Handling Complaints', which can be made either by the person who originally complained to the SLCC about the conduct of an advocate, or by the advocate him/herself. Handling Complaints relate to how the FA has dealt with a conduct complaint, i.e. whether the process of investigating and determining the complaint was satisfactory. Handling Complaints can result in the SLCC recommending that a conduct complaint is reinvestigated and/or reconsidered by the RPO, if the SLCC considers that the complaint handling functions were unreasonably applied.
- 1.3 This report has been prepared by the SLCC following a review of the conduct complaints handling procedures currently operated by the FA under the Faculty of Advocates Disciplinary Rules 2015 ('the 2015 Rules').

2 Aim and scope of review

- 2.1 The aim of the review and this report is to benchmark the FA's current complaints handling processes for reference in any future audits and handling complaints investigations.
- 2.2 In assessing the effectiveness of the operation of the FA's complaints handling processes, the SLCC's review focussed on a number of areas including:
 - Application of the 2015 Rules.
 - Adherence to the 2007 Act and the Legal Services (Scotland) Act 2010 ('the 2010 Act').
 - Conduct and service standards.
 - Case Management/file keeping.
 - Training.
 - Communication and information services.
 - Information sharing/liaison arrangements.
 - Safeguards.
- 2.3 It was not possible for the SLCC to observe a Complaints Committee or Disciplinary Tribunal hearing as part of the assessment process, due to the low number of complaints currently being dealt with by the FA. This is something, however, that the SLCC intends to discuss further with the FA during its scheduled 6-monthly liaison meetings.

- 2.4 From the SLCC’s previous experience of investigating Handling Complaints, the SLCC has been able to identify areas of potential concern and raise queries with the FA about the operation of its conduct and disciplinary processes.
- 2.5 The SLCC has also been ingathering data from the FA’s conduct decisions, which are shared with the SLCC following determination of complaints about advocates. This information has fed into discussions with the FA about its systems and processes for dealing with complaints.
- 2.6 The SLCC also monitors all of the SLCC’s gateway decisions about advocates, including those which are classified as premature, time barred, those which are deemed totally without merit, frivolous or vexatious and any accepted as service or potential conduct complaints. These decisions provide the SLCC with an insight into the subjects and business areas commonly complained of, which often feed into discussions which take place between the SLCC and the FA during our 6-monthly liaison sessions.

3 Key findings

Application of the 2015 Rules

- 3.1 The 2015 Rules set out the FA’s processes for dealing with conduct complaints from receipt through to determination by a Complaints Committee, or if required, by a Disciplinary Tribunal. The FA does not have any separate policy or process documents relating to complaints handling.
- 3.2 During the SLCC’s review, the practical application of the 2015 Rules was discussed with the FA, and some of the Rules were identified by the SLCC as being potentially unclear (see table below). The FA has agreed to amend the wording of certain Rules, and a redrafted version of the 2015 Rules has been provided. Any changes to the 2015 Rules will require approval by the Dean of the Faculty, Faculty Council and the Lord President before these can be brought into force.
- 3.3 The following table summarises the various operational issues which were discussed during the review:-

Rule/s	Existing Rule	Issue identified by SLCC	FA's response
2a	<i>"Conduct complaints remitted to the Faculty by the SLCC on or after 07 September 2015"</i>	The date of the conduct occurring should be a relevant consideration, given the change to sanction levels in the 2015 Rules? The FA needs to be clear about which set of Rules would be applied where the conduct pre-dates the 2015 Rules coming into force.	The 2015 Rules will only apply to a complaint referred to the FA from the September date. For everything else, the 2008 Rules would apply. However, if the conduct took place before 07 September 2015, the earlier set of Rules would be applied. It is anticipated that this will be made clear in the proposed redraft of the 2015 Rules.
3	<i>"Professional misconduct" means any conduct ... competent and responsible advocates..."</i>	This amendment changes the test for Professional Misconduct from "reputable" to "responsible"? The cases of 'Sharp' and 'Sandeman' refer to 'bringing the profession into	Yes. This is a drafting error in the Rule. Rule 3 amended to "Professional misconduct means any conduct that is a departure from the standards of

		disrepute'. Is this a drafting error?	<i>competent and reputable advocates and that would be regarded by such advocates as serious and reprehensible".</i>
8	<i>"A complaint may be withdrawn by the Complainer, in writing, at any time before it is determined. Where a complaint is withdrawn by the Complainer, and unless the Dean directs otherwise, no further steps shall be taken in respect of the complaint"</i>	The process for dealing with withdrawn complaints needs to be clear. What is the situation where a complainer does not engage in the investigation, i.e. can a complaint be abandoned or discontinued for lack of engagement? A robust process should be put in place for the appropriate person within the FA to decide whether a complaint should be pursued of its own motion & to proceed to make a new complaint through the SLCC's usual eligibility process.	The Complaints Committee has discretion not to allow a complaint to be withdrawn and will operate a public interest test. The FA will submit its own complaint to the SLCC where it is taking on the complaint in its own name.
9	<i>"A Complainer is presumed to have waived any right to confidentiality or privilege in respect of the Member, and the Member is entitled to rely upon and to disclose all or any information or documents that he or she considers to be necessary to answer the complaint"</i>	The FA needs to be aware of third party complaints and how documentation received should be handled differently where the client is not the person complaining. There are further restricting provisions in Section 52 of the 2007 Act regarding duty of confidentiality? The FA needs to also be cognisant of the statutory constraints.	Cross copying is done routinely and openly unless there is an issue of confidentiality. A standard paragraph will be drafted into initial correspondence with the parties to the complaint stating: <i>"Please note that the Faculty operates an open and transparent process when administering a complaint in that copies of all information submitted will be provided to both parties unless there is an issue of confidentiality in relation to a particular document(s) which is raised by one of the parties, which may require that information is not cross-copied"</i> .
10-15	Interim suspension of advocates pending determination / final disposal of a complaint	What are the parameters/rules around interim suspensions? What is the process for making submissions (oral/written)? Are the appeal/review provisions clear?	Submissions will be invited by the Dean, in writing or orally, and according to the Rules. There is a petition to the Court to approve the Dean's decision to suspend on an interim basis. The advocate has an opportunity to object before the Court, which is why there is only an appeal of a review (and not an appeal to the Dean of the original decision).
17(b)-(d)	<i>"The Dean's Secretariat shall have the power to make such further enquiry as may be appropriate with a view to...(b) investigating the facts relevant to the complaint... (d) obtaining any material ...that may assist the</i>	It is not clear what the output of undertaking such action is? In the absence of a report on the complaint, what documentation is prepared in advance of the Complaints Committee meeting?	After the administration and investigation, the papers are prepared in full for the Complaints Committee and accompanied by a summary highlighting the reason for the complaint coming before the Committee, what the key documents are and what outcomes are possible.

	<i>Complaints Committee in its determination and disposal of the complaint</i>		There will not be an index of documents, but the Committee's papers are numbered and provided before the meeting with the summary.
18(b)	No provision for oral submissions	What process is in place for oral submissions to be made to the Complaints Committee by the parties to the complaint?	Rule 18(b) amended to " <i>...the Complaints Committee may...make such further enquiries as it considers to be appropriate, including...(ii) hearing oral representations from either the complainer or the Member, or both</i> ".
18(f)	Amended existing Rule regarding reference to " <i>Where the complaint is one of Professional Misconduct...</i> "	The SLCC does not remit complaints as either a Professional Misconduct or Unsatisfactory Professional Conduct complaints, it simply refers "conduct complaints", which may be capable of meeting either of the tests.	Rule 18(f) amended to " <i>Where the complaint is upheld as one of Professional Misconduct...</i> ".
25-26	Imposition of penalties by Complaints Committee	There is no reference to training orders/legal update or any other action as might be considered appropriate by the FA.	<p>The FA will give further consideration to whether guidance should be prepared for use by the FA's decision-makers, and published for consideration by complainers and advocates.</p> <p>The FA does not wish to fetter its discretion and wishes the Rules to remain as flexible as possible. There is the risk that publishing a tariff or guidance would give false expectations, as each case will be looked at on its own facts. Reasoned decisions are provided to confirm the reasons for applying the sanction.</p> <p>The FA does not consider it necessary to specifically state that training orders are an available sanction, as this is a possibility under the existing Rules, and could be covered in a written direction.</p>
27	No provision for the complainer to make oral or written submissions	SLCC emphasised in its sanctions guidance for RPOs, how important it is to hear on the question of sanctions (particularly vouching for compensation) from the complainer.	Rule 27 to be amended to " <i>Before it imposes any penalty, the Complaints Committee shall invite comment from the Complainer within such period as shall seem reasonable to the Complaints Committee ...Thereafter, the Complaints Committee shall invite the Member to make such written or oral representations...</i> "
33-34	<i>"The Complainer may</i>	How is this impartial if the parties	The appeal to the same

	<p><i>with leave of the Complaints Committee, appeal to the Disciplinary Tribunal against the dismissal of the complaint”.</i></p> <p><i>“The Member may, with leave of the Complaints Committee, appeal to the Disciplinary Tribunal against the final disposal of the complaint”.</i></p>	<p>can only apply for leave to the same committee that made the decision to dismiss the complaint?</p> <p>Why is the complainer unable to appeal against the final disposal (which is possible under Section 42ZA(11)-(12) for disposal in solicitor complaints)?</p>	<p>Committee is usual in a court case and so the FA is following the standard model.</p> <p>Consideration will be given to redrafting the current Rule to afford complainers the same rights of appeal as those which are provided in the Rules for advocates. In light of the availability of compensation for complainers, it does appear appropriate for complainers to be given an opportunity to appeal against the penalty set by the Complaints Committee.</p>
37	<p><i>“Leave to appeal to the Disciplinary Tribunal shall only be granted on cause shown”.</i></p>	<p>This legal concept needs to be explained in lay persons terms if complainers are to be signposted to the Rules instead of being provided with separate guidance on the appeals process.</p>	<p>Rule 37 amended to <i>“Leave to appeal to the Disciplinary Tribunal shall only be granted where there is a real prospect of success, or another compelling reason to do so”.</i></p>
55	<p><i>“Any hearing before the Disciplinary Tribunal shall be held in public unless on its own motion, or on the application of the Complainer, the Member, or the Dean, the Tribunal considers that it would be appropriate for it to be held in private”.</i></p>	<p>The parties appear to be advised when the hearing is to take place, but how can this to be said to be “in public” if the only notification of the hearing is to the parties to the complaint?</p>	<p>The hearing is not publicised other than to counsel and the complainer. There is nothing preventing either party from inviting other members of the public, but the hearing is not published on the FA’s website or at Parliament House. It is, however, open to members of the public to attend, should they wish to do so.</p> <p>The FA will advertise on its website, the details of scheduled Tribunal Hearings, including the date, time and venue for the Hearing and the name of the Advocate complained of. In some cases, the Tribunal may decide to hold the hearing in private, which will be decided at the start of the hearing.</p> <p>It is not necessary for the Rule to be changed if the Tribunal decides of its own motion to sit in private and does not physically meet and deals with matters electronically.</p>
64	<p><i>“Before it imposes any penalty, the Disciplinary Tribunal shall invite the Member to make such written or oral representations in relation to penalty as he or she thinks fit”.</i></p>	<p>What about input from complainers (particularly re: compensation – see Rule 27 above)?</p>	<p>Prosecuting Counsel would have a role in exercising professional judgement here.</p> <p>Rule 64 is to be amended to coincide with the changes which are to be made to Rule 27.</p>

69	<i>"In the determination of any complaint under these rules the Member shall be given the benefit of any reasonable doubt".</i>	This is not in-keeping with other RPOs which operate a lower standard of proof for complaints upheld as UPC.	This is the standard which the FA has always applied and will continue to apply.
71-73	<p><i>"Where a complaint is upheld (in whole or part)...details of the determination and of any penalty or penalties imposed, shall be published in a register kept by the Faculty for that purpose and available for inspection".</i></p> <p><i>"Where a complaint is dismissed... shall not be published in the register referred to in paragraph 66* unless the Member so requests".</i></p> <p><i>"The Complaints Committee, or the Disciplinary Tribunal...may in its discretion order any additional publicity if it considers that the circumstances of the complaint justify additional publicity"</i></p>	<p>The Rule is unclear as to whether publication in the register relates to findings of Unsatisfactory Professional Conduct as well as Professional Misconduct.</p> <p>The register is held at Parliament House by the FA and is available for inspection. Is this sufficient publication in this day and age? Is the public aware of the register? Should the FA be more transparent about its findings against advocates, i.e. publish on its website or in the legal press?</p>	<p>The register will include reference to all conduct complaints, subject to any conditions.</p> <p>The register is hard copy only.</p> <p>The Rule already allows the FA to publish more widely if it is considered appropriate to do so. The FA is considering whether it does, as a general rule, wish to publish outside the FA. The FA is concerned that this could be considered disproportionate if the finding is one of Unsatisfactory Professional Conduct or a one-off Professional Misconduct matter. Publication could have a significant impact on the advocate and his/her livelihood.</p> <p>The public is protected by the action taken by the FA in sanctioning the advocate. Publishing the decision does not afford any additional protection. There is no direct client/advocate relationship. Solicitors instruct advocates, which also provides an additional safeguard.</p> <p>The issue of publication is an on-going matter for further consideration by the Dean of Faculty and Faculty Council.</p>

Adherence to the 2007 Act

- 3.2 The 2007 Act sets out how complaints about advocates are to be dealt with by the SLCC (at the gateway stage and during a service investigation). While the FA deals with complaints on an administrative, non-statutory basis, having set its own disciplinary rules about the make-up of the FA's Complaints Committees and its Tribunal, there are certain statutory provisions which the FA must still adhere to.
- 3.3 The 2007 Act introduced a new role for the FA, which was to deal with complaints which could amount to Unsatisfactory Professional Conduct (defined in Section 46). Prior to the 2007 Act, the only conduct finding available to the FA was one of Professional Misconduct. There are no statutory powers in the 2007 Act regarding the FA's handling of complaints which meet the lower test. Accordingly, the FA has adapted its Rules to ensure that complaints which do amount to Unsatisfactory Professional Conduct are incorporated into its existing procedures.

- 3.4 The statutory requirements relating to conduct investigations which the FA must adhere to are as follows:
- **Part 1, Section 15(a)** - where the FA identifies a potential service complaint during a mediation or investigation of a conduct matter, it must suspend any action, consult with the SLCC and notify the parties.
 - **Part 1, Section 33** – the FA must refer all conduct, service or Handling Complaints which it receives to the SLCC without delay, along with any supporting material.
 - **Part 1, Section 38(2) & (3)** – in respect of any investigation or report, the FA must liaise with the SLCC with a view to minimising any unnecessary duplication.
 - **Part 2, Section 47(1)** – the FA must investigate conduct complaints remitted by the SLCC
 - **Part 2, Section 47(2)** – the FA must make a written report to the parties of the facts of the matter and what action the FA proposes to take or has taken,
 - **Part 2, Section 47(3)** – the FA must ensure that its procedures for dealing with conduct complaints do not conflict with the Handling Complaints provisions.
 - **Part 2, Section 52** – the FA must not disclose any information contained in a conduct complaint which has been given to or obtained by the FA for the purpose of the investigation (including any report), unless disclosure is required to enable the FA to deal with the complaint or where there is a requirement under the 2007 Act, any other enactment or other rule of law.
 - **Schedule 4, Section 2** – where the FA has taken possession of documents obtained via court order for production or delivery, the FA must, without delay, serve on the parties, a notice stating date on which it took possession.
- 3.5 Insofar as referring complaints is concerned (Section 33), the FA has confirmed that it no longer operates an informal complaints process, in which the Dean would intervene in a dispute, in an attempt to resolve matters quickly, without the need for a formal complaint. The FA has advised that it is very conscious of its statutory duty to refer all complaints to the SLCC.
- 3.6 The FA has also indicated that it is cognisant of the fact that complaints should be referred to the practitioner in the first instance (so as to satisfy the prematurity provisions in Section 4 of the 2007 Act), and that this is highlighted to complainers at an early stage, to avoid those who wish to complain from being passed around too much between the various complaints handling agencies. This seems a sensible approach to take in most cases. However, the FA should be aware that there are some situations which warrant the prematurity provisions to be waived, e.g. serious misconduct claims involving allegations of bullying and threatening behaviour.
- 3.7 The SLCC is satisfied that the FA's application of its conduct complaints processes and its Rules adhere to the complaints handling requirements contained in the 2007 Act. The liaison arrangements between the SLCC and the FA are set down in an agreed 'Liaison Grid' document, which can be adapted by agreement between the SLCC and the FA, as operational arrangements and complaints handling systems change and improve over time. The SLCC is not aware that the FA has applied to the Court of Session for a production order, and it has not been necessary, therefore, for any action to be taken under Schedule 4 of the 2007 Act. It is assumed, however, that the FA is aware of its statutory duties in this regard, should the need for such an application arise in the future.

3.8 The 2007 Act contains several other statutory requirements which must be adhered to by the FA. As these provisions are not specifically related to the investigation of conduct complaints, these sections have been intentionally excluded from this report. However, the FA should be aware of all of its statutory obligations, including those which go beyond complaints investigations, e.g. to respond to Handling Complaints within a prescribed period of time; to agree protocols for information sharing; to consider and notify the SLCC of the result of its consideration of, and any action which the FA proposes to take in respect of, any Section 36 recommendation (regarding its methods and systems for dealing with remitted complaints).

Adherence to the 2010 Act

- 3.9 The 2010 Act confirms that the Court of Session is responsible for the admission and removal of advocates from the office of advocate, for prescribing the criteria and procedure for admission to and removal from the Roll and for regulating the professional practice, conduct or the discipline of advocates.
- 3.10 The 2010 Act also confirms that any Rules made by the FA must be approved by the Lord President and must be published by the FA.
- 3.11 In accordance with Section 121 of the 2010 Act, the 2015 Rules were approved by the Lord President prior to publication in September 2015. The 2015 Rules apply to all conduct complaints remitted to the FA by the SLCC after 07 September 2015. For all complaints remitted before that date, the Faculty of Advocates Disciplinary Rules 2008 apply.
- 3.12 Section 142 of the 2010 introduced a new provision into Section 35A of the Legal Aid (Scotland) Act 1986, which requires the FA to inform the Scottish Legal Aid Board ('SLAB') whenever it upholds a conduct complaint about an advocate, and provide a summary of the relevant facts. The FA has confirmed that it does share information with SLAB as and when required.

Conduct and service standards

- 3.13 The 2007 Act allows 'any person' to make a conduct complaint about an advocate. Service complaints can be made by anyone who has been 'directly affected' by suggested inadequate professional services or by those persons/organisations specifically named in Section 2 of the 2007 Act.
- 3.14 Prior to the SLCC's review, the FA had set its own conduct standards for advocates, which are publicised to the profession and the public as the 'Guide to the Professional Conduct of Advocates 2008'. The FA had made no provision, however, as to what standards are expected regarding the quality of professional services which are provided by advocates to their instructing agents and their 'clients'.
- 3.15 Following discussions with the SLCC, the FA is in the process of drafting a set of service standards for advocates, which will not only assist advocates and the public in understanding what service they can expect from advocates, but also the SLCC in assessing whether an advocate might have provided an 'Inadequate Professional Service' (Section 46 of the 2007 Act).

Case management/file keeping

- 3.16 The FA has confirmed that it does not operate a dedicated electronic case recording system for dealing specifically with complaints. The FA scoped a new system in late 2014/early 2015. However, due to the low number of complaints being remitted to the FA for investigation, the FA did not consider the implementation of a new system to be resource or cost effective.
- 3.17 The FA provides the SLCC with both paper and electronic copies of its complaints files, when these are required for the purpose of the investigation of service or Handling Complaints.
- 3.18 The FA has confirmed that it is updating its IT systems and is implementing a document management project this year, which will cover all aspects of the FA's work, including complaints and disciplinary matters. It is envisaged that this will improve record keeping functions.

Training

- 3.19 The FA has confirmed that from time to time, training programmes take place in-house for legal and lay members of the Complaints Committees and the Disciplinary Tribunal. The Faculty Solicitor maintains training for legal members through CPD. The FA has confirmed that its current lay members have been in post for a significant length of time and as such, are experienced in dealing with complaints. However, following the appointment of any new lay members, it will be necessary to run complaints handling training for these new members, as and when this becomes necessary. It is envisaged that such training would be offered in-house, but may be supplemented by training offered by the SLCC.
- 3.20 The SLCC works together with the FA to deliver training to Faculty Devils on the complaints investigation process, complaints prevention and good practice in complaints handling on an annual basis. The SLCC and the FA also put together a jointly agreed guide for advocates about best practice in dealing with complaints, which is available to advocates through the SLCC's website. The FA does not currently offer advocates any other formal training which specifically relates to complaint handling.

Communication/information services

- 3.21 The FA has updated its website recently, to assist in the navigation of the information held on the website. The Home Page has a link to the 'Making a complaint' webpage, and 'How to make a complaint about an Advocate?' is contained in the FAQs, which is also accessible from the Home Page. As stated at paragraph 3.6 above, the FAQ advises potential complainers to raise their concerns with the advocate in the first instance, but if satisfactory resolution is not achieved, a complaint should be made to the SLCC.
- 3.22 The 'Making a complaint' webpage links to the SLCC's website and refers to the SLCC's guidance on complaints handling by advocates, which offers advocates assistance about how they might deal with a complaint which is made directly to them.
- 3.23 There is also a link to the FA's Disciplinary Rules, which set out in detail the FA's processes for dealing with conduct matters. Full versions of both the 2008 and the 2015 Rules are available to view.

- 3.24 At present, there is no other information on the FA's website which confirms how the FA deals with conduct complaints. It is incumbent on the person complaining to read and to understand the FA's Rules.
- 3.25 The FA has, however, drafted an information leaflet titled 'A practical guide for complainers and counsel', which is intended to provide a simple outline of the practice and procedure that will be followed by the FA in its handling of a conduct complaint. The SLCC has provided the FA with suggestions and comments on the contents of the leaflet, in order to make the process as clear and user friendly as possible. The FA has considered the SLCC's comments and has now finalised the guidance ready for publication. It is FA's intention to issue the leaflet to both complainers and advocates at the outset of the complaints investigation. The document will also be accessed through its website and linked to from the SLCC's website.
- 3.26 The SLCC already utilises a document titled 'Overview of Faculty of Advocate's conduct investigation process' in Handling Complaint investigations, which explains the FA's complaints and disciplinary processes in a little more detail. This document contains reference to the estimated timescales involved in the determination of a complaint, it also refers to the appeal, liaison and Handling Complaint provisions. The FA agreed the terms of this document back in November 2013, and this is currently being used in ongoing Handling Complaint investigations.
- 3.27 An amended version of the SLCC's 'Overview' has been prepared, which reflects the FA's proposed Rule and process changes. This document will be agreed by the FA before being utilised by the SLCC in future handling investigations. The SLCC intends to make this document available on its Handling Complaints webpage, to inform potential complainers of what they should have expected from the FA's investigation process. The FA may wish to link to this document, as another resource which explains the way that it deals with conduct complaints.

Information sharing/liaison arrangements

- 3.28 Although the 2007 Act limits the amount of information that the SLCC can share with the FA, the Act requires the SLCC and the FA to have protocols in place to ensure that certain information and documentation is shared. The information sharing protocol was last reviewed and signed by both organisations in July 2014.
- 3.29 To supplement the protocol, the SLCC and FA have agreed a 'Liaison Grid' which contains details of the practical arrangements for liaison between the organisations at various stages of the complaints handling process and the estimated timescales. The document also contains contact details for each organisation. The 'Liaison Grid' is a working document and is subject to change, as timescales change and processes evolve. The current liaison arrangements seem to be adequate, given the low number of complaints.

Safeguards

- 3.30 The Dean of the FA has the power to petition the Court of Session to suspend an advocate from practice on an interim basis, while the formal investigation of a conduct complaint is carried out. The FA has indicated that this is a significant step to protect the public, as soon as concerns about an advocate become known. Although there is no formal information sharing forum with other interested professional bodies, such as the Law Society of Scotland,

the SLCC and the Scottish Legal Aid Board ('SLAB'), the FA will contact these bodies on a case-by-case basis, should issues of concern require to be shared more widely in order to safeguard the public.

4 Conclusions & Recommendations

- 4.1 A significant amount of work has already been undertaken by the FA during the course of the benchmarking exercise, including a thorough review of the current 2015 Rules, the preparation of an information leaflet on the FA's complaints process, consideration of the SLCC's 'Overview' and further discussions around the potential advertisement and publication of Tribunal decisions.
- 4.2 The FA is also considering how it might create a consumer-friendly set of service standards for advocates, which will not only assist the SLCC in assessing the eligibility of service complaints about advocates, it will also inform both consumers and advocates as to what the FA expects from its advocates in terms of the provision of professional legal services. The SLCC will then use these standards to benchmark against when deciding complaints of alleging Inadequate Professional Service (defined by Section 46 of the 2007 Act).
- 4.3 The FA has confirmed that it intends to put forward its proposals for change to the 2015 Rules (as highlighted in the table at paragraph 3.3) to the Dean of Faculty and Faculty Council as soon as possible, with the intention that a proposed amended Rules document can be placed before the Lord President for approval by the end of 2016.
- 4.4 The FA and the SLCC will continue to hold 6-monthly liaison meetings, when the outstanding matters of publication, guidance/tariff for the application of sanctions and service standards will be on the agenda for further discussion. The next liaison meeting is due to take place towards the end of September/start October 2016, at which point the FA will be asked to update on the actions which it has agreed to undertake as part of this benchmarking exercise.
- 4.5 On the basis of the discussions between the SLCC and the FA, and the action already taken by the FA, the SLCC has no formal recommendations for change to the current complaints handling process. However, further discussion will need to take place in the event that the Lord President refuses the proposed Rule changes.
- 4.6 In the absence of on-going training in complaints handling for advocates already in the profession (referred to at paragraph 3.20 above), the SLCC recommends that the FA puts in place appropriate training for its Members, by way of regular update or CPD. The FA may wish to work together with the SLCC to deliver a package of training which is tailored to suit advocates specifically.
- 4.7 The SLCC intends to utilise this report as a benchmark in its future audits of the FA's complaints handling process. The SLCC envisages that a further audit may be scheduled into the SLCC's Operational Plan for 2017-2018 (01 July 2017 – 30 June 2018), depending on complaint numbers. If complaints about advocates remain low, it may not be necessary to audit the FA until the following operational year.

- 4.8 Regular liaison between the SLCC and the FA should provide reassurance that any ongoing issues will be addressed as these arise. In addition, the SLCC will continue to monitor all complaints being remitted to and disposed of by the FA.

5 Acknowledgment

- 5.1 The SLCC would like to thank the Dean of Faculty, the Vice Dean, the Faculty Solicitor and FA staff for their time and co-operation during this review.