# SLCC draft policy on disclosing information in the public interest

# Draft policy

The Scottish Legal Complaints Commission (SLCC) is generally in favour of broader disclosure of information about complaints to aid transparency, learning and continuous improvement.

There is a general restriction in the legislation on the disclosure of information about complaints, and this remains the default position. The SLCC may, however, decide to disclose information about a complaint or complaints if it considers it to be in the public interest.

The disclosure may include information that identifies or is likely to identify any practitioner, firm or legal services provider to whom the complaint relates, but it may only include information that identifies or is likely to identify the complainer with the complainer's consent.

The disclosure may include information relating to the investigation or resolution of a complaint, or any outcomes resulting from the complaint.

The decision to disclose information can only be made a Board Member.

## The public interest disclosure test

The public interest disclosure test will ensure that any decision to disclose information in the public interest is clearly and robustly justified, necessary, proportionate and defensible.

Decisions will be determined on the facts and circumstances of each case.

All disclosure decisions made under this policy will be documented with a clear rationale, including consideration of public interest, risks and mitigations, and legal and regulatory obligations, to support transparency and safeguarding of the public and the wider profession.

The SLCC will consider making disclosures in the public interest where the information in the complaint or complaints:

- exposes serious or systemic service failure; and/or
- reveals exceptional or severe harm, or the potential to cause exceptional or severe harm, to consumers of legal services; and/or
- corrects misinformation that could undermine public confidence in legal services; and/or
- clarifies facts where silence would cause serious harm or unfairness to the public; and/or
- protects the public from misleading statements about legal services; and/or
- reveals a severe or sustained lack of co-operation with the SLCC (for example, repeated non-compliance with regulatory and statutory requirements, such as section 17 orders or non-payment of the complaints

levy) which risks undermining public confidence in legal services and/ or raises significant consumer protection concerns; and/or
- highlights systemic issues, emerging risks, or recurring themes identified through complaints, and disclosure would support wider learning, improvement of practice, or the prevention of similar issues arising in the future.

## Risk assessment

After conducting a public interest disclosure test and identifying a potential disclosure in the public interest, the SLCC will then undertake a risk assessment.

The risk assessment will assess whether the benefits of publicly disclosing information outweigh any potential risks or harms, including impacts on consumers, legal and regulatory compliance, and the safety and wellbeing of individuals (consumers and practitioners).

Where a decision to disclose information is being considered, practitioners/ firms will be notified at least 14 days in advance to provide them with an opportunity to make any written representations.

The SLCC will take any such representations into account prior to taking the decision to disclose information.

Where a firm has ceased trading or otherwise no longer exists, the SLCC will make every reasonable effort to contact any relevant practitioners directly and provide them with the same opportunity to make representations.

When the information to be disclosed relates to a complaint about a firm of solicitors, the SLCC will normally seek to publish the name of the firm rather than the practitioner. Where the firm consists of a sole practitioner, where the practitioner is readily identifiable from the subject of the complaint, or where the practitioner is no longer associated with the firm, the SLCC will take these matters into account as part of its risk assessment before deciding whether and how to disclose information and before notifying the firm and any relevant practitioners.

In general, the SLCC will never seek to publish the name of a complainer or any information which, in the opinion of the SLCC, is likely to identify them, except in very limited circumstances as set out below.

The SLCC might name a complainer if they specifically request to be named publicly and/or formally consent to public disclosure in a written declaration.

The SLCC reserves the right not to disclose information about a complainer, even if they request or consent, and will explain any decision-making to the complainer.

## Disclosing information

Following a risk assessment, any recommendation to make a disclosure will be referred to a Board Member for a decision in a recommendation report.

Disclosure decisions will be allocated to Board Members on the basis of availability, having ensured there are no actual, potential or perceived conflicts of interest.

The recommendation report will set out why the SLCC is considering disclosure, any risks associated with the disclosure, including any potential impact on the reputation and legitimate business interests of the firm or practitioners concerned, and how those risks have been weighed against the public interest in disclosure.

The recommendation report will also set out the SLCC's reasoning in support of the recommendation, what information we will disclose, in what circumstances, and to whom.

If the Board Member approves, the test has been met for disclosure in the public interest.

The SLCC will notify the practitioner or firm, and the relevant professional organisation, of its decision prior to any disclosure being made under this policy.

Decisions to disclose information in the public interest will be recorded, together with the reasons for the decision, the factors considered, the name of the decision maker and the outcome of any risk assessment.

This policy will be kept under review in light of use and good regulatory practice.

# Appendix 1: Legislative basis for policy on disclosure

(N.B. text in black is the existing 2007 Act; text in red relates to new provisions in the 2025 Act, amending the 2007 Act.)

**41A Power to disclose information about complaints: Commission**

(1) The Commission may, if it considers it to be in the public interest, disclose information about any conduct complaint, regulatory complaint, services complaint or handling complaint, including—

(a) information that identifies or is likely to identify any person to whom the complaint relates,
(b) information about the investigation or resolution of the complaint,
(c) information about any outcomes resulting from the complaint.

(2) But information that, in the opinion of the Commission, identifies or is likely to identify the complainer may not be disclosed under subsection (1) unless the complainer consents to its disclosure.

**42 Disclosure of information by Commission: privilege**

For the purposes of the law of defamation, the disclosure of any information by the Commission under section 24, 35(2), 36(2), 41A or paragraph 16 of schedule 1 is privileged unless the disclosure is proved to be made with malice.

**43 Restriction on disclosure of information: Commission**

(1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.

(2) The information is information—

(a) contained in a conduct complaint, services complaint, regulatory complaint or handling complaint;
(b) which is given to or obtained by the Commission or any person acting on its behalf in the course of, or for the purposes of—
(i) any consideration of such a complaint;
(ii) an investigation (including any report of such an investigation) into a services complaint or a handling complaint.

(3) Such information may be disclosed—

(a) for the purpose of enabling or assisting the Commission to exercise any of its functions (including the disclosure of information of information under section 41A(1));
(aa) for the purpose of enabling or assisting a regulatory body to exercise any of the body's functions,
(b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.

(4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, the Commission is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(4A) In subsection (3)(aa), “regulatory body” means any regulatory body as the Scottish Ministers may by regulations specify.

(4B) Regulations under subsection (4A) may—
(a) include transitional, transitory or saving provision,
(b) make different provision for different purposes.

(4C) Before making regulations under subsection (4A), the Scottish Ministers must—
(a) consult—
(i) any regulatory body that is proposed to be specified by the regulations,
(ii) the Lord President,
(iii) the Commission,
(iv) the independent advisory panel established under paragraph 11A of schedule 1,
(v) each category 1 and category 2 regulator,
(vi) each approved regulator within the meaning of Part 2 of the Legal Services (Scotland) Act 2010,
(b) publish a report describing—
(i) the consultation carried out,
(ii) any representations received in response to the consultation, and
(iii) the changes (if any) to the proposals as a result of the representations, and
(c) confirm that the Lord President agrees with the proposal to make the regulations.

**SCHEDULE 1 – Delegation of functions**

13 (2) The Commission may authorise—
[…] (ca) the making of any decision on the disclosure of information under section 41A to be exercised only by one of the Commission’s members […]

# Appendix 2: Example scenarios (to test the robustness of the policy)

In developing this policy, the SLCC has identified a number of examples of potential uses of the power, and we have compiled a range of real and imagined scenarios to test against the policy. This has been helpful to guide development of the policy and may be useful indicative examples to share with stakeholders. However, these examples would not form part of the policy and would not restrict the application of the policy to other circumstances.

## Disclosing information that exposes very serious or systemic service failure

A firm collapses, and the SLCC receives more than twenty complaints from former clients in less than a month. The complaints indicate that consumers may have lost access to client funds, missed critical deadlines, or suffered substantial financial or legal prejudice as a result of the firm's failure. In these circumstances, the public interest in preventing further exceptional harm to consumers may justify the disclosure of information that would otherwise remain confidential.

## Disclosing information that reveals exceptional or severe harm on consumers

The SLCC receives a significant number of complaints from cancer patients and their family members about a firm that has been recommended by a national cancer charity. The complaints contain similar allegations, raising concerns about a potential pattern of poor service affecting a particularly vulnerable group of consumers. Despite these concerns, the charity continues to promote the firm's services through its website and external communications. Disclosure of relevant information may be necessary to prevent further consumer harm and ensure prospective clients are not misled about the quality of the firm's services. Any disclosure would be limited to what is necessary and proportionate in the circumstances.

## Disclosing information to correct serious misinformation that could undermine public confidence in legal services and legal regulation

A member of the public publicly alleges on national news that the SLCC and other legal services regulators have failed to act in relation to a complaint against a solicitor who has recently been convicted of a criminal offence. In fact, the SLCC has assessed the complaint and referred it to the Law Society of Scotland, which is undertaking its own regulatory and complaints processes. Following a public interest disclosure assessment and risk assessment, the SLCC may decide to disclose limited information about the existence or status of the complaint where this is necessary and proportionate to correct serious misinformation and reassure the public that the matter is being addressed through the appropriate statutory and regulatory processes.

### Disclosing information that clarifies facts where silence would cause serious harm or unfairness to the public

A firm publicly advertises on its website that it has not received any complaints from recent clients. The statement is used to promote the firm's services to prospective clients. However, over the period of twelve months, the SLCC has received dozens of complaints concerning solicitors employed by the firm, alleging varying levels of poor service and professional misconduct. In these circumstances, there may be a public interest in disclosing relevant information to prevent consumers from being misled about the firm's complaints history.

### Disclosing information that protects the public from misleading statements

A firm has collapsed, resulting in a significant increase in complaints to the SLCC. A support group established by former clients of the firm publicly criticises the SLCC on social media, alleging that it has failed to uphold any complaints or award any financial compensation. However, SLCC records show that dozens of complaints have been upheld and that thousands of pounds in compensation have been awarded to former clients of the firm. Disclosure of relevant information may be justified where doing so is necessary to correct misleading statements and ensure that consumers have accurate information about both regulated legal services and the SLCC's handling of complaints.

### Disclosing information that reveals a severe or sustained lack of cooperation with the SLCC which risks undermining public confidence in legal services

The SLCC identifies a number of firms that have repeatedly failed or refused to comply with statutory obligations, including compliance with section 17 requests, awards made to consumers relating to upheld complaints and payment of the complaints levy. Despite numerous attempts to secure compliance, the firms have not responded to correspondence or acknowledged formal requests from the SLCC. This ongoing failure to engage frustrates the complaints process and delays redress for consumers. Disclosure of relevant information about a firm's lack of engagement may be necessary to protect consumers of legal services and maintain public confidence in the complaints system.

## Disclosing information that highlights systemic issues, emerging risks or recurring themes identified through complaints

The SLCC identifies a sharp increase in service complaints against a firm over a short period. The complaints contain similar allegations of excessive delays, poor communication, and errors in legal documents. In addition, publicly available Companies House records show that the firm's accounts are more than 16 months overdue, raising concerns about the firm's financial position and ability to continue operating. Based on the volume and nature of the complaints, together with other available information, the SLCC considers there to be a credible risk that the firm may shortly cease trading. Disclosure of relevant information may be necessary to prevent further individuals from instructing the firm without awareness of the potential risks.