

Experiences of SLCC and reflections for the future

This is necessarily quite a long note and accordingly I have provided a table of contents which assist in understanding our thoughts

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Initial Thoughts

Our experience of SLCC has been that we have always been treated with the utmost courtesy, which we hope has been seen to be fully reciprocated by us. That has been very much our intention along with fostering an ethos of cooperation with SLCC. When necessary, in dealing with client complaints, we are prompt in providing a link to the SLCC website, and stating that we fully support the clients' right to contact you and, if considered necessary to make a complaint.

Our experience has been almost exclusively in relation to our residential conveyancing practice. This is a significant practice area for us, but not the only one. Other practice areas include lender work, commercial and traditional private client work.

We understand that SLCC looks to promote an environment where universal values can be expected by the public when dealing with solicitors. Our concern is that in achieving such universal values, it will not take into account decisions made by the clients themselves about different "delivery systems" of legal work. More than that, we believe that access to affordable legal services is an essential pillar of any properly functioning democratic society. As in areas such as legal aid, it is very important that the baby is not thrown out with the bathwater. Standards based approaches are incredibly important but so is customer choice and the delivery of value to the consumer.

Unlike some solicitors, we are always keen to promote the value of SLCC and we have modelled our internal complaints handling upon our experiences with SLCC. This is, as you would hopefully wish it to be, in that if we have dealt with the client in the manner which we believe that SLCC would approve, then any complaint which was made would be seen in the light of those actions.

It is fair to say, therefore, that we have seen a shift in emphasis by SLCC in recent months which raises concerns for us, especially given our strong belief in the value of SLCC. However, first of all it would be helpful to explain what we are and why the environment in which we work is always likely to produce persons who complain to SLCC.

What we do and our experiences

As regards conveyancing, we have positioned ourselves as a “volume” firm, obtaining business from all over Scotland. Our volume places us occasionally first and consistently in the top four of non estate agency based firms, according to RoS statistics. We have one office in Glasgow and accordingly virtually all our work is conducted via the web, using Apps, e mail and telephone as the means of communication. Almost nothing is issued by us in paper form, and the only face to face meetings we have with clients involves those who happen to live or work near our office, who may sometimes call in to have their ID certified, for example.

Given that business model, effective communication is seen as essential, and it is necessary for us to control our client communications by directing both outgoing and incoming communications into channels which we can manage. Much rests on our introductory e mail, which “sets the scene” and the business model we have chosen can perhaps be best illustrated by our latest client introduction mail, which in fact we adopted last month. I attach that for information, and provide a link to the web page referred to, “MMi Explains.”

To bring contextual matters to close, a few figures:

Completed Conveyancing cases 2015	3,735
Client Conveyancing complaints 2015	53 (includes “grumbles and niggles”)
Client complaints to SLCC having a 2015 reference	7
Approximate number of SLCC complaints p.a.	1,000 (SLCC statistic)

Achieving Quicker Resolutions: Contracted Standards of Service

You have indicated that SLCC are rightly concerned about achieving quicker resolutions and our recent experience certainly suggests that this is “reaching the coalface”. I wonder whether changes to the current sifting and resolution processes might be helpful in achieving that aim.

One aspect of standards of service, which interests us, is the relationship between the service we offer and the government’s strategic objectives referred to in the strategy document. Whilst governments and policies change, I would suggest that there is probably little cross party dispute that fair and accessible legal services (which in the present context means conveyancing services), and their contribution to economic stability and growth, social cohesion and safer and stronger communities are “good things.”

One contribution, which firms such as ours can make to these objectives, is to ensure that the public has access to conveyancing services delivered at a high quality and at a reasonable cost. There are many financial obstacles in the path of potential consumers of conveyancing services, more so than at any time in recent history (much of it at the hand of the Scottish Government, the UK Government and international regulations) and the contribution of firms such as ours is to ensure that legal fees, as an obstacle to market activity, are minimised.

Broadly speaking, there are three models available to the consumer of conveyancing services:-

- The General Practitioner firm (quite expensive)
- The Private Client niche firm (very expensive)
- The Volume Conveyancing firm (less expensive)

Whether it is the case or not, I assume for the purpose of this note that all three models offer an equal degree of legal skill in conveyancing. All are subject to the same regulatory regime, and in

respect of each the public can expect the conduct and integrity which are the hallmarks of the solicitor “brand.” The comments I am going to make relate largely to issues of client communication which have been correctly identified as leading to large numbers of complaints.

It is one aspect of the solicitor brand that all solicitors are regulated as regards communication, and all are obliged to communicate effectively. However that does not mean that a solicitor firm is precluded from contracting with its clients to define the nature of that communication; within reason of course – there must be communication, and that communication must adhere to certain universal standards as to confidentiality, Data Protection and professionalism.

Where the first two models differ from the third is that, in those models, the client can expect to have a one to one relationship with “their solicitor”. In our model, whilst as a firm we offer the full solicitor/client relationship and the “hallmarks” described above, the interface between the client and firm will be different. Our relationship is described in our introductory material (part of our terms of business), the most recent example of which is attached. We have noticed, from both complaints which we resolve ourselves, and complaints which reach SLCC, that there can be a misunderstanding of this fundamental position on the part of clients. The client has elected to purchase a conveyancing service as described in our material, provided by a firm of solicitors detailing the way, always in accordance with rules and regulations, that we as a firm of solicitors achieve the requisite level of quality assurance.

Accordingly, the client has not contracted for an expectation of being able to meet with, speak with or telephone an individual solicitor (at least not when and as often as they may wish), except in an escalated situation. (An escalated situation meaning either that a serious conveyancing issue has been discovered and is being resolved by a senior solicitor, at an agreed additional fee, or that a complaint is being resolved).

Indisputably, the absence of a one to one relationship as would be enjoyed in the first two models of conveyancing provision makes complaints much more likely. Why is this? Because the relationship is more anonymous and complaining often appears to be a “victimless crime” in just the same way that complaining to utilities or large providers of services is seen by many as a knee-jerk response within our society and for a few ways of abusing a compensation culture.

But it is a direct consequence of choice on price and service that this arises. In other words, if people want competitive fees and it is clearly explained to them what are the relevant methods of delivery of a volume service, they can't then complain that the service is not akin to a one-to-one service of the first two models which would be far more expensive. Part of our task is to make this as clear as possible to clients, and our Terms and Conditions are always a work in progress. The most recent introductory e mail is a direct result of recent complaints experience. Our obligation is to make it clear to our clients what it is they have contracted for.

What do we ask of SLCC in return? This has, in fact, been demonstrated in the course of some individual complaints which have been referred to SLCC, which is an understanding of the nexus between the professional and contractual relationship which we have created with the client. For example, in cases where clients claim “not to have been updated” it has been possible to point to a) the client’s expectation (e.g. to be telephoned proactively on a daily/almost daily basis) and b) what actually happened (received responses to e mail requests for updates within a reasonable time).

Therefore, in individual cases we have been able to demonstrate this, and acting fairly and impartially, SLCC have recognised our position. What more, then, might we ask of SLCC? I will deal with this in the next section.

Understanding our model in a changed SLCC environment

In previous sections I have been able to outline our philosophy and an excellent relationship with SLCC. As I will come onto there are signs of a changing position at SLCC which, together with your note, prompted this report.

Reverting to the question of what more we might expect of SLCC I think that the following probably sums it up:

Without pre-judging any issue, or departing from the rule of impartiality, the fostering of an internal understanding which pervades the organisation, of identifying initially “the nature of the beast”?- This would have the result that any complaints about our service regarding communication are seen from the outset in the context of the superset of our defined service and professional obligations..

Knowing that this was predetermined by SLCC would reduce any sense on our part of our being judged as if we had charged three times as much, and in exchange had promised our clients the expectation of speaking to their individual solicitor for perhaps half an hour a day during the period of the service delivery. It would also reduce, perhaps, the need to explain ourselves on a case by case basis, to overcome any perception at SLCC that we had held ourselves out as providing a different kind of service.

A common theme is that “house purchase/sale is stressful”. We fully recognise that and try to address the stress factor via our online information. That is factored into the relevant fee level. If clients, in addition, require a “friend and counsellor” we need to find a way of explaining in a client friendly way that the cost of that service would be more by a factor of 2-3 times. An understanding of this by SLCC and perhaps a referencing of it in communications with complainers by SLCC would be welcome! An extension of this is the material which we provide to the clients explaining the ins and outs of conveyancing issues. The latest manifestation of this is our “MMI Explains” which we think is easy to read, helpful, mobile friendly and, bluntly, the obligation of the client to read. We explain that reading MMI Explains is part of the clients’ responsibility. If the client chooses not to read the material which we make available to them, and many do not, then within the constraints of the cost of the service which we are providing, our belief is that SLCC should be able to say to that client “you signed up for communication and professional services of X while you expected Y and there is nothing that we can do for you”. Provided that the services defined as X meet the professional obligations of a solicitor, which in our case they do, then that should be the forum in which the complaint is judged.

There is an element in the current situation that the client has bought a Ford Focus which is an admirable vehicle able to fulfil all reasonable requirements of a motor car and then complains because the Ford Focus is not a Rolls-Royce.

I note the suggestion that strict liability service standards may be under consideration. If that is seen as a way forward it emphasises the need for clear terms of business against which we are to be judged into sharper focus.

How could matters be improved

It is important to mention that whilst these views are our own, similar considerations might apply to other firms in the field of volume conveyancing. We cannot speak for such firms, nor do we have any knowledge of their views. However, if my comments are to be of any assistance in driving quicker resolutions, then clearly they would have to have an application beyond our own practice, and perhaps into other areas where services are becoming commoditised. There are tensions throughout the provision of professional legal services about what is a solicitor in 2016. The Law Society of Scotland recently produced a video on conveyancing for prospective clients. As is often the case it portrayed a view which often does not reflect the reality of the real world or the different methods

of delivery of conveyancing services available from solicitors in Scotland. There is no criticism in the effort to produce material for the public but it reinforces the problem of the provision of competitive services to the public by different methods of delivery.

Ascertaining the service for which the client has actually contracted

From our own point of view, ideal outcomes of a recognition by SLCC that they are judging us against standards contracted for by the client, rather than standards which the client unjustifiably expects, might be:-

1. More cases perhaps being excluded at the eligibility stage.
2. In respect of cases not excluded at that stage, facilitation of a pre-determination resolution by SLCC communicating a clearer expectation of the likely outcome to both parties.

Both of these outcomes, which would potentially lead to quicker resolutions, involve further discussion of the issues of exclusion at the eligibility stage, and how eligible cases are likely to be resolved which is now discussed in the following section.

Triviality and proportionality

In my comments under this heading I recognise that as things stand, SLCC is constrained by the statutory terminology “frivolous, vexatious or totally without merit” when sifting complaints at the eligibility stage. I can see the difficulty in explaining to a complainer that his complaint falls into one of these categories. I recognise that SLCC is fully prepared to face that difficult task as several complaints with which we have been involved have been disposed of, in whole or in part, at the eligibility stage.

So once again, the question arises, “what more do we ask?” We cannot surely expect all complaints to fall at this stage?

Well, no, but if a theme is to be taken from the article and plan/strategy documentation it is a proposal to seek a departure from the statute based approach and a transformation to an individual based approach, that can operate in more than one direction. As well as perhaps short circuiting the process in the complainer’s favour, there may be opportunities under a new approach to identify cases which cannot be excluded under the strict rule based approach, but where issues relating to triviality and proportionality can be identified more easily and speedily. Also complaints, whilst not being strictly “vexatious,” might be identifiable as cases where the complainer is “chancing his or her arm” or where the monetary value is below a threshold which makes it unreasonable for the complaint to take up the time of all concerned .

Such an individual approach may allow distinctions to be made based on a gradation of merit rather than a binary option of “totally without merit” on the one hand and “having merit” (but not necessarily much) on the other hand. There might be more flexibility open to SLCC in excluding relatively trivial or disproportionate complaints, which are however not “frivolous, vexatious or totally without merit.”

In cases which cannot be thus excluded, published sanctions and guidance, as suggested in the strategy document, might be of help. There have been some cases where we have recognised a service defect, and have offered what we regarded as a reasonable sum in compensation. These might be cases where a minor defect in service caused no financial loss, and where a reasonable person might have suffered minor inconvenience. However, on occasion such cases have resulted in

a complainer “holding out” for a 100% fee abatement and a substantial sum in respect of compensation for life changing “stress” over and above.

If in such a situation we had offered, say £100, and the complainer wanted £1500, neither we nor the complainer would know the likely outcome if the complaint were to be upheld. If there were to be a statement from SLCC, based on the relevant factors of the case known to it, that “the complaint, if upheld, would result in an award of £420.56p (reasons stated)” that might result in more complaints being settled without the need for determination. As things stand, faced with the “£100/£1500” option, we would have no real choice but to go to determination, even taking account of the probable effect of the levy.

If it were to be possible for SLCC to sift and sort in this manner, there would be less likelihood of us having to choose between making a decision to offer a payment to make “go away” a complaint we felt was largely without merit, or over stated financially, or to fight it out as a matter of principle at the risk of incurring greater financial loss. As things stand, we are prepared on occasion to allow cases to go to determination rather than merely “give in”.

Obviously between complainer and the firm complained of, matters are by definition adversarial initially. As well as acting as Judge, we recognise and appreciate SLCC’s position as potential Mediator, in the formal sense. The suggestion that there be further emphasis on an agreed resolution, to be pursued by SLCC at every stage of the process is also to be welcomed.

Possible Issues of Concern

However, and I am sure this is not the intention of SLCC, the aim for speedier resolutions should not have the appearance of urging the solicitor to settle at all costs. As a regulatory body which has a reputation for being fair and impartial, and which has and seeks to retain the trust of the profession, we are hopeful that SLCC will bear in mind the views and interests of solicitors as well as those of consumers.

We have noticed an identifiable shift in the position of SLCC in recent times. One has a feeling that statistics both as to the length of cases and the “clean-up rate” are having an impact upon the work of the case handlers. Here are a few recent examples:

- Pressure placed on the solicitor to settle. This is taking two forms. One is that everybody involved in the process including those people dealing with whether the matter is mediated upon appear to be pushing for settlement in some cases irrespective of the issues. The second method of pressure is to indicate that it is better to settle now as settlement later is likely to involve a levy which may be more than the settlement figure.
- A desertion of process. External complaints processes need to comply with natural justice and openness to review. This is especially the case with SLCC where the appeal process is such a “nuclear” option that one really does not want to have to go down that route. This places at a premium the adherence by SLCC staff to an open process which accords with natural justice. Recently, we have been concerned that the emphasis has moved from an open review to a pre-judgement of the case, not necessarily with the facts available or arguments made. This prejudgement is not of the nature that I described in the previous section but rather to complete the case.
- In discussion with case handlers there is an open recognition that solicitors, even if they do not agree with the complaint, will pay just to have rid of the matter. It feels as if there is a “de minimis” strict liability evolving against the solicitor.

Final Thoughts

We live in difficult times. Outside of Edinburgh, there is little demand in the economy and we work very hard to create modern, systems based and highly innovative methods of providing legal services

to a high standard but at affordable costs. In a profession which is so dominated by the establishment and the elite and, if you are a conveyancer, you have seen the disastrous results of projects such as the 2012 Act, which in the end of the day only results in costs to the end consumer and the lowly conveyancer, it is easy to see any actions by government and regulators as injurious both to the profession and its clients.

Although we may be in a minority, we take a view that what we do is important for society as well as trying to make a living. Regulation should be there to maintain standards and not destroy competition by penalising innovation and alternative methods of delivery. You may recall that this firm took the principal role in opposing the abolition of separate representation. From a business point of view, given that the firm acts for a number of lenders, the suggested change would have probably been financially to our benefit. However, the impact upon the ordinary person in the street would have been outrageous without resolving any of the supposed problems of joint representation.

In conclusion, we wholly support SLCC, but we see in your proposals the unintended consequences of undermining the volume model. That model is already under great pressure from changing legislation and regulation to which our response is an ever greater investment in systems and technology. If the volume provision of conveyancing is effectively undermined by changing SLCC regulation, then our belief, from the reality of the current position and our ability to provide better value for the client, is that the main loser would be the consumer.