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Criminal law

working with your solicitor on your
criminal case - a guide for legal
consumers



scottish legal
complaints commission **slcc**

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what can I do?

You - as well as your solicitor - have a role to play in ensuring that your criminal case goes as smoothly as possible. From our experience of dealing with over 10,000 complaints, these are our ten top tips in relation to criminal law cases.

1

read your Terms of Business letter

It contains important information. Reading it at the start can avoid misunderstandings later on in the case.

2

ask for explanations

There will probably be things you won't understand. Always ask when you're unsure.

3

know your responsibilities

Responding promptly to requests for information and being open and honest with your solicitor can make all the difference.

4

prepare for delays

Criminal cases can be unpredictable. Delays are common and might not be within your solicitor's control.

what can I do?

5

discuss key decisions

If you are unhappy about how your solicitor plans to present the case, talk to them.

6

find out about likely costs

Talk about costs and payment methods at the start. You might be able to make monthly payments.

7

understand your legal aid provision

You might have to make a contribution to your legal costs - if you're not sure, ask your solicitor for clarity.

8

think carefully about changing lawyer mid-case

A change of lawyer is not usually a good idea during a case but in some circumstances it can be appropriate.

9

expect replacement solicitors

If your solicitor cannot attend court, they may ask another solicitor to step in. This is quite normal.

10

if things go wrong

If you have concerns, speak or write to the solicitor first. Give them 28 days to reply before you contact us.



getting legal advice

Everyone is entitled to legal advice at a police station if they have been detained. An on-call solicitor is normally available.

If you or a member of your family has been accused or charged with a crime or been told to attend court in relation to a criminal matter you have been charged with, it is a good idea to get legal advice.

Everyone is entitled to access legal advice at a police station if they have been detained. This may include a telephone conversation with a solicitor before a police interview, and/or having a solicitor present during the interview.

For people aged 16 years and over who may have difficulty with communication or understanding, an 'Appropriate Adult' may be appointed during police interviews.

Their role is to check that the person being interviewed is following and understanding what is being discussed. There may be more than one person involved in your case, sometimes referred to as your legal team.

The three most common types of legal practitioners who you may encounter in criminal proceedings are:

- Solicitors who provide legal advice and services. They can only appear in some courts in Scotland.
- Solicitor advocates who can provide legal advice and appear in court.
- Advocates who specialise in presenting cases in court.

"Everyone is entitled to access legal advice at a police station if they have been detained."

getting legal advice

Remember

- Everyone is entitled to legal advice if they have been detained.
- If you don't have a solicitor, there will be an on-call solicitor.
- For adults with communication difficulties, an 'Appropriate Adult' can be appointed to help.

"Read the Terms of
Business letter - it contains
important information
about your case"

communication

Most of the complaints we receive are about communication.
Simple steps can improve communication.

Good communication is the key to a good relationship with your solicitor. Steps you can take to improve communication include:

Extra support

Tell your solicitor if you are having difficulty communicating with them. For example, if your first language isn't English or if you have learning disabilities or mental health issues, it is very important that you let your lawyer know.

They may be able to arrange the additional support you may need, such as an independent advocate to help you during meetings.

Terms of Business letter

Read the Terms of Business letter. It is sometimes referred to as Letter of Engagement/Terms of Engagement letter.

This letter contains important information that you need to be aware of. It will probably be the first letter you receive from your solicitor.

We find that many common misunderstandings could be avoided if everyone was to read and fully understand the Terms of Business letter.

A Terms of Business letter usually sets out:

- an outline of the work to be done
- information about how fees will be charged (and possibly an estimate)
- details of Legal Aid (if you are entitled to Legal Aid)
- names of staff who will carry out the work
- information about any other staff who will be involved and the costs for their involvement
- who should be contacted in the event that you are unhappy with the firm.

It is important that you understand the Terms of Business letter. If you don't understand the written information given to you, then always ask for an explanation.

You might receive a Terms of Business letter after you have already been legally represented - for example at a police interview or at court. This is quite common.

However, solicitors must send these letters out as soon as possible.

communicating with advocates

If you have an advocate as well as a solicitor, the amount of communication you will have with your advocate will depend on the type and complexity of the case. Unlike when you instruct a solicitor, there is no direct contract between you and the advocate. You will not, therefore, receive a Terms of Business letter from an advocate.

While your advocate will meet with and advise both you and your solicitor, any questions that you may wish to ask your advocate, outside of a direct meeting with them, should go through your solicitor.

Some advocates may respond directly to you. However, it is more likely that your advocate will communicate with your solicitor and it will be up to your solicitor to pass on any information to you.

Sometimes we see complaints about advocates failing to communicate, such as in the case of Mr X below.

Mr X, complained that the advocate failed to contact him prior to his sentencing at the High Court to discuss his options.

The complaint was rejected on the basis it would have been up to Mr X's solicitor to have contacted Mr X directly to discuss his options prior to his sentencing. As there was no duty on the advocate to contact Mr X directly, the complaint was not upheld.



communication

Updates and your input

Expect updates at key stages of your case. Your solicitor should have explained what these key stages are and when an update is likely to be provided.

You should also be told when your input is required.

The outcome

Your solicitor can only give you their professional opinion of what might happen and the best and worst case scenarios.

Ultimately, it will be up to the court on the day to decide on your case. Although the final outcome might be different to what you have been advised, this does not necessarily mean that you were inadequately advised.

There can be no guarantees so you should prepare yourself for a number of different outcomes.

Solicitors do have a duty to give you honest advice, and sometimes this advice might not be what you are expecting or want to hear.

"the final outcome might be different to what you were expecting... this does not mean you have been inadequately advised"

Different levels of communication

Things which may affect the amount of communication you receive include:

- Your solicitor's schedule: Your solicitor may not always be available when you contact them. They will often be at court during office hours. It may not be possible for a solicitor to return a call or respond to an email quickly.
- Usually if your solicitor is unavailable, you can ask to speak to their secretary, or another solicitor in the firm may be able to help in their absence.
- If you receive Legal Aid, the level of communication between you and your solicitor may have to be limited, based on the level of Legal Aid funding that has been approved. Legal Aid is discussed in more detail in Section 7.

communication

Remember

- If you have specific communication needs, tell your solicitor at the start
- Read your Terms of Business letter
- If you don't understand, ask your solicitor to explain
- Agree at the beginning how you will communicate and how often

"You - as well as your solicitor - have a role to play in how well things go."

your responsibilities

Your responsibilities include:

- agreeing with your solicitor how instructions should be given
- giving instructions as soon as possible
- turning up to meetings on time
- signing and providing supporting documents when requested
- answering questions as openly and honestly as possible
- providing information which is relevant to your case as soon as possible
- not deliberately misleading your solicitor
- not asking your solicitor to carry out work which is illegal
- keeping in touch with your solicitor
- keeping your solicitor advised of any change of contact details
- asking questions if you don't understand

Remember

- Sign and provide supporting documents when requested
- Advise your solicitor of any changes to contact details
- Answer questions openly and honestly

your responsibilities

Your solicitor's responsibilities include:

- explaining to you what your options are and what they consider to be the best plan of action for you
- making sure that you understand what is going on in your case
- asking questions to get an understanding of the situation
- requesting proof of personal information (passports, bank statements etc)
- letting you know of deadlines for information

"Over half of all criminal cases don't go ahead as planned."

delays

Delays in criminal cases are common and, often, are not within your solicitor's control.

Over half of all criminal cases don't go ahead as planned. Reasons for delays can include:

Court timetables

Busy courts, other cases over-running or a Sheriff deciding that more time than expected will be needed to deal with your case can mean that it won't always be possible for your case to be heard quickly. It could also be adjourned to another day or another week.

For more information on the Scottish Court Service, please see: www.scotcourts.gov.uk

Delays in achieving disclosure

The Crown Office and Prosecutor Fiscal Service must disclose material evidence relevant to the case to the Defence. There are sometimes delays in achieving disclosure for a range of reasons e.g. technical issues with CCTV tapes etc, amended witness statements or poor quality evidence.

Availability of everyone needed

As well as you, your solicitor, advocate, witnesses, expert witnesses, the Sheriff and jury may all be required to be at court to deal with your case. Trying to fix a date which is suitable for all parties to attend is often difficult and can result in delays.

Legal Aid funding

Delays are not usually caused by the length of time taken for SLAB to process Legal Aid applications (although this may happen if an application is late).

However, the different types of legal assistance means that eligibility including financial may have to be checked if you change to a different type during the lifetime of a case. Delays might also be due to incomplete applications being submitted.

Proof of income and capital is required when applying for Legal Aid.

To avoid delays in Legal Aid being granted you should provide your solicitor with all information required as early as possible.

At the request of your solicitor, SLAB may also have to decide whether to make funding available for the employment of an advocate, an expert witness, unusual work or work which may be unusually expensive.

Failing to provide all of the necessary information will lead to a delay in obtaining a decision on your funding.

delays

Remember

- There are no rules or guidelines to say how long a case should take
- If you feel that matters are dragging on, ask your solicitor for an update
- If you ask questions, and your solicitor explains the process to you, it is likely that you will have a better understanding of what is involved, the timescales and the factors which may cause delays

"Your solicitor should explain all the options available and why they think their advice is the best option."

decisions on your case

Complaints in criminal law are quite often about the way a client's case has been prepared and presented.

Your solicitor will use their professional judgement when deciding on the best course of action for your case.

In addition, they must also consider other factors. For example, they must act in your best interests.

This means that you might receive advice that is not what you want or expect to hear, like being advised to plead guilty, when you don't want to.

Your solicitor should explain to you all the circumstances and options available and why they consider a certain course of action is the best option for you.

Your solicitor has a duty to be honest towards you and not to be misleading.

If they do not think that it is possible or reasonable to carry out your instructions, it is appropriate for them to refuse to do so.

If, for example, you ask your solicitor to lodge an appeal on your behalf, and the solicitor doesn't think you have any grounds for appeal, they will not accept your instructions.

Your solicitor also has a duty to the courts, to the profession and to others. Sometimes you may feel that these duties conflict with each other.

We sometimes see complaints about solicitors failing to object to another solicitor or Sheriff saying something that the client didn't consider to be correct or fair.

However, the other side will always be given the opportunity to present their case. This can result in some things being said in court which you are unhappy about.

Just because your solicitor didn't object at a specific point doesn't mean that they aren't on your side.

Ultimately, it is up to the professional judgement of the solicitor to decide how best to present your case.

If you are unhappy with how your solicitor intends to progress matters, or how the case has been presented, speak to them about your concerns and ask them to explain the reasons for their approach.

If you are very unhappy with the service that you are receiving, you can consider asking to move your case to another solicitor in the firm, or to a new firm altogether.

decisions on your case

Remember

- You will sometimes receive advice which is not what you want or expect to hear
- Your solicitor won't always be able to act on your instructions
- Your solicitor has a duty towards the court and to others as well as to you

"In addition to the cost of time spent on your case you may also have to pay travel expenses, expert witness fees and advocate fees."

costs

Criminal cases can be unpredictable. Many solicitors will find it impossible to provide you with an estimate of fees.

Your solicitor should either provide you with a rough estimate of fees, or details of how you will be charged.

Time spent on your case

Because of the unpredictable nature of criminal cases, it is likely that the fees charged will be based on an hourly rate instead of a fixed fee.

This means that the fee will depend on time spent on your case. The amount of time your solicitor will spend on your case will depend on a number of things including;

- the seriousness of the charge
- the amount of evidence and witnesses needed

- how fast the other side deals with matters; and
- whether the case goes to court.

These are all matters which are largely outside the control of your solicitor.

Additional costs (outlays)

In addition to the cost of the time spent preparing your case and attending court, you may have to pay other expenses known as outlays. These may include court fees, travel expenses, fees of expert witnesses, medical reports and advocates' fees.

It is not unusual for a firm to ask you to make an initial payment when you first instruct them, especially if your case will be proceeding to court.

The fee note

The fee note usually includes a brief explanation of the work which has been carried out.

You can also request a breakdown of how the fee has been calculated. If there is something in your bill which you don't understand, ask.

Your solicitor should be able to provide you with an explanation.

Payment methods

Ask to be kept updated about costs - you might ask your solicitor for regular fee notes (known as interim fee notes) every few months.

Some firms will agree to set up a standing order so that you can make a regular contributions towards your costs.

If you are eligible for Legal Aid you should also be told about any contributions that you may have to make. This information should be given to you in writing in your Terms of Business letter.

Advocates' fees

The fee which your advocate may charge can be negotiated in advance. This is usually done between your solicitor and advocate. In some cases, the work of an advocate may be covered by Legal Aid, but this is something you will need to check with your solicitor.

costs

Remember

- Costs can be unpredictable - it is best to ask for regular updates
- Ask for an indication of costs at the beginning
- Expect to be charged for time spent on emails, telephone calls and meetings, even if you just call for an update
- Details of charging rates and who is doing the work should be in the Terms of Business

"To avoid delays in legal aid being granted, you should provide your solicitor with all information required as soon as you can."

legal aid

Different types of legal aid are available for criminal cases. Talk to your solicitor about which type you are entitled to.

The types of funding available from the Scottish Legal Aid Board for criminal proceedings are:

- Advice and Assistance and Advice By Way Of Representation (known as ABWOR) - this may be free, or you may have to pay a contribution towards the cost of your case.
- Summary Criminal Legal Aid – if you are eligible for Summary Criminal Legal Aid you will not be expected to pay any contributions towards the cost of your defence.
- Solemn Criminal Legal Aid - for more serious crimes e.g. murder, rape, serious drugs offences etc. you will be entitled to Solemn Criminal Legal Aid and

will not be expected to pay any contributions towards the cost of your defence. Solemn Legal Aid may be available automatically for your first appearances in court.

You should be aware that you may have to pay for any Advice and Assistance or ABWOR you have received before summary/solemn Criminal Legal Aid has been granted.

It can sometimes be confusing to know what the difference is between the types of funding and what you may be entitled to, if anything. Your solicitor will be able to explain all of this to you.

Your Terms of Business letter should contain details of any Legal Aid you are entitled to.

If you receive Legal Aid, the level of communication between you and your solicitor may have to be limited, based on the level of Legal Aid funding that has been approved.

This is because solicitors need to make sure that there are enough funds available to progress your case, and that the funding is being put to best use in order provide you with the best service.

An example of this is prison visits. Prison visits will only be funded by the Scottish Legal Aid Board ('SLAB') if they are considered necessary.

If your solicitor can obtain your instructions without incurring costs for travelling to, and attending, a prison meeting, SLAB will refuse funding.

If funding has been refused, your solicitor should explain the reasons why a meeting cannot take place.

Finally, bear in mind that if you are receiving Legal Aid and you wish to change your legal representation, SLAB must give permission for you to change to another solicitor or advocate.

legal aid

Remember

- Even if you are receiving Legal Aid, you may still have to make a contribution to your legal costs
- If you receive Legal Aid, the amount of communication between you and your solicitor may need to be limited

"If your solicitor has withdrawn from acting, it will be up to you to find new legal representation as soon as possible."

changing solicitor

Usually, a change of solicitor is not a good idea while a case is ongoing. However, there are circumstances when it may be appropriate.

Advocates and solicitor advocates generally follow the same principle in that it is not desirable to withdraw from acting whilst a case is ongoing.

Your solicitor can stop acting for you if:

- a conflict of interest arises
- you want your solicitor to mislead the court
- you ask your solicitor to assist in a criminal activity
- you are unwilling to accept advice
- you fail to pay fees
- you fail to give instructions
- you act unreasonably for example if you shout or swear abusively in court, or towards those representing you, including members of staff

If your solicitor withdraws from acting

The solicitor should give you reasons why they have decided to stop acting for you. If your case is at court, they must also inform the court in writing. They must also inform the other parties to the case.

Advocates need to formally request permission from the Judge if they wish to withdraw from acting.

If your solicitor has withdrawn from acting it will be up to you to find new legal representation as soon as possible. If it happens close to, or during, a trial, it will be up to the Judge to decide whether to postpone your trial to allow you time to find new legal representation.

Ending the contract with your solicitor

Generally speaking, clients are free to end the contract with their solicitor whenever they please, and are free to choose a new solicitor.

If you decide to change solicitor or firm while your case is ongoing, your new solicitor will need to send a mandate to your old solicitor requesting the safe delivery of your file and papers. The process of passing your file and papers to a new solicitor is often referred to as the implementation of the mandate.

If a solicitor receives a mandate, they must arrange for the file and papers to be sent as soon as possible.

There are some situations where a solicitor will be unable to pass the files and papers immediately, these include;

- If the client hasn't yet paid their fees and outlays
- If the client has been certified as incapable e.g. medical reasons
- For clients receiving Legal Aid, SLAB must give permission for the transfer

If a solicitor is not in a position to send the papers/files immediately, they should advise the new solicitor that they are exercising a lien over the files. You should be aware that where files or documents are delivered by one solicitor to another, a fee may be charged for this.

changing solicitor

However, your solicitor cannot hold on to your papers if it would prejudice a continuing case.

What can happen is that the relevant documents needed for your case can be sent to your new solicitor whilst your old solicitor holds on to the rest of the file, until their fee has been paid. This will allow your new solicitors to prepare your case for court.

If you are considering changing solicitors, be open and honest about your reasons for doing so. Delays and disputes can happen if the reason you have provided your new solicitor (which they will put on your mandate) is different from your previous solicitor's understanding.

Remember

- Your solicitor can withdraw from acting for you in certain circumstances
- If that happens, it will be up to you to find new legal representation
- Generally speaking, clients are free to end the contract with their solicitor whenever they please

“...your solicitor may not know that they will not be able to appear on your behalf until the last minute.”

local agents

Sometimes your solicitor may not be able to appear at court on the day of your trial and will have arranged for a different solicitor to appear.

This can either be another solicitor from the same firm, or a solicitor from a different firm (known as a local agent).

Although this may be unsettling, it is quite common for this to happen. Given the busy nature of the courts and the busy diary of criminal solicitors, they may not know that they will not be able to appear on your behalf until the very last minute.

If this situation arises, it is up to your solicitor to arrange for a local agent to appear and to ensure that they are fully briefed to represent you.

Failure to do so can result in an upheld complaint against the solicitor, as in the case of Mr Y (see opposite page).

Mr Y was advised by his solicitor that he would personally appear in court. When it became apparent that the solicitor would be unable to attend, he failed to tell his client. Although a local agent was instructed, the solicitor had not allowed enough time to ensure that the agent was fully briefed and had been provided with all of the relevant information prior to the start of the trial. The SLCC determined that Mr Y's solicitor provided him with an inadequate professional service and ordered the firm to pay Mr Y £600 by way of compensation.

It is always better to be prepared for any eventuality. Be upfront and ask your solicitor about what systems they have in place if they find themselves unable to appear in court on your behalf. This should provide you with some reassurance, during what is already a stressful time for you.

local agents

Remember

- It is quite common that solicitors are unable to attend court due to changing court timetables
- If your solicitor can't attend, it is up to them to arrange for another solicitor to appear



complaints

If you are unhappy with the service a solicitor has provided to you, or feel that a solicitor's conduct is unprofessional, we are here to help.

There are certain things which you need to be aware of before you make your complaint.

We can normally only look at a complaint if the lawyer has already had the opportunity to put things right. Complaints can often be completely resolved at this stage.

Allow your solicitor 28 days to deal with your complaint. If, after having done this, you are still not happy with the outcome, you can make a formal complaint to us. It is best to make your complaint as soon as possible. The sooner you make the complaint, the more clearly you will remember the circumstances around it.

We can only consider complaints made within the time limits which are set out on our website.

If your complaint is not made within these time limits, we may not be able to accept it.

If you want to find out more about us and what we do, please visit
<http://www.scottishlegalcomplaints.com>

We are open from 9am until 5pm, Monday to Friday, apart from Tuesday when we close for staff training between 10am and 11am.

If you need information in another language or in large print or on audio CD, please let us know.

"We can normally only look at a complaint if the lawyer has already had the opportunity to put things right"

complaints

Remember

- Normally, you should contact the firm first to give them the opportunity to put things right
- Allow the firm or lawyer 28 days to respond
- Be aware of our time limits

Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
EDINBURGH EH1 3EG

Phone: 0131 201 2130
Fax: 0131 201 2131

Email: enquiries@scottishlegalcomplaints.org.uk

 @slccccomplaints