

Best practice in complaint handling

– a guide for advocates

Complaints are a business risk and can give you valuable insight into the needs and expectations of current and future clients. The better you can recognise and address any concerns at the earliest possible stage, the better you will manage the risk.

We find that many complaints from the public arise from misunderstandings about the role of the advocate. Although solicitors will generally manage their clients' expectations, we do recommend that whenever you first meet with their client, you should take some time to explain or reiterate what you can and cannot do. You may like to keep a note of what was discussed.

Although members of the Faculty of Advocates do not generate many complaints, it is very important that all advocates have a sound complaints policy and process in place, and for them to handle any complaints that are made in an appropriate way.

You should always respond to complaints from the client and any third parties; you should also make it clear, if this applies, that privilege or the duty of confidentiality may prevent you from giving a complete response.

Each individual advocate is responsible for handling any complaint against them, but might prefer to ask their clerk to assist in dealing with the communication. Guidance can also be obtained from the Faculty Office or from the Dean's Secretariat.

Good handling of any concerns may help you to reach resolution without the need for the SLCC's involvement. It also reflects well on you and will reduce the unbillable time and stress that prolonged complaints can cause. However, because we recognise that a complainer may still want to exercise their right to approach the SLCC, you should still always signpost us (with our website address and phone number) in your final response. If complaints are made to us, we will work with you wherever possible to try to achieve resolution, right throughout our process.

Why use our guidance?

This guidance gives some best practice advice around drafting a complaints policy, your approach to a complaint, and some tips to help you answer complaints. It draws on our learning from complaints that we have received, and our analysis of what helped to resolve them.

Although this guidance is not mandatory, your level of compliance with the best practice principles that we outline can be taken into account when we consider the complaint, and may influence any complaints levy applied in respect of upheld complaints about service. You can read more about the complaints levy [on our website](#).

Principles of good complaint handling

A good complaints system should be:

- Accessible
- User-focused
- Timely
- Objective
- Resolution-focused
- A tool for learning and improvement.

We'll explain these first, then go on to outline the three basic steps that we believe are crucial to effective engagement with complaints.

1: An accessible process

If your stable has a complaints policy, everyone in the stable should know where to access it, be aware of the correct steps to follow, and how to answer any questions about it.

The Legal Profession and Legal Aid (Scotland) Act, 2007, which governs the legal complaints process, defines a complaint as “any expression of dissatisfaction”, so your policy needs to take that into account when describing how a complaint will be handled. The process should be open, simple, and easy to access. Clear communication is as vital to the complaints journey as it is to the work instructed.

Any complaints procedure should also be flexible enough to take account of special needs and circumstances.

2: A user-focused process

Ideally, your own or your stable's website should make it clear that queries and concerns may be raised and will be dealt with.

Your commitment to a user-focused approach could include:

- An open, empathetic and non-defensive attitude
- Recognition that it could have been difficult for the complainer to bring a complaint
- An early acknowledgement of the complaint, perhaps summarising the issues that you're going to respond to
- Managing expectations about what the complaints process can achieve, particularly if it arises from dissatisfaction with a court's decision
- Providing clear explanations and reasons to show how you reached any conclusions
- Signposting the complainers to the next step, including the right to approach the SLCC. You should provide at least our email, website address and phone number.

3: A timely process

The SLCC will not normally accept a complaint unless it has been brought to you first, allowing you at least 28 days to respond. That time may allow you to resolve the issues without the SLCC being involved at all. Even if a complainer approaches the SLCC, our investigators will continue to help you resolve a complaint wherever possible.

A timely process would be one where you:

- In your initial acknowledgment, set realistic timelines that will properly allow you to get any relevant information from your instructing solicitor and to consider the issues
- Aim to respond within those timelines
- If you realise will not be able to meet the initial targets, let the complainer know as soon as possible, specify a new date, and report back within that revised timescale.
- Demonstrate, in your answer, that you have used the time well to consider all the points made and any proposed resolution.

4: An objective process

An objective process might include:

- A consistent way of recording what needs to be investigated, how this is to be done, and the time frames
- Accurate notes of any actions taken, or conversations with either the complainer or your instructing solicitor
- Clear explanations, in your final answer, of what you have taken into account on each issue, including whether you considered other points that you can't reveal because they are privileged, as well as your conclusions
- Using plain language that is not confusing or open to misinterpretation
- A neutral, polite, and respectful approach
- Acknowledging any shortcomings, including inadequate communication.

5: A focus on resolution

When you summarise how you will look into the complaint, you should also explore what could resolve the concerns. In many cases, that could be as simple as an apology (provided that your insurers agree) or a clearer explanation, or more clarity on your fee. A complainer usually expects any actual or emotional loss to be acknowledged and put right.

You might achieve resolution more easily if you:

- Assure the complainer that their concerns are taken seriously
- Explore personalised options that will satisfy the complainer
- Even if you were not able to control a situation, think about whether you did properly manage the complainer's expectations and keep them updated

- Set out clearly any resolution proposals – including any conditions or dates for acceptance – and action them promptly
- If the proposals from the complainer are not appropriate, you should explain why, in neutral and respectful language, and signpost the complainer to the SLCC.

In a case referred to the Faculty Complaints Committee, the complainer only asked for an apology and a written undertaking to desist from a threatened course of action. The advocate refused. The Committee described the advocate's refusal to focus on resolution as "a most unwise action" - particularly since the actions giving rise to the complaint were finally considered to be unprofessional.

6: Learning from complaints

For a complaints process to be fully effective it is important to use any complaint as a learning opportunity. Reflecting on a complaint may suggest areas for improvement in practice and service levels. Keeping a log of complaints and what helped to resolve them can be a powerful tool for reflection, particularly if this highlights any trend of recurring issues that you will need to address.

You should regularly review and critique your complaints policy and the way that complaints have been handled, including asking for feedback.

We provide a specimen complaints policy at the end of this guidance that you may find useful.

Putting our guidance into practice

We believe the most effective way to handle a complaint is to:

- Engage
- Explore
- Respond

Engage

“The most effective engagement happens early, and draws on a variety of techniques”

After concluding a case in the Court of Session, Mr X was shocked to see that the bill included a fee of more than double the quotation given by the advocate’s clerk at the outset. He expressed his surprise at the amount and requested a meeting, but neither the advocate nor the advocate’s clerk responded to that request.

Effective engagement starts with recognising “any expression of dissatisfaction” (the wording used in the 2007 Act). During face-to-face interaction, be alert to any non-verbal clues.

Effective engagement could include:

- **acknowledging** the concerns and confirming that you will use your process to look into them
- **finding out** what exactly has upset the complainer – which may involve going back to other issues
- **being aware** of the emotional impact that making a complaint can have on the complainer
- **discussing** what solution the complainer is looking for
- **confirming** to the complainer what the concerns are, how you will investigate, and by when. As mentioned under Principle 2 above, notify a complainer as early as possible if you need more time to investigate or respond.

Mrs D had concerns over delays in the finalisation of the settlement of her personal injury claim. Although Mrs D had expressly asked the stable clerk, in two letters, to provide a copy of the advocate’s complaints handling procedure, they did not do so. When she subsequently followed up on this the clerk said they had no record of Mrs D’s previous request – yet still failed to provide the information.

Explore

We've deliberately used this term because – as in the example below – some practitioners don't pay sufficient attention to what the complainer is really saying, and the most pragmatic way to achieve resolution.

- You might want to get input from your instructing solicitor and call for any files or records that they may have
- You might also like to seek advice from the Dean's office before responding
- Keep notes of all calls or meetings with the complainer as you might want to refer to these in your response and your record of complaints.

A complaint arose as a result of a poorly worded document. When the matter came before the Faculty's Complaints Committee, the Committee expressed its concern that the whole matter could have been easily avoided, or solved far earlier, by a direct discussion between the parties.

Respond

Whether or not you feel the complaint is justified, it's important to let the complainer know of your full conclusions, as soon as possible.

A good response would:

- Demonstrate that you have considered and are responding to all the issues raised. Remember that a comprehensive response to the complainer can equally serve as your first response to the SLCC, if the complaint reaches us. Some further tips are set out under Principles 4 and 5 above.
- Clearly record your conclusion on each issue that you said you would investigate. For instance, you might demonstrate how your actions were ultimately in the client's best interests, but you might concede that you could have explained something better.
- Signpost that the complainer may approach the SLCC, if they remain dissatisfied. You should provide at least the SLCC's email, website details and phone number.

Ms L complained to her advocate about the way in which he had handled her divorce proceedings. She asked for several specific explanations about the way the case had been conducted. The stable clerk told her they would provide a detailed response within 10 working days. Seven weeks passed before she received the response, which failed to address the questions she had raised. We accepted the complaint for investigation.

Dealing with the SLCC

If the complaint is referred to us, please 'engage and respond' to us at an early stage too – including providing your explanation to us within the required timeframe.

From the outset, our investigators will try to help you and the complainer explore opportunities for resolution, and we also have a free mediation service to help resolve service issues of complaint.

Please keep an open mind, and do note, in your records, any proposals that helped to achieve resolution, for future guidance.

We have other resources available on our [website](#), and our staff are always happy to assist with any queries.

A specimen complaints policy that you can adapt or provide to complainers is included on the next page.

Specimen Complaints Policy

Advocates always aim to provide high quality legal services, but we also recognise that there may be times when a person is unhappy with what has been done. We are committed to a thorough investigation of any concerns. Either the advocate, or their clerk, may deal with the correspondence around a complaint, but primary responsibility for implementing the complaints policy and giving an answer to the complaint rests with the advocate.

We will deal with the complaint as follows:

1. We will, within three days of receiving your complaint, acknowledge it in writing and enclose a copy of this policy.
2. We may, if necessary, contact you to clarify any issues so that we understand the full extent of your concerns.
3. We will give you a timeframe for considering your complaint and providing our written response. Usually this will be 21 days after receipt of the complaint, but we will advise if we need more time.
4. We will take immediate steps to gather the information required to consider your complaint fully. That might involve obtaining documents from the instructing solicitor, who will have the case file.
5. There may be cases where we will be unable to provide a full explanation because our duty of confidentiality does not allow us to do so. We will highlight where this applies to specific concerns that you have raised.
6. Please understand that your complaint cannot alter the result of a court decision or any settlement already agreed upon.
7. We will provide a full response, explaining how we have considered your complaint.
8. If you are not satisfied that our response resolves your complaint, you have the right to refer your complaint to:

The Scottish Legal Complaints Commission
Capital Building, 12-13 St Andrew Square, Edinburgh, EH2 2AF
Website: www.scottishlegalcomplaints.org.uk
Email: Enquiries@scottishlegalcomplaints.org.uk
Phone: 0131 210 2130