

Final Report on Complaint Numbers and Complaint Handling amongst Scottish Advocates



TNS BMRB

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1. Background, objectives and method

1.1 Survey Background

The Scottish Legal Complaints Commission (or SLCC) was created under the Legal Profession and Legal Aid (Scotland) Act 2007, with operations started in October 2008. The organisation provides a gateway for all complaints against legal practitioners operating in Scotland. The SLCC is a neutral body and operates independently of the legal profession.

The SLCC receives complaints about the *conduct* of legal practitioners, which are referred to the appropriate professional body to investigate. Complaints about the *service* provided by legal practitioners are investigated by the SLCC. Where legal practitioners are unable to resolve complaints themselves, SLCC aims to provide an easily accessible and effective investigation and resolution service.

The SLCC has additional responsibilities; to monitor trends in practice and complaint handling and share best practice, providing guidance and giving recommendations where appropriate.

At the end of March 2012, the SLCC commissioned TNS BMRB to undertake research into the trends and practices regarding the number, the type and the handling of complaints received by Scottish legal firms and Advocates. **This report covers the findings in relation to Advocates.**

1.2 Research objectives

The specific objectives of the research were grouped into two distinct categories as follows:

Statistical Information

1. To establish background information on number and type of new cases by practice area;
2. To establish number of complaints dealt with since 2008, by practice area;
3. To identify from where complaints originate;
4. To establish the outcome and disposal of complaints.

Complaints handling

1. To identify management information systems in place for complaint record keeping;
2. To assess how clients are informed about how to make a complaint;
3. To determine what type(s) of training have been provided to Advocates, by whom.

1.3 Sample and methodology

The SLCC supplied TNS BMRB with the name and postal contact details of 452 Advocates in Scotland. Questionnaires with accompanying letters and reply paid envelopes were sent to all of these contacts on 8th May 2012.

Email reminders were subsequently issued to help boost the number of returned questionnaires.

In total 93 questionnaires were completed – a very respectable response rate of 21% - between 8th and 25th May 2012.

SLCC and TNS BMRB would like to thank all those who participated.

This report summarises the main findings obtained.

2. Numerical information on new cases

Before collecting information on volume of work and number of complaints, the questionnaire sought to establish in which practice areas Advocates worked.

2.1 Practice area coverage

Specifically the questionnaire listed seven practice areas and respondents were asked to indicate those areas they worked in. The results obtained were as follows

Table 1: Practice areas worked in
Q1. In which of these legal practice areas do you work?

Base: All respondents	(93) %
Personal injury/medical negligence	63
Commercial	47
Public/administrative (incl. immigration/asylum)	40
Land/property/rural	40
Criminal	27
Executries, wills and trusts	17
Matrimonial/family	14
Other legal areas¹	34

Personal injury/medical negligence was most likely to be mentioned as a practice area worked in, and by a significant margin. Almost two thirds (63%) of Advocates stated that they worked in this area compared to just under half (47%) working in the commercial field, which was endorsed by the second highest proportion.

Fairly significant numbers, although not the majority, indicated that they covered public administration and land/property/rural practice areas (40% for each), whereas far fewer by comparison endorsed the areas of criminal, executries (including wills and trusts) and matrimonial/family law. Around a third also indicated that they worked in fields other than the seven areas listed on the questionnaire.

2.1.1 Number of new cases

One of the main numerical objectives of the research was to establish whether there has been a decreasing number of complaints over the course of the last 3 complete years, and if so, whether the reduction in complaints correlates with a general decline in the level of business/number of new cases handled by Advocates.

¹ In addition to the seven main practice areas Advocates were given the option to tick a box for 'any other legal' area for those legal cases which they considered to fall outside of those listed.

Accordingly all respondents were initially asked "For each area where you work please write in the boxes below the number of **new cases** that you have taken in the specified period". Information on new cases was therefore obtained for each practice area and across three timeframes, namely:

- 1 October 2010 to 30 September 2011 (2010/11);
- 1 October 2009 to 30 September 2010 (2009/10); and
- 1 October 2008 to 30 September 2009 (2008/09).

A summary of the results obtained is provided in tabular format below for each practice area. The summary includes three different measures namely:

- The mean number of new cases year on year;
- The total number of new cases year on year;
- The lowest and highest number of new cases worked on year on year;
- The number² who were unable/did not provide an answer.

Personal injury/ medical negligence

Considering first the number of new cases in personal injury/medical negligence, the results were as follows:

Table 2: Number of New Cases: Personal injury/medical negligence

Base: all working in personal injury/medical negligence	2008 – 2009 (59)	2009 – 2010 (59)	2010 – 2011 (59)
Mean number of new cases	33	31	31
Total number of new cases	1402	1475	1603
Range of new cases	0-150	0-180	0-200
Don't know/not stated (n=)	16	12	8

Based on this evidence each year Advocates worked on an average of 31 new cases in this practice area – a figure that has remained fairly stable over the three timeframes. The actual number of new cases worked on varies significantly though, and indeed the highest number of new cases has increased from 150 to 200 in the latest year. Partly reflecting this but also arguably reflecting the drop from 12 to 8 for those not giving a response (i.e. saying don't know or not stated), the total number of new cases has also increased year on year. The latest increase, of 128 new cases, is thus very similar to what we would have expected with 4 more Advocates providing a response in the latest year.

² As only a proportion of the sample answered for each practice area (ranging from 59 Advocates for civil to 13 for criminal) the data has been shown in terms of the actual numbers, not percentages.

Commercial

Moving onto commercial, the number of new cases recorded for this practice area was as follows:

Table 3: Number of New Cases: Commercial

Base: all working in Commercial	2008 – 2009 (44)	2009 – 2010 (44)	2010 – 2011 (44)
Mean number of new cases	10	10	10
Total number of new cases	319	338	387
Range of new cases	1-40	1-45	1-50
Don't know/not stated (n=)	13	10	6

The average number of new cases worked on is relatively small low in this practice area, at ten, and this figure has remained constant over time. In line with the findings for personal injury/medical negligence though, there has been an increase in the maximum volume of new cases undertaken, which has risen from 40 to 45 to 50. The steady rise in the total number of new cases however is likely to have been determined, at least to some extent, by the increase in the number of respondents supplying a figure: 33 out of the 44 Advocates working in this area did so for the year 2008/09 compared to 38 Advocates in the most recent year.

Public Administration

The figures for new cases in the area of public administration (including immigration and asylum) were as follows:

Table 4: Number of New Cases: Public administration

Base: all working in public administration	2008 – 2009 (37) %	2009 – 2010 (37) %	2010 – 2011 (37) %
Mean number of new cases	11	13	15
Total number of new cases	250	289	406
Range of new cases	0-50	0-50	0-50
Don't know/not stated (n=)	14	14	10

In the public administration practice area the average number of new cases has increased steadily year on year, from 11 to 15. Moreover there has been a year on year increase in the total number of new cases – even during those periods where the number of Advocates giving a 'don't know/not stated' response did not change. Furthermore the increase from 289 to 406 new cases is even greater than might have been expected from the rise in the number of Advocates providing a response at this question. This suggests there have been more new cases in public administration, particularly between 2009/10 and 2010/11.

Land/property/rural

The next table provides the results for those working in the land/property and rural practice area.

Table 5: Number of New Cases: Land/property/rural

	2008 – 2009 (37) %	2009 – 2010 (37) %	2010 – 2011 (37) %
Base: all working in land/property/rural			
Mean number of new cases	11	10	10
Total number of new cases	244	262	293
Range of new cases	0-70	0-70	1-70
Don't know/not stated (n=)	15	11	8

The constancy of these results in terms of both the average number of new cases and the range of new cases handled, suggests that the relatively small increase in the total number of new land/property/rural cases has occurred as a result of the drop in the 'don't know/not stated' level of response. Specifically, with 3 more Advocates giving a response, and an average of 10 cases handled by each, we would have expected an increase of 30. The actual rise in the total number of new cases was from 262 to 293 – an increase of 31. The volume of business in this area therefore appears to be relatively stable.

Criminal

Some 25 Advocates indicated that they worked in the area of criminal law and the actual number of transactions recorded was as follows:

Table 6: Number of New Cases: Criminal

	2008 – 2009 (25) n	2009 – 2010 (25) n	2010 – 2011 (25) n
Base: all working in criminal law			
Mean number of new cases	18	14	15
Total number of new cases	311	304	336
Range of new cases	0-85	0-50	0-73
Don't know/not stated (n=)	8	4	3

The figures recorded in respect of the criminal practice area show fluctuating trends, with the mean number, the total number and the highest volume of new cases each dropping in 2009/10 but rallying again in 2010/11. This pattern was most pronounced in terms of the range of new cases undertaken. The 'don't know/not stated' level on the other hand dropped between the earlier time frames, but changed only marginally in the latest year. There is therefore some evidence that the volume of work has increased in this area, but only by a relatively small amount.

Executries, wills and trusts

Considering next the number of new cases in Executries, wills and trusts, the results were as follows:

Table 7: Number of New Cases: Executries, wills and trusts

Base: all working in Executries, wills and trusts	2008 – 2009 (16) n	2009 – 2010 (16) n	2010 – 2011 (16) n
Mean number of new cases	7	6	6
Total number of new cases	47	47	62
Range of new cases	2-15	1-15	0-15
Don't know/not stated (n=)	9	8	6

The figures between 2008/09 and 2009/10 were fairly consistent across all four measures, whereas between 2009/10 and 2010/11 there was a slight increase of 15 in the total number of new cases, 47 to 62. However the latter corresponded with a slight fall in the 'don't know/not stated' level. Specifically, two more respondents provided a response at this question for 2010/11. On the basis of the evidence presented here, if it is assumed that these two Advocates worked on an average of 6 new cases, then we would have expected an increase of around 12 new cases. On balance therefore this suggests little real change.

Matrimonial/family

Considering next the number of new cases in the matrimonial/family practice area the results were as follows:

Table 8: Number of New Cases: Matrimonial/family

Base: all working in matrimonial/family	2008 – 2009 (13) n	2009 – 2010 (13) n	2010 – 2011 (13) n
Mean number of new cases	16	16	16
Total number of new cases	130	129	143
Range of new cases	1-40	0-35	1-35
Don't know/not stated (n=)	5	5	4

The findings for this practice area follow a similar pattern to those recorded in several other areas: there has been a constant mean number of new cases and an upward shift in total numbers, with the latter due, probably, to the increase in the number of Advocates providing a figure for the number of new cases they handled. Overall though with only 13 respondents providing information it is difficult to draw clear conclusions from the results in this practice area.

Other legal areas

Finally for other legal areas, outwith those listed, the number of new cases recorded across the three timelines was as follows:

Table 9: Number of New Cases: Other legal areas

	2009 – 2008 (32) n	2010 – 2009 (32) n	2010 – 2011 (32) n
Base: all working in other legal areas			
Mean number of new cases	6	7	7
Total number of new cases	116	154	174
Range of new cases	0-15	0-30	0-30
Don't know/not stated (n=)	11	9	8

In this practice area there has been a steady increase in the total number of new cases in the period 2009/10 yet only a marginal decline in the numbers giving a 'don't know/not stated' response. Accordingly the evidence suggests that there has been a real increase in the number of new cases in 'other legal areas'.

2.1.2 Overall number of new cases year on year

The table below summarises these results by showing the total number of new cases undertaken by practice area and the overall total across all legal areas, each year.

Table 10: Total New Cases Summary

Base: All respondents working in each area	2008 – 2009	2009 – 2010	2010 – 2011
Personal injury/medical negligence (59)	1402	1475	1603
Public/administrative (incl. immigration/asylum)(37)	250	289	406
Commercial (44)	319	338	387
Criminal (25)	311	304	336
Land/property/rural (37)	244	262	293
Matrimonial/family (13)	130	129	143
Executries, wills and trusts (16)	47	47	62
Other legal areas (32)	116	154	174
TOTAL NUMBER OF NEW CASES	2819	2998	3404

As there has been an increase in the number of Advocates supplying information on their own case load, particularly in the most recent year, an increase in the total number of new cases is to be expected. However in public administration and other legal areas the increase cannot be wholly accounted for by the greater number of Advocates providing data.

Year on year personal injury/medical negligence has accounted for a much larger volume of business than any other practice area. In the most recent year, for example, almost half (47%) of new cases were in this practice area.

3. Complaints

Advocates working in each practice area were also asked to specify how many complaints, if any, they had received across each of the three timeframes. The results obtained were as follows:

Table 11: Number of advocates working in each practice area

Base: All Advocates working in each area	2008 – 2009	2009 – 2010	2010 – 2011
Personal injury/medical negligence (59)	1	0	7
Public/administrative (incl. immigration/asylum) (37)	0	2	1
Commercial (44)	0	0	1
Criminal (25)	0	1	0
Land/property/rural (37)	0	0	0
Matrimonial/family (13)	0	1	0
Executries, wills and trusts (16)	0	0	0
Other legal areas (32)	1	0	1
TOTAL NUMBER OF COMPLAINTS	2	4	10

In total 10 out of the sample of 93 Advocates indicated that they had received a complaint since September 2008. Overall the number of complaints has been very low, although this has increased year on year and noticeably in the most recent year. Seven out of the ten complaints in 2010/11 were received for cases undertaken in the area of personal injury/medical negligence, which is the main practice area for Advocates.

3.1 New cases and Complaints Summary

However this pattern was not evident in the previous year as demonstrated in the table below.

Table 12: New cases and number of complaints summary

Base: All respondents working in each area	2009 - 2010		2010 - 2011	
	Percentage breakdown of all new cases %	Breakdown of complaints n =	Percentage breakdown of all new cases %	Breakdown of complaints n =
Personal injury/medical negligence (59)	49	0	47	7
Public/administrative (incl. immigration/asylum) (37)	10	2	12	1
Commercial (44)	11	0	11	1
Criminal (25)	10	1	10	0
Land/property/rural (37)	9	0	9	0
Matrimonial/family (13)	4	1	4	0
Executries, wills and trusts (16)	2	0	2	0
Other legal areas (32)	5	0	5	1
TOTAL	100	4	100	10

Thus whilst in the area of personal injury/medical negligence a higher number of complaints might be expected given the higher number of cases handled, this pattern was not in evidence every year. More generally though the very low level of complaints makes it very difficult to discern any true patterns, or attach statistical meaning to the numbers in terms of the different practice areas.

Considering therefore the ratio of the **total** number of complaints to total new cases year on year, it would appear that the level of complaints has increased.

Table 13: Ratio of complaints to new cases

Base: all respondents (93)	2008 – 2009	2009 – 2010	2010 – 2011
Total number of new cases	2819	2998	3404
Total number of complaints	2	4	10
ALL AREAS/TOTAL NUMBER	0.07	0.13	0.30

Whilst the level of complaints to new cases is undoubtedly low, this ratio has increased over the different time-frames.

3.2 Source, and resolution, of complaints

Follow-up information on the source and resolution of the complaints was provided from the 10 respondents who indicated that they had had a complaint since September 2008. The main findings across the different questions asked were as follows:

- 9 out of the 10 Advocates with any complaints indicated that they were made by the client (or someone on the client’s behalf);
- 4 out of the 10 Advocates indicated that the complaint(s) was resolved;
- When asked what information was provided to complainer when the complaint was unresolved the results were as follows:
 - To complain to the SLCC (4 Advocates)
 - To contact the Faculty of Advocates (3 Advocates)
 - To seek alternative legal advice (2 Advocates)
 - 6 out of the 10 did not give a response at this question – arguably reflecting the lack of any experience in **unresolved** complaints for several of the Advocates.
- All bar one Advocate indicated that they had a process for noting complaints, which was to record this information on a separate complaint file. One Advocate also recorded this information on the original paperwork.
- 8 out of the 10 Advocates indicated that their record keeping included recording actions taken or information provided where the complaint is not resolved.

- When those who had received any complaints were asked what lessons had been learnt from dealing with complaints, the responses either indicated that the complaint was dismissed at such an early stage that there was no opportunity to have learnt anything, or that the experience caused them to reflect on how to avoid / be more aware in the future.

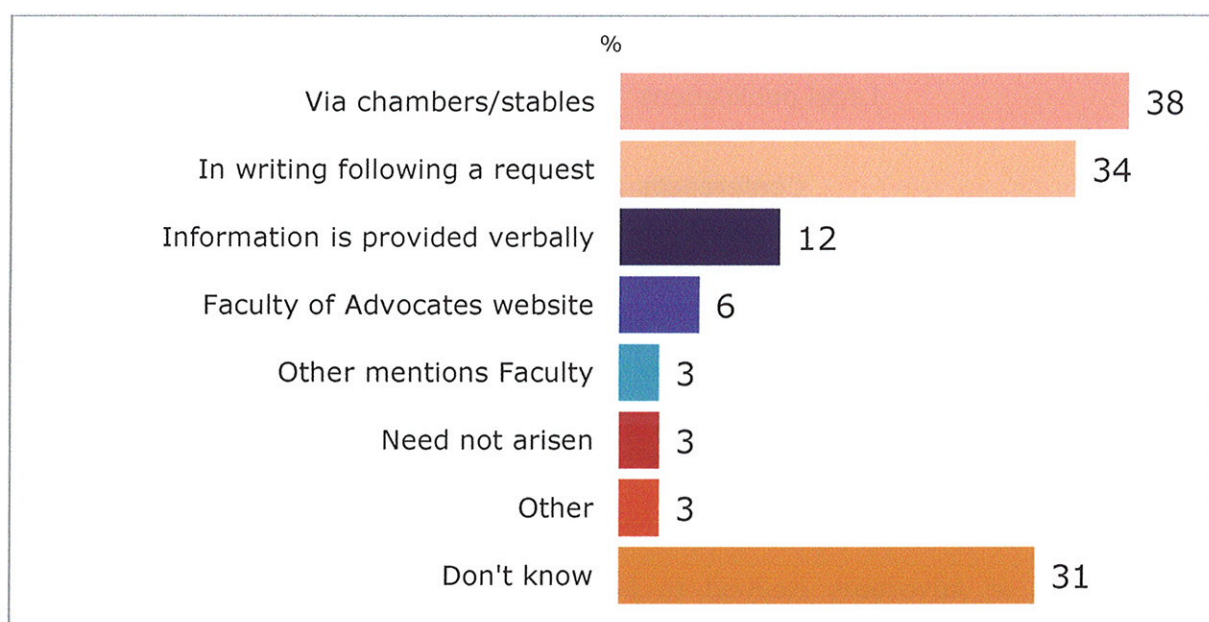
4. Complaint procedures information and training

The final objective of the survey was to inform the SLCC of current practices on information and training provision.

4.1.1 Information provision to complainers

The survey sought to establish the different means used by Advocates to provide information about the complaints procedure by asking which of four possible ways, if any, they used. The response was follows:

Figure 1: Ways in which information is provided on complaints procedures
Q10: In which of the following ways, if any, do you provide information to complainers about your complaint procedures?
Base: All respondents (93)



Most commonly, Advocates either provide information via their stables, or they do so in writing when requested. Around a third of the total sample uses each of these methods.

4.1.2 Formal documented process for dealing with complaints

Aside from a sizeable degree of uncertainty as to whether or not there is a formal documentation process in place, the results at this question demonstrated a lack of consensus on this issue. Specifically, 47% indicated that they had a formal documentation process set up; compared to 35% saying they did not. The remaining 17% did not respond either way.

Far fewer by comparison provide this information verbally (12%) and only a very small minority claimed to use the Faculty website. The other key point to note is that around

a third did not respond at this question suggesting that a sizeable proportion of Advocates have no mechanism in place for information provision.

4.1.3 Training and guidance on complaints

To inform the SLCC's strategy on training and guidance amongst Advocates respondents were asked to indicate from which sources, if any, they had accessed information, training or guidance on complaint handling. Figure 2 below summarises the results obtained:

Figure 2: Ways in which information, training and guidance has been accessed
Q12. Thinking now about training or guidance on complaint handling, have you accessed information, training or guidance on complaint handling via any of the following places?
Base: All respondents (93)



In total 41% of Advocates claimed to have received any information, training or guidance on complaint handling. For those who have received it, provision has mainly been sourced via either legal publications or through information on websites. Only very small numbers have been supported via any other means.

The Faculty of Advocates was most likely to be named as the provider of any guidance or information (by 66% of those receiving any), with much smaller proportions claiming to have sourced this assistance from the SLCC (13%) or an external legal organisation (16%). A further 18% were unable to name the provider.

5. Conclusions

The total number of new cases worked on by the Advocates in the sample has increased year on year, although considerably more so between 2009/10 and 2010/11 than earlier. However the growth in several practice areas can be accounted for by the corresponding increase in the number of Advocates who supplied data on their workloads for the more recent timeframes, and in particular for the period 2010/11. Public administration and 'other legal areas' are the only practice areas where there is evidence of a real increase.

Very few complaints have been received since September 2008 – just 16 in total. However the year on year figure has risen, from 2 in 2008/09 to 10 in 2010/11. Moreover, the number of complaints as a proportion of all new cases is also higher than that recorded three years previously.

These complaints tended to be from the client (or someone on the client's behalf) and just under half were resolved. Notwithstanding the small number of Advocates who have handled unresolved complaints, the evidence suggests that where this has occurred, complainers are likely have been signposted to the SLCC and/or to the Faculty of Advocates. The Advocates who had received complaints were also likely to have a process for noting complaints and how they have handled them, including the recording of information to the complainer when the complaint was unresolved.

Amongst Advocates generally there would appear to a variety of ways in which information is provided to complainers on the complaints procedure – with most either providing this via their stable, or in writing following a request. However the lack of response at this particular measure also suggests that a reasonable proportion do not provide this information, given that a third indicated subsequently that they did not have a formal documentation process in place for handling complaints.

