

The Public Records (Scotland) Act 2011

Scottish Legal Complaints Commission

Progress Update Review (PUR) Final Report by the PRSA Assessment Team

14th June 2019

Contents

1. The Public Records (Scotland) Act 2011	3
2. Progress Update Review (PUR) Mechanism.....	4
3. Executive Summary.....	5
4. Authority Background.....	5
5. Assessment Process.....	6
6. Records Management Plan Elements Checklist and PUR Assessment.....	8-15
7. The Public Records (Scotland) Act Assessment Team's Summary.....	16
8. The Public Records (Scotland) Act Assessment Team's Evaluation.....	17

1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal Assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor recordkeeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

2. Progress Update Review (PUR) Mechanism

Under section 5(1) & (2) of the Act the Keeper may only require a review of an authority's agreed RMP to be undertaken not earlier than five years after the date on which the authority's RMP was last agreed. Regardless of whether an authority has successfully achieved its goals identified in its RMP or continues to work towards them, the minimum period of five years before the Keeper can require a review of a RMP does not allow for continuous progress to be captured and recognised.

The success of the Act to date is attributable to a large degree to meaningful communication between the Keeper, the Assessment Team, and named public authorities. Consultation with Key Contacts has highlighted the desirability of a mechanism to facilitate regular, constructive dialogue between stakeholders and the Assessment Team. Many authorities have themselves recognised that such regular communication is necessary to keep their agreed plans up to date following inevitable organisational change. Following meetings between authorities and the Assessment Team, a reporting mechanism through which progress and local initiatives can be acknowledged and reviewed by the Assessment Team was proposed. Key Contacts have expressed the hope that through submission of regular updates, the momentum generated by the Act can continue to be sustained at all levels within authorities.

The PUR self-assessment review mechanism was developed in collaboration with stakeholders and was formally announced in the Keeper's Annual Report published on 12 August 2016. The completion of the PUR process enables authorities to be credited for the progress they are effecting and to receive constructive advice concerning on-going developments. Engaging with this mechanism will not only maintain the spirit of the Act by encouraging senior management to recognise the need for good records management practices, but will also help authorities comply with their statutory obligation under section 5(1)(a) of the Act to keep their RMP under review.

3. Executive Summary

This report sets out the findings of the Public Records (Scotland) Act 2011 (the Act) Assessment Team's consideration of the Progress Update template submitted for the Scottish Legal Complaints Commission. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

4. Authority Background

The SLCC acts as a gateway and point of contact for all complaints against legal practitioners in Scotland. Legal practitioners include qualified conveyancers, solicitors, advocates and commercial attorneys.

The SLCC receives complaints about the *service* received from a legal practitioner, and decides whether to investigate those complaints. The Legal Profession and Legal Aid (Scotland) Act 2007 encourages practices and practitioners to resolve the grievance themselves. Where this is not possible SLCC aim to provide an easily accessible and effective dispute investigation and resolution service. The Law Society of Scotland, Faculty of Advocates, Association of Commercial Attorneys still deals with matters of professional misconduct or unsatisfactory conduct and the SLCC oversees how these complaints are investigated and prosecuted. SLCC has an important role in influencing the conduct processes, including the powers to audit and recommend changes.

The SLCC aims to be of service to both the public and the profession. SLCC has an additional responsibility to share best practice, monitor trends, and highlight areas of concern. SLCC are committed to the use of mediation to resolve disputes between practitioners and their clients. In the right circumstances, mediation should prove to be a quick and successful method of resolving complaints.

The SLCC operates independently of the Scottish Government, Scottish Legal Profession, the Law Society of Scotland, the Faculty of Advocates and Association of Commercial Attorneys. SLCC appreciates their position of independence is valued by their service users by providing a greater sense of impartiality and objectivity to reviewing complaints.

5. Assessment Process

A PUR submission is evaluated by the Act's Assessment Team. The self-assessment process invites authorities to complete a template and send it to the Assessment Team one year after the date of agreement of its RMP and every year thereafter. The self-assessment template highlights where an authority's plan achieved agreement on an improvement basis and invites updates under those 'Amber' elements. However, it also provides an opportunity for authorities not simply to report on progress against improvements, but to comment on any new initiatives, highlight innovations, or record changes to existing arrangements under those elements that had attracted an initial 'Green' score in their original RMP submission.

The assessment report considers statements made by an authority under the elements of its agreed Plan that included improvement models. It reflects any changes and/or progress made towards achieving full compliance in those areas where agreement under improvement was made in the Keeper's Assessment Report of their RMP. The PUR assessment report also considers statements of further progress made in elements already compliant under the Act.

Engagement with the PUR mechanism for assessment cannot alter the Keeper's Assessment Report of an authority's agreed RMP or any RAG assessment within it. Instead the PUR Final Report records the Assessment Team's evaluation of the submission and its opinion on the progress being made by the authority since agreeing its RMP. The team's assessment provides an informal indication of what marking an authority could expect should it submit a revised RMP to the Keeper under the Act, although such assessment is made without prejudice to the Keeper's right to adopt a different marking at that stage.

Key:

G	The Assessment Team agrees this element of an authority's plan.		A	The Assessment Team agrees this element of an authority's progress update submission as an 'improvement model'. This means that they are convinced of the		R	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Assessment
---	---	--	---	---	--	---	--

				authority's commitment to closing a gap in provision. They will request that they are updated as work on this element progresses.			Team may choose to notify the Keeper on this basis.
--	--	--	--	---	--	--	---

Progress Update Review (PUR) Template: Scottish Legal Complaints Commission (SLCC)

Element	Status of elements under agreed Plan, 2017	Status of evidence under agreed Plan, 2017	Progress assessment status, <Date>	Keeper's Report Comments on Authority's Plan, 2017	Self-assessment Update as submitted by the Authority since 2017	Progress Review Comment, <Date>
1. Senior Officer	G	G	G	Update required on any change	The Job Description for CEO has now been updated to include responsibilities as Senior Officer.	<p>The Assessment Team thanks SLCC for this update which we have noted.</p> <p>The Assessment Team acknowledge the receipt of updated <i>Job Description</i> which they have retained in order that they may keep the SLCC submission up-to-date.</p>
2. Records Manager	G	G	G	Update required on any change	The Job Description for Finance & Corporate Services Manager has now been updated to include responsibilities as Records Manager.	<p>The Assessment Team thanks SLCC for this update which we have noted.</p> <p>The Assessment Team acknowledge the receipt of updated <i>Job Description</i></p>

						which they have retained in order that they may keep the SLCC submission up-to-date.
3. Policy	G	G	G	Update required on any change	No Change	No immediate action required. Update required on any future change.
4. Business Classification	G	G	G	Update required on any change	Records Destruction and Retention policy is a live document covering element 4 and 5, so minor updates are ongoing.	In their original submission SLCC committed to updating relevant policy documents on a regular basis. The Assessment Team appreciates the confirmation that this is being done.
5. Retention Schedule	G	G	G	Update required on any change	Live document so minor updates to the schedule are ongoing.	In their original submission SLCC committed to updating relevant policy documents on a regular basis. The Assessment Team appreciates the confirmation that this is being done. There is a clear recognition that a Retention Schedule is

						a 'living document' which is to be commended.
6. Destruction Arrangements	A	G	A	The Keeper can agree this Element on an 'improvement model' basis. This means that the authority has identified a gap in provision (the full roll-out of the file manager software which will allow SLCC to delete records from the New-Pro case management system) and has identified how it intends to close this gap. As part of this agreement the Keeper will need to be kept updated on the progress of work.	The background work for File Manager implementation was completed in June 2017. File Manager was not rolled out onto the live NewPro system with the 2017 annual upgrade due to incompatibility with the supplier's planned GDPR related system improvements. SLCC tested an updated version of File Manager in Q4 of 2017-18 and found issues with the flagging of cases for deletion, and so did not activate File Manager on the live NewPro site during the 2018 annual upgrade. Fixes were deployed to the system test site and retesting commenced in Q1 of 2018-19, with work ongoing since then. The SLCC have made File Manager implementation an	<p>The Assessment Team thanks SLCC for this update which we have noted.</p> <p>It is understandable that new projects, particularly those that touch on IT compatibility, may hit snags and targets may slip.</p> <p>The Assessment Team has noted that work in this area is ongoing and they look forward to being kept updated on this work in subsequent PURs.</p> <p>The Assessment Team acknowledge the receipt of e-mails supporting the statements in this PUR. This element remains at 'amber' for the moment as the work progresses.</p>

					operational priority, and are actively working with our supplier to resolve outstanding issues, so that case deletion/anonymization can commence before the end of the 2018-19 operational year. The destruction of paper records is ongoing.	
7. Archiving and Transfer	A	G	A	SLCC is currently in discussion with National Records of Scotland (NRS) Client Management Team with a view to developing a Memorandum of Understanding (MoU) which would govern the transfer of archival records from SLCC to NRS. The Keeper's Assessment Team has confirmed with the Client Management Team that discussions are underway to agree a MoU. The Keeper can accept this as a commitment to developing a formal agreement with an appropriate archive and requests that he is sent a copy of the signed MoU	Work on finalising the MoU has been ongoing since the RMP submission, as the SLCC require a specific clause to be added due to the Legal Profession and Legal Aid (Scotland) Act 2007, Section 43: Restrictions upon Disclosure of Information: Commission. An updated schedule of documents for permanent preservation was sent to NRS 21.01.19 and the SLCC met with NRS Staff 14.02.19 to discuss the MoU. A copy of the act was sent to NRS on 15.02.19 for their team to review and agree the MoU. We have since been	The Assessment Team is aware of the delay in providing Scottish public authorities an MoU due to the development of a new template. The Assessment Team understands that, since SLCC submitted its PUR, this work is now completed and the template MoU has been created. They also understand that NRS Client Managers have been in touch with SLCC to get this process back on track. The Assessment Team looks forward to re-grading this element to Green when an

				<p>once it has been agreed.</p> <p>The Keeper can agree this Element on an 'Improvement Model' basis. This means that the authority has identified a gap in provision (the lack of a formal transfer agreement with a suitable archive) and has identified how it intends to close this gap. The Keeper will be able to fully agree this Element once he receives the finalised MoU with NRS.</p>	<p>informed by our contact at NRS that the standard MoU is under review, and that our agreement cannot be progressed until this review is completed.</p> <p>We are awaiting further updates from NRS so that the MoU can be signed and we can start transferring our records as necessary.</p>	<p>MoU has been negotiated. (For PUR purposes only. The RAG status of the formal agreement remains unchanged – see explanation below).</p>
8. Information Security	G	G	G	Update required on any change	We have updated our processes and staff training to cover our responsibilities under GDPR.	As with all other Scottish public authorities SLCC have been required to review and update their data protection procedures in light of the 2018 legislation.
9. Data Protection	G	G	G	Update required on any change	We have updated our processes and staff training to cover our responsibilities under GDPR.	<p>As with all other Scottish public authorities SLCC have been required to review and update their data protection procedures in light of the 2018 legislation.</p> <p>The Assessment Team acknowledges that the public</p>

							facing SLCC website has been updated appropriately (including a video): https://www.scottishlegalcomplaints.org.uk/privacy.aspx
10. Business Continuity and Vital Records	G	G	G	Update required on any change	RSA soft tokens system installed Q1 2018-19 to allow for secure remote access to be extended to more people. Soft token setup is simple and could be completed remotely allowing for access to SLCC systems in event of the building becoming inaccessible. Minor update to BCP itself bring into line with Scottish Government Cyber Resilience reporting arrangements.	The Assessment Team thanks SLCC for this update which we have noted. It is commendable to review and, in this case enhance, business continuity/disaster planning processes.	
11. Audit Trail	G	G	G	Update required on any change	No Change	No immediate action required. Update required on any future change.	
	G	G	G	Update required on any change	A Competency Framework	The Assessment Team	

12. Competency Framework				change	has now been written for the Records Manager Role.	<p>acknowledges the receipt of the SLCC <i>Record Management Competency Framework</i> dated 14 February 2019. This has been stored in order that the SLCC submission can be kept up-to-date.</p> <p>The creation of this framework indicates a continuing resource investment by the authority and a determination to follow-up on a commitment in the original submission where SLCC stated: “A competency framework outlining what the SLCC considers are the vital skills and experiences needed to carry out the task is an important part of any records management system. The SLCC’s HR Manager is currently in consultation with an external consultant to draft a Records Manager Competencies Document.” The Assessment Team is now happy to acknowledge that this commitment has been pursued.</p>
--------------------------------	--	--	--	--------	--	---

13. Assessment and Review	G	G	G	Update required on any change.	No Change	No immediate action required. Update required on any future change.
14. Shared Information	G	G	G	Update required on any change	No Change	No immediate action required. Update required on any future change.

7. The Public Records (Scotland) Act Assessment Team's Summary

Version

The progress update submission which has been assessed is the one received by the Assessment Team on 15th March 2019. The progress update was submitted by Laura Clark, Facilities Officer.

The progress update submission makes it clear that it is a submission for the Scottish Legal Complaints Commission.

PRSA Assessment Team's Summary

The Assessment Team has reviewed Scottish Legal Complaints Commission's Progress Update submission and agrees that the proper record management arrangements outlined by the fourteen elements in the authority's plan continue to be properly considered. The Assessment Team commends this authority's efforts to keep its Records Management Plan under review.

General Comments

The Scottish Legal Complaints Commission continues to take its records management obligations seriously and is working to bring all elements into full compliance.

Section 5(2) of the Public Records (Scotland) Act 2011 provides the Keeper of the Records of Scotland (the Keeper) with authority to revisit an agreed plan only after five years has elapsed since the date of agreement. Section 5(6) allows authorities to revise their agreed plan at any time and resubmit this for the Keeper's agreement. The Act does not require authorities to provide regular updates against progress. The Keeper, however, encourages such updates.

The Keeper cannot change the status of elements formally agreed under a voluntary submission, but he can use such submissions to indicate how he might now regard this status should the authority choose to resubmit its plan under section (5)(6) of the Act.

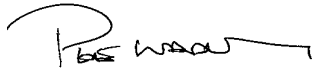
Where 'no change' has been recorded under the update on provision by the authority, the Assessment Team is happy to agree that these elements require no further action for the time being.

8. The Public Records (Scotland) Act Assessment Team's Evaluation

Based on the progress update assessment the Assessment Team considers that the Scottish Legal Complaints Commission continue to take their statutory obligations seriously and are working hard to bring all the elements of their records management arrangements into full compliance with the Act and fulfil the Keeper's expectations.

- The Assessment Team recommends authorities consider publishing PUR assessment reports on their websites as an example of continued good practice both within individual authorities and across the sector.

This report follows the Public Records (Scotland) Act Assessment Team's review carried out by,



.....
Pete Wadley
Public Records Officer