

Complaints about non-lawyer employees

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Introduction

Each year, around 5% of complaints dealt with by the Lawyers' Complaints Service (LCS) are related to non-lawyer employees. In some cases, non-lawyer employees are unaware that, if they are employed by a lawyer or an incorporated law firm, their conduct falls under the jurisdiction of the Lawyers Complaints Service and that there are professional standards expected of them. To bridge this gap, the New Zealand Law Society te Kāhui Ture o Aotearoa has produced this guidance to help non-lawyer employees understand their responsibilities and navigate the complaints process.

The guidance covers:

- who is a non-lawyer employee
- the types of conduct that can be complained about
- what the process is when a complaint is received
- support services available if a complaint is made
- practical tips on how to avoid common complaint types.

The aim of the guidance is to ensure that everyone who is involved in delivering regulated services is aware of their duties and, where necessary, has the tools to participate in and be supported through the complaints process. It can be confronting to deal with a complaint, especially if it comes as a surprise, so this guidance is designed to clarify when a complaint may legitimately be lodged against a non-lawyer employee and the steps that follow.

Definitions

- (a) The Lawyers Complaints Service is "**the LCS.**"
- (b) The New Zealand Law Society Te Kāhui Ture o Aotearoa is the "**Law Society**".
- (c) The Lawyers and Conveyancers Act 2006 is "**the Act.**"
- (d) The Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 is "**the Regulations.**"
- (e) The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 is "**the Rules of Conduct and Client Care.**"
- (f) The New Zealand Lawyers and Conveyancers Disciplinary Tribunal is "**the Disciplinary Tribunal.**"
- (g) The Legal Complaints Review Officer is "**the LCRO.**"

What is a non-lawyer employee?

A non-lawyer employee is someone who is employed by a lawyer or incorporated law firm but is not a lawyer themselves. This can include legal executives, legal secretaries and administrative staff.

Can a complaint be made to the LCS about a non-lawyer employee?

Non-lawyer employees are regulated by the Law Society and subject to the complaints and disciplinary regime provided for in Part 7 of the Act. Under s132 of the Act and reg6(1)(c) of the Regulations, the LCS can receive complaints about the conduct or standard of service provided by non-lawyer employees.

Complaints about non-lawyer employees make up approximately 5% of those dealt with by the LCS each year. Non-lawyer employees are often responsible for correspondence with clients, particularly in practice areas such as trusts and estates, and/or property. This means they may be the first person that comes to mind if there is a conduct or service complaint.

Like complaints about a lawyer or incorporated law firm, complaints received about non-lawyer employees are considered by independent Standards Committees. A Standards Committee may decide whether further action needs to be taken on the complaint and, if so, determine whether a non-lawyer employee has engaged in unsatisfactory conduct.¹ The matter may also be referred to the Disciplinary Tribunal if there is a reasonable basis to consider the conduct may amount to misconduct.²

Non-lawyer employees can also be the subject of Designated Lawyer Reports. These are reports made to the LCS by lawyers to meet their reporting obligations under r11.4 of the Rules of Conduct and Client Care. In certain circumstances, conduct or service concerns that are reported this way are also considered by Standards Committees. More information on those reports can be found on the [Law Society's website](#).

What types of conduct can be complained about?

- (a) Under s132 of the Act, any person may complain to the LCS about the conduct of or standard of service provided by a lawyer or former lawyer;
- (b) an incorporated law firm or former incorporated law firm; or
- (c) a non-lawyer employee or former non-lawyer employee.

A person may also complain to the LCS if any of the above have failed to comply with an order or determination made by a Standards Committee or the LCRO.

¹ s152(2)(b) of the Act

² s152(2)(a) of the Act

Non-lawyer employee misconduct

Non-lawyer employee misconduct is described as conduct by a person in the course of their employment by a lawyer or incorporated law firm that would, if it were conduct of a lawyer, make them liable to have their name struck off the roll.³

A lawyer's name will be removed from the roll if they are found by reason of their conduct not to be a fit and proper person.⁴ For non-lawyer employees, the most common example of misconduct is dishonest handling of firm or client money.⁵

Non-lawyer employee unsatisfactory conduct

Non-lawyer employee unsatisfactory conduct is defined as conduct by a person in the course of their employment by a lawyer or incorporated law firm that would, if it were conduct of a lawyer, be unsatisfactory conduct.⁶

This refers to conduct, when providing regulated services, that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. It also includes conduct, when providing regulated services, that would be regarded by lawyers of good standing as being unacceptable, including unbecoming or unprofessional conduct.⁷

Unsatisfactory conduct extends to any conduct that violates:

- the Act;
- regulations or practice rules made under the Act; or
- any other Act relating to the provision of regulated services⁸

Receiving a non-lawyer employee complaint

What happens?

When a complaint is received, pursuant to reg9(1) of the Regulations, the LCS must:

- acknowledge receipt of the complaint in writing;
- refer the complaint to a Standards Committee;
- notify the firm or persons to whom the complaint relates; and
- provide a copy of the complaint to that firm or persons.

If there are special circumstances that would make it inappropriate to provide of a copy of a complaint about a non-lawyer employee to their employer, the LCS may decide not to share it with them. The LCS will provide the non-lawyer employee with information about next steps.

³ s11(a)

⁴ s244(1) of the Act

⁵ See for example *Waikato Bay of Plenty Standards Committee 2 v Smith* [2023] NZLCDT 36, *Waikato Bay of Plenty Standards Committee 1 v Buschman* [2019] NZLCDT 21 and *Auckland Standards Committee 5 v Blackman* [2017] NZLCDT 11

⁶ s14(a)

⁷ s12

⁸ s14(b)

That may include asking the non-lawyer employee (or their employer) to provide a brief response to the complaint to help the LCS decide which Standards Committee to refer the complaint to.

Once a Standards Committee receives a complaint, it can make the following decisions under s137 of the Act:

- (a) to inquire into the complaint;
- (b) to refer the parties to mediation; or
- (c) to take no action or no further action.

When a Standards Committee chooses to inquire into a complaint, it must invite the non-lawyer employee to provide a written explanation of the situation. It may require the non-lawyer employee to appear before it to provide information they believe is relevant to the complaint.⁹ In the interests of natural justice, any response provided to a Standards Committee will be shared with the complainant.¹⁰

Possible determinations

If a Standards Committee determines that there has been unsatisfactory conduct on the part of a non-lawyer employee, it can make orders under s156 of the Act, including:

- to order (with the parties' agreement) that some or all of the terms they have settled on in mediation will form part or all of the final decision of the complaint
- to censure the person to whom the complaint relates;
- to order an apology to the complainant;
- to order compensation be paid to the complainant;
- to order a fine not exceeding \$15,000; and
- to order costs.

A Standards Committee determination can be appealed to the LCRO within 30 working days after the Committee's determination is brought to the attention of the applicant for review (which, in the absence of proof to the contrary, is presumed to have occurred on the fifth working day after it is made).¹¹

More serious matters may be referred to the Disciplinary Tribunal to consider if there has been misconduct. In relation to non-lawyer employees, the Disciplinary Tribunal can make orders under s242 of the Act, including:

- to order a non-lawyer employee's employment be terminated;
- to order a person not be employed by a lawyer or incorporated firm until the order expires;
- to order a fine not exceeding \$30,000; and
- to order costs.

⁹ ss141(a) and 147

¹⁰ s142(1)

¹¹ s198(b)

Appeals against a Disciplinary Tribunal decision can be made to the High Court.¹²

What to do

Receiving a complaint can be stressful but it is important to communicate with the LCS from the outset and provide any information requested. Failure to do so can have disciplinary consequences.

The LCS will advise if specific information is needed in relation to a complaint. However, generally speaking, information should be provided promptly and cover all matters raised by the complainant. Supporting documentation can also be submitted where relevant. If there are several allegations within the complaint, it can be helpful to list them and deal with each one separately. Any follow up requests for information should be responded to within the timeframe provided to assist with inquiries.

The non-lawyer employee's employer or someone else from the firm can help provide the information if required. Where the employer or supervising lawyer believes that the complaint should have been made against them instead of the non-lawyer employee, they can explain why they think that as part of any information provided.

Support services

The Law Society provides support options for lawyers and employees in legal workplaces, including those who are navigating the complaint process. These options include:

- Legal Community Counselling Service;
- LawCare free phone line; and
- National Friends Panel.

LCS staff are also available to talk to non-lawyer employees throughout the complaint process. LCS staff cannot however provide legal advice.

How to avoid a complaint

Complaints made about non-lawyer employees often concern issues with communication, such as delays with providing updates or documents, or administrative errors. Being open and honest with clients when there are unexpected issues or delays while dealing with their matters or when a mistake is made can go a long way to maintaining a positive working relationship. By appropriately managing a client's expectations, many complaints can be avoided.

If something has gone wrong, it is helpful to engage with early dispute resolution and to let a client know of their options to make an internal complaint to the firm.¹³ Often, clients are looking for an acknowledgement of their circumstances or an apology for a mistake that has been made. Facilitating this internally can assist in preventing formal complaints from being made to the LCS.

¹² s253(1)

¹³ r3.4 of the Rules of Conduct and Client Care

Decisions about non-lawyer employee conduct

Legal executive – fined \$1,000 for failure to protect client's interests

A lawyer and legal executive were subject to a complaint from their client who they represented in a property purchase subject to the Unit Titles Act 2010.

The lawyer and legal executive failed to provide their client with a pre-contract disclosure statement prior to entering into the agreement for sale and purchase of the property. The disclosure statement contained details about a problem with roof deflection which, one year after the client purchased the property, turned into a major defect. The client argued that the lawyer and legal executive had been negligent by failing to advise them of the issues identified in the disclosure statement.

The Committee found that the legal executive engaged in unsatisfactory conduct by failing to bring adverse information about the property sale to the client's attention. The legal executive was ordered to pay a fine of \$1,000 and costs of \$500. The lawyer was fined \$3,000 and had to pay costs of \$500.

Legal executive – fined \$2,000 for failing to act competently and with reasonable care

A lawyer and legal executive acted in a property transaction where they represented two parents and their son. The transaction involved the transfer of the parents' home to their son, with the legal executive representing the parties and the lawyer responsible for certifying the transfer of property.

The parents signed a certificate of gifting which amounted to their equity in the home. However, the parents' understanding was that their son was being added to the title only with the intention that he could look after them in their home when they retired. After settlement of the property, relations broke down between the parents and their son, which resulted in the parents being forced to leave their home.

The Committee found that the lawyer and legal executive had failed to act competently and acted for both parties to a transaction where there was more than a negligible chance of a conflict of interest. The legal executive was fined \$2,000 and ordered to pay costs of \$500. The lawyer was ordered to pay compensation to the clients alongside a fine of \$5,000 and costs of \$1,000.

Accounts handler – do not employ order after funds were misappropriated

An accounts handler arranged for two payments to be made to her friend's bank account instead of the intended creditor. The payments were made ten months apart, with the second transaction being recovered by bank action.

The Tribunal found that this constituted conduct in the course of employment which, if it were the conduct of a lawyer, would render the lawyer to have their name struck off. The Tribunal prohibited any lawyer or incorporated law firm from employing the accounts handler until such time as the order is removed and ordered the accounts handler to pay compensation for the first unrecovered payment, plus interest and costs.

Two non-lawyer employees – finding of unsatisfactory conduct after using racial slur in emails

Two non-lawyer employees at the same firm exchanged messages using their work email where they referred to a colleague using a derogatory nickname. The email exchanges were prompted by their interactions with and observations of colleagues in the course of the workday and also related to an announcement from law firm management.

The Committee determined that the nickname was a racial slur and that the use of the nickname by the employees amounted to unsatisfactory conduct and was a breach of rules 10 and 10.3(d) of the RCCC.

The Committee emphasised that the RCCC are also applicable to non-lawyer employees, who can be subject to the disciplinary process, and that the Act explicitly allows Standards Committees to consider the conduct of any employee of a law firm, not just those who are lawyers.

The Committee findings also underlined that racist comments made about colleagues are inappropriate and unprofessional.