



# PRACTICE BRIEFING: RUNNING AN EFFECTIVE INTERNAL COMPLAINTS PROCESS

## INTRODUCTION

*Rule 3.4(d) of the Lawyers and Conveyancers Act (Lawyers’ Rules of Conduct and Client Care) Regulations 2008 requires lawyers to provide clients in advance with information in writing about the “procedures in the lawyer’s practice for the handling of complaints by clients, and advice on the existence and availability of the Law Society’s Complaints Service and how the Law Society may be contacted in order to make a complaint”.*

*Rule 3.4 applies to all lawyers (subject to some exceptions in 3.7) whether they are practising as barristers, sole practitioners or partners/directors/employees in a law firm or an incorporated law firm.*

*This Practice Briefing aims to provide best practice information for lawyers on responding to complaints and establishing an effective system for complaint investigation and resolution. While it refers to “law firms”, it applies to all lawyers in private practice.*

## BACKGROUND TO RULE 3.4(D)

Lawyers must provide this information as part of the client care information or letter of engagement provided to clients upon receiving instructions.

Many lawyers found this rule overly prescriptive on its implementation in 2008 with some commenting that it did not seem intuitive to inform clients at the beginning of an instruction about

how to complain about their services. Nevertheless it is generally accepted best practice for consumers to be aware that they have a right to complain if matters do not go according to plan.

Handling complaints effectively and fairly is an important part of maintaining trust in the legal profession and upholding its collective reputation.

Many organisations provide information about how to complain on their websites. One such example from a law firm's website is as follows:

*XX is committed to providing a professional, efficient and courteous service to all our clients. If you feel that we have failed to achieve an acceptable standard of service we want you to tell us. We regard it as an opportunity to monitor and improve our quality of service. We will investigate your concerns objectively and try to generate a positive and speedy solution.*

In many overseas jurisdictions complainants are required to make their complaints direct to the lawyer in the first instance before engaging in any formal process such as the Lawyers Complaints Service. This is not yet a requirement in New Zealand. Once a formal complaint is received there is a statutory obligation to investigate the matter. However, where appropriate Law Society staff will always encourage a potential complainant to try to resolve the matter directly with the lawyer in the first instance.

It is useful to bear in mind that many complaints received by the Lawyers Complaints Service are not necessarily made by the client of the firm.

In the year to 30 June 2013 only 55% of the 1766 complaints received were from clients. The rest were from clients on the other side, other lawyers or third parties or were own motion investigations by a Standards Committee. Many of these non-client complaints will still be made to the firm in the first instance. Dealing with these well initially can save a lot of stress and angst in the long term.

## WHY SHOULD I HAVE A GOOD INTERNAL COMPLAINTS PROCESS?

A good written internal complaints process that is easily explained and easy to follow can increase client confidence in a firm, especially where it is able to address problems as they arise. It demonstrates that the firm has confidence in the service it offers and is committed to delivering an excellent service.

It will help staff to recognise complaints, and can be a document that you share with clients to help them understand the process. It should be easy to understand and include details such as timeframes and contact details. You should provide this to clients on request or when they make a complaint or have it readily available on your website.

If a law firm annoys, disappoints or upsets one client, the message can spread quickly via email, online reviews, and social media. This can be very damaging to the reputation of the lawyer and

the law firm. Sites like Facebook, LinkedIn and Twitter are open sounding boards for disgruntled clients (and competitors) who can launch open sometimes unfounded complaints about a law firm's services.

If properly managed it can resolve complaints rapidly and prevent them escalating and/or resulting in a formal complaint to the Lawyers Complaints Service. All staff should be trained to recognise a complaint and how the complaints process within the firm operates.

Most new clients are referred by people they know. If you pick up on any dissatisfaction and resolve it, it is more likely that those clients will recommend your law firm to others.

## WHAT IS A COMPLAINT?

A complaint can be any expression of dissatisfaction. The word "complain" may not be used but a client may be dissatisfied with a bill of costs or about the length of time being taken to resolve a matter and express this in an email or during a phone conversation.

Responding appropriately to an informal expression of dissatisfaction can prevent the matter becoming a formal complaint.

## HOW TO RESPOND INITIALLY

Acknowledge the complaint at the earliest possible opportunity preferably within 2-3 days.

Reply in the same medium (telephone, email, and letter) in which the complaint was made.

Asking a caller to submit the complaint in writing may not always be appropriate and could potentially escalate a matter that could be resolved more simply.

Clarify your understanding of the complaint and the complainer's expectations.

Explain the next steps of the process.

Explain what, if any, impact the complaint may have on any current matter in which the firm is acting

Provide information about what to expect.

Set a realistic timetable.

Give a full explanation of what is being done to address the complaint.

Avoid using legal jargon

Many clients worry that they will be charged for making a complaint. Reassure them that they will not be charged.

## WHO SHOULD ANSWER THE COMPLAINT WITHIN THE LAW FIRM?

This will depend on the particular complaint. Complainants prefer to know that a named individual is responsible for handling their complaint. In some cases a senior or managing partner/director is the most appropriate person to respond. Sole practitioners might ask their attorneys appointed under section 44 of the Lawyers and Conveyancers Act 2006 to handle their complaints on a reciprocal basis.

If the complaint is about a specific person in the firm it is usually better for someone other than the person complained about - and preferably someone independent - to respond. Research in the United Kingdom has shown that involving another solicitor from the practice improves complaints handling and is welcomed by clients.

Ensure the person who is complained about is kept fully informed, is given an opportunity to respond and that appropriate support is provided. Receiving a complaint can be very stressful. For information about what do as a lawyer when you are the subject of a formal complaint to the Lawyers Complaints Service see: <http://my.lawsociety.org.nz/in-practice/practising-law/regulatory-advice/some-common-questions-asked-by-lawyers-who-are-the-subject-of-a-formal-complaint>

## HOW DO I INVESTIGATE THE COMPLAINT?

Approach all complaints with an open mind and treat each complainant as an individual and with courtesy and respect. Give full and fair consideration to the complaint and address it on its merits. Consider informal conciliation to resolve the matter.

A complaint may be from a “difficult” client but that does not mean it is not a valid complaint.

Respect the confidentiality of the complainant and person complained about.

## CAN I CHARGE?

It is bad practice to charge a client for responding to a complaint. This would not be considered professional by a Lawyers Standards Committee.

## DECISION ON COMPLAINT

A final decision should be made on every complaint. Do not leave matters unanswered or unresolved in the hope it has gone away of its own accord. A decision should be easy to understand, written in clear plain English and reiterate your understanding of the complaint and how you came to your decision.

If you find evidence of poor service you should acknowledge this and provide an appropriate

remedy. This might include:

- an apology;
- compensation for loss or stress/anxiety suffered;
- an offer to put things right;
- a reduction in fees.

If you find that there is no basis to the complaint, fully explain why you have come to this conclusion and provide evidence of this. For example, delays may have been caused because the other side was self-represented or did not respond within a given timeframe. There may have been delays with other stakeholders, such as the Court, in setting a matter down, and not due to any poor service by your firm. If so, explain this fully.

## WHEN TO APOLOGISE AND PI INSURANCE

Apologising to a client who has made a complaint about a minor matter can lead to the complaint being resolved quickly and helps to maintain goodwill.

If the complaint relates to a matter that may involve negligence on your part, consider whether an apology could be seen as an admission of liability. You may have a duty to notify your insurer about the complaint. Any admission of liability or proposal for remedy may have implications for your PI insurance, so you may want to discuss the matter with your insurer in the first instance.

Be aware of the terms of Rule 5.11 if the complaint relates to a potential claim in negligence:

When a lawyer becomes aware that a client has or may have a claim against him or her, the lawyer must immediately

- (a) advise the client to seek independent advice; and
- (b) inform the client that he or she may no longer act unless the client, after receiving independent advice, gives informed consent

## SHOULD YOU CONTINUE TO ACT FOR YOUR CLIENT?

If a client seeks to re-instruct you or to continue with a retainer while a complaint remains unresolved, consider whether you can continue to act under the circumstances.

In relation to a claim against a lawyer, Rule 5.12 says that a lawyer may resume acting for a former client where the matter in dispute has been resolved.

Consider whether you can isolate the complaint from the rest of the instructions, or whether the relationship may have deteriorated to the extent that you should not continue to act for the client.

## CLOSING THE COMPLAINT

Before ceasing correspondence about the complaint, be satisfied that the complaint has been fully considered, a decision made, remedies have been offered if appropriate and that the client, if not satisfied, has been made aware of the right to make a formal complaint to the Lawyers Complaints Service: <https://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint>

If the complainant continues to correspond, you could respond setting out:

- A brief outline of the complaint.
- The decision that has been made and how it was reached.
- What remedies were offered, if any.
- An explanation that in the absence of new evidence, you will not continue to correspond on the matter and that you regard the complaint as closed.
- That you will monitor any further correspondence for new evidence or areas of complaint not previously considered. If received you will assess this information and consider appropriate action.

## WHAT IS THE ONE THING I CAN DO TO IMPROVE MY EXISTING COMPLAINTS PROCESS?

### **LISTEN!**

The cheapest and most effective remedy sometimes can be to listen to a client and where possible respond to any concern raised promptly.

Encourage staff to pass on all feedback (good or bad) or hints of dissatisfaction to their supervising partner immediately. Maintain a praise file as well as a complaints file.

Make the complaints process accessible. Consider introducing a portal where a customer with a grievance can lodge a concern direct to the firm which can be dealt with quickly and informally. The Lawyers Complaints Service has a “concerns” portal where matters can be dealt with informally: <https://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form>

## WHAT ARE CLIENTS’ MOST COMMON COMPLAINTS?

A failure to communicate effectively is at the heart of most complaints. If a client is not happy with the service provided it inevitably translates into a complaint about the fee charged. Some areas of

law such as family law attract more complaints than others. Wills, trusts and estate management can attract complaints also because multiple parties are involved and communication channels are not always clear.

The Law Society's Annual Regulatory Reports set out information about the most common types of complaints, who makes them and the areas of law to which they relate: <http://www.lawsociety.org.nz/news-and-communications/annual-reports>

## HOW CAN I PREVENT COMPLAINTS?

Nobody is perfect and complaints should not necessarily be prevented altogether as they can be a very useful way of finding out how your firm is viewed by others and lead to improvements.

Some strategies to minimise complaints are:

- Provide good service that meets a client's individual needs - poor service drives clients away.
- Provide information in a logical place about common issues that your clients may face. Your letter of engagement and other client care information should be easily accessible and explained to all new clients. Consider having FAQs on your website.
- Keep clients informed of progress with their files and provide them with clear expectations and information about fees, billing, who is carrying out their work and how long this may take.
- Return phone calls and emails promptly even if just to acknowledge receipt and provide a time frame for a substantive reply.
- Identify trends in complaints received and areas of service needing improvement and implement these across the firm.
- Review client service and client files firm-wide to ensure consistency and excellence.
- Train staff in client service with a focus on constant improvement.
- Remember that an apology can prevent most minor issues from becoming a complaint.
- Ensure adequate records and systems are kept so that inquiries - such as a request for the file - can be easily responded to.
- Evaluate and obtain client feedback. Value and act upon the information received. Look for creative ways of getting feedback.
- Always thank clients for feedback, even if it is negative.
- Build client loyalty through newsletters or promotions.
- Invite a group of clients to provide feedback on the service they have received. Invite

previous complainers to join in. Ask someone from outside your firm to facilitate the session to ensure you obtain the required information.

- Good training and management support for staff will prevent complaints and introduce a culture of empathy and openness.
- Improve internal and external communication. Ensure there is good communication between departments in your firm. A breakdown can result in complaints. Examples include if a client receives a statement from the accounts department of the firm that does not reflect a promised discount or if the receptionist receives a request for a client file but fails to pass on the request. These will result in dissatisfaction, be frustrating to the client and may result in a complaint.
- See the Law Society pamphlet *Seeing a Lawyer: What can you expect?* and ensure your firm lives up to the expectations listed. These pamphlets are available from the Law Society and can be provided to new clients. Inquiries can be made to [pamphlets@lawsociety.org.nz](mailto:pamphlets@lawsociety.org.nz) or by phoning (04) 472 7837.

## ADDITIONAL INTERNAL PROCEDURES TO ENHANCE YOUR COMPLAINTS PROCESS

The extent of the internal procedures required will be dictated by the size of the firm and the number of complaints it receives.

The written process could include:

- How complaints are to be logged and filed.
- Confidentiality principles.
- Who needs to be notified, internally and externally, about different types of complaints?
- Who has authority for dealing with complaints?
- Timescales for investigating the complaint and responding to the client.
- When complaints should be escalated within the firm.
- When no action will be taken on complaints or communication with a complainant will cease.
- Guidelines on appropriate remedies.
- Training requirements for staff on complaints management.
- A complaint record destruction policy after, say, 6 years.

## REVIEWING YOUR COMPLAINTS PROCEDURE

Aim to regularly review your complaints procedure to ensure it remains current and effective.

Keeping good records of complaints that you receive provides you with useful data. It will help you identify any problem areas in your practice and enable you to:

- Identify patterns and trends in complaints and areas of weakness in your firm's service needing improvement and implement these firm wide. For example, if a number of complaints concern a lack of communication ensure that copies of all incoming and outgoing correspondence are copied as a matter of course to clients. This may not suit all clients. For example, elderly clients may find this upsetting.
- Assess whether policy or procedural changes are reducing the level of complaints.
- Assess the effectiveness of your complaints management process in resolving complaints internally.
- Build up an understanding of appropriate remedies to common complaints and promulgate these within the firm.
- Continuously improve customer information based on deficiencies identified through complaints and other feedback mechanisms.
- Employ root cause analysis of systemic complaints and regular assessment of complaint data with a view to identifying the underlying causes of complaints, so that these may be rectified on a permanent basis.

## WHERE CAN I GET ASSISTANCE ON HOW TO SET UP A COMPLAINTS HANDLING POLICY?

There is plenty of material available on the internet, or ask your colleagues.

A Standard AS/NZS ISO 10002:2014 Guidelines for Complaints Handling in Organizations will shortly be available for purchase. This is not intended for certification. The objective of the Standard is to provide guidance on complaints handling to an organization, including planning, design, operation, maintenance and improvement.

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