

# Handling complaints effectively



The Law Society

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## Introduction

Many complaints are not about solicitors' legal knowledge or the quality of advice they give to clients. They are about client care. Too many solicitors continue to find this area difficult. In particular, many fall into the trap of taking client complaints as accusations of professional negligence. But complaining is quite different from threatening action for negligence.

Most solicitors are anxious to do a first-class job for their clients. Most understand that if they get a reputation for being unhelpful, it will damage their long-term prosperity. They do not want clients to complain about them to the Law Society, and they dread negative publicity.

In this booklet we suggest three model complaints procedures - one for sole practitioners, one for small practices and one for large or multi-office practices. You will also find a model for a central complaints register. Use or adapt these procedures to suit your and your client's needs. You can send them to your client either when the client asks or when you receive a complaint. They are the 'external' mechanics of the process you need to follow. What follows is advice on the 'internal' procedure you will need on how actually to handle the complaint. So you end up with two procedures.

One of the ways of making amends when a client complains about poor service is of course to offer compensation. Some solicitors have said they find it difficult to decide what would be a sensible offer of compensation. We therefore give some guidance on the factors the Law Society takes into account when considering complaints about service, and examples of actual cases with the levels of compensation they merited.

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## Why do clients complain?

They complain because you have not met their expectations of what they think is a good level of service.

This is often because you have not considered the level of service they wanted or expected.

## What is poor service?

Poor service (sometimes referred to as "Inadequate Professional Service", or IPS) is any aspect of service which falls short of that which could reasonably have been expected.

Various common situations are regarded by the Law Society as being either **presumptive** or strongly **indicative** of poor service.

Situations regarded as **presumptive** of poor service (and which frequently give rise to awards of compensation) include:

- lack of a client care letter when one is required
- unreasonable delay in billing or making mistakes on bills or accounts which cause serious inconvenience to the client
- failure to give costs or rising costs information
- failure to explain the risks of litigation and failure to carry out a "cost-benefit and risk" analysis at the outset and appropriately during the conduct of the case.
- failure to respond to communications – failure to reply to letters is a clear instance of poor service; failure to return phone calls or reply to faxes and e-mails may depend upon the facts of the case
- not doing something the solicitor agreed to do
- failing to comply with the Rule 15 complaints handling procedure

- not treating the client with fairness and respect
- failure to give information about trials and hearings
- failure to pay interest

Issues which are more subjective but which are nevertheless **strongly indicative** of poor service include:

- delay
- failure to provide written evidence of advice given
- failure to inform of progress – even where there has not been any
- failure to update clients on a reasonable basis
- failure to follow instructions or to explain why instructions have not been followed
- not abiding by a quote
- varying substantially from an estimate without prior notification
- terminating a retainer unsatisfactorily – this can include an inappropriate reason for terminating a retainer as well as the means of termination
- deceiving or misleading a client – not only clearly a service issue and usually a conduct one as well

## If you receive a complaint

If you get a complaint from a client, deal with it calmly and in line with your complaints procedure. If you don't follow the principles set out in this guide, it can be taken as evidence of poor service. It is part of your job to deal properly and professionally with complaints, even if they are made after you have completed the task you were appointed to do.



## Designing a good complaints procedure

The following advice deals with:

- the basic rules of an effective complaints procedure; and
- the 'hearts and minds' approach to client complaints.

You can use this advice as the basis for giving your staff guidance on how to react when a minor grumble or concern arrives or when a client complains.

A complaints procedure should:

- be easy for clients to gain access to;
- be simple to use;
- allow you to deal with complaints quickly;
- involve a full and fair investigation;
- respect confidentiality;
- deal with each issue and provide possible solutions; and
- feed information to your firm's management.

### Access

Under Solicitor's Practice Rule 15 everyone in private practice must have a procedure for handling complaints. You do not need to give your clients a copy of this procedure before they complain, but you must let them know from the start who they should contact if they have a problem with the service you have provided. Once they have formally complained, you should send them a copy of your complaints procedure and a letter acknowledging their complaint.

Your complaints procedure should be clearly written and should avoid complicated language.

It should describe each stage a complaint may need to go through and the timescale involved. Your letter acknowledging the complaint should also be specific about the next step and when this will happen.

Make sure your staff are familiar with your complaints procedure. They must be committed to what your complaints procedure is trying to achieve and why.

Avoid a defensive attitude to complaints. Encourage your staff and partners to be open and honest about them, so that anyone faced with a client's concern will have the confidence to deal with it properly.

### Simplicity

Your complaints procedure should be simple. The best complaints procedures will normally have the following three stages.

#### 1 Informal stage

A complaint may be verbal or written. Whatever the case, the person dealing with it should make an accurate written record of what is said.

The aim at this stage is to resolve the complaint as quickly and as smoothly as possible. You can do this by offering an apology and, if necessary, a practical solution.

All members of staff will be involved at this stage of a complaint at some point in their careers, so you will need to provide everyone with training in how to deal with clients' concerns and complaints and how to apologise and offer practical solutions.

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## 2 Formal stage

If a complaint involves more important issues, you may need to act more formally. You will probably have to agree written details of the complaint with your client and make some kind of investigation into the facts. You should do this within a fixed timetable and should let your client know the timescales involved.

At the end of your investigations, you should send your client a letter explaining:

- what you have decided; and
- any practical solutions you are prepared to offer. (These will probably be agreed at partnership level.)

## 3 Appeals stage

All complaints procedures should allow clients the opportunity to appeal to someone who is not involved in the complaint.

You could, for example:

- ask your local Law Society to help;
- set up an appeals exchange scheme with another local firm;
- set up an appeals committee or panel made up of different partners from your firm;
- offer clients arbitration - contact the Chartered Institute of Arbitrators for information on 0207 837 4483; or
- offer clients a local mediation service if this exists. (Again, your local Law Society may have information about this.)

## Speed

Speed should be your top priority when handling complaints. The longer the complaint is unresolved, the more irritated clients get - and understandably so.

You should send your client a letter to acknowledge their complaint within a working day of receiving it. Or if you can resolve the complaint very quickly, you can send them a detailed reply within the same timescale.

If you do not need to investigate a complaint in much detail, it may be more efficient to use your acknowledgement letter to invite the client to make an urgent appointment to discuss the matter face to face.

If you need time to investigate a complaint, your acknowledgement letter should tell your client when they will hear from you. (This should be well within 28 days.) You must then stick to your timescales, even if you have not completed your investigation. You can use your letter to explain why you need more time.

If a complaint is more complicated, it might still be worth offering your client a face-to-face meeting. Many clients respond more positively and are more co-operative in a personal discussion. They can see that you are taking their complaint seriously. You can then follow up the meeting with a letter summarising what you have discussed.

Remember that your client will be quite justified in passing their complaint to us if you do not take suitable action to resolve matters within a reasonable time. We will then consider what action you have taken to deal with the complaint.



## Fairness

Your complaints procedure should show your client that you will investigate their complaint fully and fairly. It should make sure that both you and your client have all the information needed to reach a decision on the complaint. Your client will feel more fairly treated if you have given them the opportunity to air all their grievances to someone who shows a clear desire to reach a just decision. They will then be more likely to accept your final decision.

## Confidentiality

You should respect your client's desire for confidentiality. And, you should make it clear that their complaint will not affect the way you treat them in future.

You should allow clients who want to complain in confidence to do so. But if the complaint is about serious professional misconduct, you must remember your professional duties.

## Practical solutions

You must deal with all the points raised in a complaint and offer a suitable solution for each one at the same time. Your client should not have to chase you for a remedy.

Sometimes an immediate apology will be enough. Even if you disagree with the complaint you should apologise as a way of acknowledging that your client is unhappy. This will go a long way towards showing personal concern and understanding.

If your client's complaint is justified, you should also offer a fair solution or compensation. This should include an element for inconvenience to your client of having to make a complaint. You could, for example:

- reduce the bill you have already sent to the client;
- reduce the amount to be charged to the client;
- agree to waive charges altogether;
- offer compensation (in some cases as well as reducing the bill); or
- agree to do some other work free of charge.

You could also offer to put things right at your own expense if you have made a mistake.

You are more likely to resolve the complaint to everyone's satisfaction if you provide a rapid response which deals with all the issues raised and offers a sensible remedy. The client will be happy and you will save yourself valuable fee-earning time. You can delegate power to staff to make small payments immediately if clients are going to be satisfied by that. This will save your administration costs, even if the complaint becomes formal.

## Management information

Your complaints procedure should be part of your firm's overall management procedures. In this way you can analyse complaints regularly and change your firm's practice and procedures where necessary. Involve your staff in this process. They all need to see why a complaint arose if they are to avoid the same complaint in the future. You should view client complaints as a rich source of free feedback about where you need to improve.

When analysing complaints you should look at:

- the reason for the complaint;
- what you did when you received the complaint;
- the remedy suggested; and
- the client's response.

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This kind of analysis (at least every three months) will help you prove that you have an effective procedure for handling complaints.

## Summary

Complaints arise when people don't get the service they expect. Clients often complain about service issues such as lack of courtesy or poor communication. They rarely complain about the technical quality of legal work.

Don't treat every complaint as a possible negligence case. If in doubt, check with your insurer.

Your complaints procedure is part of your approach to client care. Make sure everyone (partners, staff and clients) knows about it.

A good complaints procedure is simple. Don't make it more complicated than it has to be.

Complaints are often urgent. Deal with them quickly before they have time to grow.

Handling complaints is mainly about politeness and consideration. Listen carefully to clients and involve them fully in the process of resolving their complaint. Treat them as fairly as you would like to be treated yourself.

### **If you must have the last word, say sorry.**

If you follow these guidelines and keep proper written records, you need not fear any investigation by us. But we will take action against solicitors who neglect their duties in this area.

**Note:** This guidance on handling complaints is not a substitute for the LSC Specialist Quality Mark or Lexcel requirements.

## Conclusion and further help

The steps set out so far give you the best chance of resolving your client service complaints. By following these steps you put yourselves in the best position to justify the effectiveness of your complaints procedure if we have to call upon you to do so.

On the following pages you will find:

- a list of dos and don'ts for handling complaints;
- a model client care charter;
- three model complaints procedures for different types of practice; and
- a model central complaints register.

We hope you find this information useful. Please feel free to pass it to all your staff and to adapt any of the models to suit your own needs and those of your clients.

Improve your client care through Lexcel, the Law Society's Practice Management Standard. Call 020 7320 5749 for more information.

**If you need to speak to someone about client care, please call our Practice Standards Unit on 01527 883264.**

**The Law Society's Lawyer Line service can give solid practical advice on how best to deal with a client complaint. Call it on 0870 606 2588.**

## Techniques for handling complaints

### Do's and don'ts

#### Do

- ✓ Be positive, open-minded and honest.
- ✓ Be friendly and show the client that you understand their position.
- ✓ Make contact with the client as soon as possible.
- ✓ Tell the client in detail what steps you will take.
- ✓ Urgently review the client's complaint to assess what may have gone wrong.
- ✓ If possible, involve someone who has not been connected with the matter.
- ✓ Consider each complaint, whatever its merits - it can tell you a great deal about how people view your performance.
- ✓ If you think the complaint may not be justified, ask yourself why the client thought they had cause for complaint.
- ✓ Consider whether your communication was clear, complete, and all it should have been to meet the client's needs and expectations.
- ✓ Once your review is complete, see the client immediately. (Clients value face-to-face discussions and they are more 'honest'.)
- ✓ Apologise if this seems to be all that is called for, and give any relevant or reasonable assurances.
- ✓ If the complaint is justified, be prepared to offer a reduction in the bill or provide some other professional service.

- ✓ If your services have been seriously below standard, be prepared to write off the whole bill or most of it.
- ✓ If the complaint is not justified or has been caused by a clash of personalities, consider whether it makes commercial sense to offer a remedy to avoid damaging your reputation.
- ✓ Do everything you can to keep the client (unless there is a good reason for not doing so) and make them happy.
- ✓ Learn from the complaint. Understand how it came about, introduce changes to prevent it happening again, and tell the client what you are doing.
- ✓ Involve all your staff who have any contact with clients. Make them aware of things to avoid.
- ✓ Always remember that a happy client can recommend up to 5 new clients, but a dissatisfied client can lose you up to 23 new clients.

#### Don't

- ✗ Be aggressive or defensive, or suffer wounded pride.
- ✗ Reject the complaint immediately without a good reason.
- ✗ Forget clients are your livelihood and have needs and expectations you should care about.
- ✗ Give the impression that only you know all the answers.
- ✗ Be critical because your client expects money as a remedy. Clients are consumers and demand a direct approach.
- ✗ Let your client's complaint 'escape' from your office to ours.

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## The Client's Charter

The Client's Charter, published in March 2003, summarises the kind of service and consideration that the Law Society believes clients are entitled to. Many firms give copies of

the Charter to their clients when accepting their instructions. Adherence to the Charter will greatly reduce the risk of clients wishing to complain about your service.

### The Client's Charter

Whatever legal service you need, you have the right to be treated with care and professionalism by your solicitor. The Client's Charter is your guide to what to expect from your solicitor in terms of customer care.

#### Working together

Whilst your solicitor has various duties to you as their client, they can only give their best advice and service if the information you give them is accurate and complete.

#### A solicitor will:

- put your interests first when representing you;
- be polite and considerate in their dealings with you;
- find out from the start what you are hoping to achieve, and aim to make sure that your expectations are realistic;
- make every effort to explain things clearly, and in terms you can understand, keeping jargon to a minimum;
- agree with you the type of service you can expect to receive;
- tell you who will be handling your work;
- explain what the costs are likely to be;
- keep you informed of costs throughout so that you can work out if a particular course of action is worth following financially;
- respond to your letters and phone calls;
- tell you about any developments and update you on progress as work proceeds;
- give you a clear bill which shows the work done and the amount charged;
- treat all clients fairly, and not discriminate against anyone; because of his or her race, sex, sexual orientation (sexuality) or disability; and
- keep what you tell them confidential, and refuse to act for anyone else if doing so could compromise that confidentiality.

This is a summary of the main rules and principles that apply to all solicitors.



**PLEASE NOTE:** Other legal and professional duties may occasionally affect the ability of your solicitor to meet all these standards.

For example, the legal duty to release information about money laundering or the solicitor's duty to the court can override the duty of confidentiality or the duty to put your interest first.

When confirming instructions, you may also wish to undertake to let the client know whether he qualifies for Legal Aid and how this would affect him.

You might also decide to point out to the client ways in which he or she can help you to provide satisfactory service. We suggest the following text:

## How you can help us

You can help us to do our best for you by telling us what we need to know and providing documents when we ask for them.

- Please bring all relevant papers with you when we ask to see you. If you are not sure, bring what you think might help us.
- Please tell us if you have any special needs relating to the service you want to receive.
- Please tell us at the start what you expect of us so that we can agree with you what it is possible to achieve.
- Please tell us immediately if your expectations change.
- Please tell us if you have personal time limits or targets which would not be obvious to us.
- Please make sure that you always understand what we have discussed. If you are not sure, please tell us.
- Please contact us quickly if we ask for instructions, documents or information.
- Please tell us if you change address or phone number, or if your circumstances change in a way that may affect the way we deal with your case.

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## Model complaints procedure - for large practices and practices with more than one office

### Our complaints policy

We are committed to providing a high-quality legal service to all our clients. When something goes wrong we need you to tell us about it. This will help us to improve our standards.

### Our complaints procedure

If you have a complaint, please contact [name], our Client Care Partner. You can contact him (or her) at:

Our Client Care Partner [name] will pass your complaint to [name], the partner in charge of the department involved in your complaint.

### What will happen next?

- 1 We will send you a letter acknowledging your complaint and asking you to confirm or explain the details set out. We will also let you know the name of the person who will be dealing with your complaint. You can expect to receive our letter within two days of us receiving your complaint.
- 2 We will record your complaint in our central register and open a file for your complaint. We will do this within a day of receiving your complaint.
- 3 We will then start to investigate your complaint. This may involve one or more of the following steps.
  - We may ask the member of staff who acted for you to reply to your complaint within five days.

- We may examine their reply and the information in your complaint file. We may then ask them for more information. This will take up to three days from receiving their reply and the file.
- 4 We will invite you to meet [name] to discuss and hopefully resolve your complaint. We will do this within three days of receiving all the details we need from the member of staff who acted for you.
  - 5 Within two days of the meeting we will write to you to confirm what took place and any solutions we have agreed with you.

If you do not want a meeting or it is not possible, we will send you a detailed reply to your complaint. This will include our suggestions for resolving the matter. This will happen within five days of us completing our investigation.
  - 6 At this stage, if you are still not satisfied you can contact us again. We will then arrange to review our decision. This will happen in one of the following ways.
    - [Name] will review his/her own decision within five days.
    - We will arrange for someone in the firm who has not been involved in your complaint to review it. They will do this within 10 days.
    - [Name], our Client Care Partner, will review your complaint within 10 days.
    - We will ask our local Law Society or another local firm of solicitors to review your complaint within five days. We will let you know how long this process will take.
    - We will invite you to agree to independent mediation. We will let you know how long this process will take.



7 We will let you know the result of the review within five days of the end of the review. At this time we will write to you confirming our final position on your complaint and explaining our reasons. We will also give you the name and address of our Consumer Complaints Service. If you are still not satisfied, you can contact them about your complaint.

If we have to change any of the timescales above, we will let you know and explain why.

## Model complaints procedure - for small firms

### Our complaints policy

We are committed to providing a high-quality legal service to all our clients. When something goes wrong we need you to tell us about it. This will help us to improve our standards.

### Our complaints procedure

If you have a complaint, contact us with the details.

### What will happen next?

- 1 We will send you a letter acknowledging your complaint and asking you to confirm or explain the details set out. We will also let you know the name of the person who will be dealing with your complaint. You can expect to receive our letter within two days of us receiving your complaint.
- 2 We will record your complaint in our central register and open a separate file for your complaint. We will do this within a day of receiving your complaint.
- 3 We will then start to investigate your complaint. This will normally involve the following steps.

- We will pass your complaint to [name], our Client Care partner, within three days.
- He (or she) will ask the member of staff who acted for you to reply to your complaint within 5 days.
- He (or she) will then examine their reply and the information in your complaint file. And, if necessary, he may also speak to them. This will take up to three days from receiving their reply and the file.

4 [Name] will then invite you to a meeting and discuss and hopefully resolve your complaint. He will do this within three days.

5 Within two days of the meeting [name] will write to you to confirm what took place and any solutions he (or she) has agreed with you.

If you do not want a meeting or it is not possible, [name] will send you a detailed reply to your complaint. This will include his (or her) suggestions for resolving the matter. He (or she) will do this within five days of completing the investigation.

6 At this stage, if you are still not satisfied you contact us again. We will then arrange to review our decision. This will happen in one of the following ways.

- Another partner of the firm will review [name]'s decision within 10 days.
- We will ask our local Law Society or another local firm of solicitors to review your complaint within five days. We will let you know how long this process will take.
- We will invite you to agree to independent mediation within five days. We will let you know how long this process will take.

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7 We will let you know the result of the review within five days of the end of the review. At this time we will write to you confirming our final position on your complaint and explaining our reasons. We will also give you the name and address of our Consumer Complaints Service. If you are still not satisfied, you can contact them about your complaint.

If we have to change any of the timescales above, we will let you know and explain why.

## Model complaints procedure - for sole practitioners

### My complaints policy

I am committed to providing a high-quality legal service to all my clients. When something goes wrong I need you to tell me about it. This will help me to maintain and improve my standards.

### My complaints procedure

If you have a complaint, please contact me with the details.

### What will happen next?

- 1 I will send you a letter acknowledging your complaint and asking you to confirm or explain the details. I will also let you know who will be dealing with your complaint. You can expect to receive my letter within two days of me receiving your complaint.
- 2 I will record your complaint in my central register and open a file for your complaint. I will do this within a day of receiving your complaint.
- 3 I will acknowledge your reply and confirm what will happen next. You can expect to hear from me within a day of your reply.

4 I will then start to investigate your complaint. This may involve one or more of the following steps.

- If I acted for you, I will consider your complaint again. I will then send you my detailed reply or invite you to a meeting to discuss the matter. I will do this within 10 days.
- If someone else acted for you, I will ask them to give me their reply to your complaint within five days. I will do this within a day.
- I will then examine their reply and the information in your complaint file. I may also speak to the person who acted for you. I will do this within three days of receiving their reply and the file.
- I will ask another independent local solicitor to investigate your complaint and report to me. I will do this within three days.

5 I will then write inviting you to meet me and discuss and hopefully resolve your complaint. I will do this within three days.

6 Within two days of the meeting I will write to you to confirm what took place and any solutions I have agreed with you.

If you do not want a meeting or it is not possible, I will send you a detailed reply to your complaint. This will include my suggestions for resolving the matter. I will do this within five days of completing my investigation.

7 At this stage, if you are still not satisfied, you can let us know. I will then arrange to review my decision. This may happen in one of the following ways.

- I will review the decision myself within five days.



- I will arrange for someone who is not connected with the complaint to review my decision. I will do this within 10 days.
  - I will ask my local Law Society or another local firm of solicitors to review your complaint within 10 days. I will let you know how long this process will take.
  - I will invite you to agree to independent mediation within 5 days. I will let you know how long this will take.
- 8 I will let you know the result of the review within five days of the end of the review. At this time I will write to you confirming my final position on your complaint and explaining my reasons. I will also give you the name and address of our Consumer Complaints Service. If you are still not satisfied, you can contact them about your complaint.
- If I have to change any of the timescales above, I will let you know and explain why.
- an indication of whether the complaint is justified;
  - the reasons for the complaint;
  - details of any suggestions to resolve the complaint;
  - the dates of any letters confirming details or suggestions;
  - the date of any review and the result of the review;
  - the date of the final letter;
  - the date the file was closed; and
  - any action to be taken internally as a result of the complaint.

Please see pages 274 and 275 of the Guide to the Professional Conduct of Solicitors (8th edition, 1999) for more details of handling complaints.

## Model central complaints register

Your central complaints register should include:

- a complaint reference number;
- the date of the complaint;
- the name of the client;
- the name of the member of staff involved;
- a general description of the complaint;
- the date of any internal meeting and the names of those present;
- the date the file was examined;
- the date of any meeting with the client;

## A guide to compensating clients

As mentioned before, one of the ways in which you can try to resolve a client's complaint is to offer compensation.

However, deciding how much to offer can be perplexing. The aim of this section is to help you determine a level of compensation that would be in line with those required by the Law Society.

This should not only help to prevent your client wanting to complain to the Law Society but also, if the client does so, minimise the chances of a formal adjudication against you.

It is important to keep in mind, though, that the payment of compensation is only one of the

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options for dealing with a complaint about poor service. Others are to

- reduce or cancel your costs
- at your expense, rectify any errors or omissions
- also at your expense, do what is necessary to protect your client's interests

If the complaint came to be adjudicated by the Law Society, you could be required to take one or more of those steps. The Law Society can also order solicitors to pay compensation up to a limit, currently £15,000. This applies only where the complaint has come from the client.

The Law Society can order compensation to be paid to a client for:

- financial loss, and/or
- distress and inconvenience.

Any **financial loss** must have been directly caused by the poor service. The client must be able to identify what caused the loss, its amount, and provide reasonable evidence of the loss.

An award for **distress and inconvenience** is intended to provide a tangible, if limited, redress for the effects of the poor service on the client. It is meant to be an expression of regret. It is not the same as damages that could be awarded by the Court and it is not intended to be a substitute for any legal rights or remedies that may be available through the Courts. The Law Society is not a substitute for the Court system, especially when allegations of serious professional negligence are made. However, the Law Society has the discretion to investigate complaints against solicitors in circumstances where the client can also take legal action. If it is found that

it would not be reasonable for any solicitor to give such wrong advice or take such action then the Law Society may reduce the bill or order the payment of compensation.

There are no rigid distinctions between poor service and negligence. It is often merely a question of degree; sometimes the same facts can give rise to a finding both of poor service and negligence.

The term **distress and inconvenience** is intended to convey that there has been an adverse effect on the client's general well being. It must have been the poor service, and not the case generally, which has caused it.

**Distress** includes genuine worry, concern, embarrassment, anxiety, disappointment and loss of some reasonable expectation. This varies from minor annoyance at one end of the scale to anxiety sufficient to produce medical symptoms, such as depression or insomnia, at the other. The client's susceptibility to distress may also need to be considered. If the solicitor knew the client suffered from anxiety but ignored it, this might be a factor, as might a client who without warning over-reacted to a minor situation.

**Inconvenience** usually represents time and/or effort spent by the client that would not have occurred had the service been of a proper standard.

## How much is awarded for distress and inconvenience?

There is no simple tariff or scale. Each case is assessed on its merits. Inevitably, factors relating to the case will be relevant, and there will be a degree of subjectivity which may include factors such as the behaviour and actions of both the client and the solicitor.



The status of your firm, or its ability to meet any costs or compensation awards made, will generally not affect the level of the award. Your firm's size and sophistication may be relevant in so far as it relates to the quality of service that it would be reasonable to expect from it.

In assessing the level of award, the effect of the poor service upon the client is categorised into one of four groups:

- modest
- significant
- serious
- extremely serious

**Modest** cases are those where the poor service had only limited effect on the client. Often, they arise from a single error or lapse which ideally should not have occurred but which the solicitor acknowledged and tried to remedy.

**Significant** poor service will have had a more serious, but passing, effect on the client. The poor service will have the client caused worry, concern or annoyance. The client will have been clearly upset and/or inconvenienced, but the effect will have been limited in duration or severity.

**Serious** cases, in our view, are those which have a serious effect on clients, probably over a significant period of time. This would include cases where quality of life will have been considerably, or even severely, disrupted.

**Extremely Serious** cases, in our view, are those which have a severe effect on clients, possibly over a long period of time or with permanent effects.

Although we can award substantial compensation, it will always be within our maximum level of £15,000.

## How is compensation assessed?

Assessments will need to be subjective – taking account of all of the factors. Your actions, and those of your client and the effect of the poor service on the client, will all be relevant.

The main factor in assessing the award is the **effect** of the poor service on the client. Some clients are more vulnerable and disadvantaged than others. You should take this into account in all your dealings with them, including when handling their complaints. Dealing with a complaint in an unreasonable manner may cause the client to become more distressed, and this can lead to a higher award.

Anything you have already done to address the complaint - perhaps giving a credit note against fees or offering to take further action at no charge - will be taken into consideration. If appropriate, this may result in no further compensation being awarded.

However, it should be stressed that the award of compensation is not a "punishment" for the solicitor – it is what it says it is, compensation for poor service.

## Deciding how much compensation to offer

Although there is no tariff, you can usually get a fairly realistic view of the level of award that the Law Society would probably make by looking at past awards. Later, we give examples of real cases and the compensation awards they attracted.

But before using the examples, you should consider the following points.

**First**, identify why your client thinks your service was inadequate. Are you aware of any shortcomings and if so, have these been

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acknowledged? Try and see the complaint from your client's point of view. Were your client's expectations unreasonably raised? Did you explain the process that would be used in the case clearly? Did you follow up any complex, key or difficult advice in writing? Bear in mind that your client may never have been in a situation like this before and may not have known what to expect. Did you explain clearly what was expected of your client or did you assume that the client would know?

**Secondly**, consider the likely effect of the inadequate service on your client. Try and put yourself in your client's position and consider how he or she would probably react when faced with this problem. How would you have reacted if you had been treated in the same way? Has your client over-reacted to the problem or inconvenience? If so, why? Is it because he or she is vulnerable or disadvantaged, or is there another reason why they want to make so much out of the issue? If your client was vulnerable or disadvantaged, did you know this during the course of the retainer and, if so, did you take this into account in all dealings with the client? If not, why not?

**Third**, look at how the complaint was handled. Did you follow the correct procedures? Did you acknowledge any shortcomings in your service and did you offer to put the problem right, reduce the fees or pay compensation? If you didn't accept the complaint made, did you explain this in a way the client understood? Did you have, or offer to have, a meeting with the client?

**Fourth**, having looked at these matters, put yourself in the position of an independent person considering the complaint. Within which category would you place this matter and, within that category, how serious would you regard it?

Above all, remember that the Law Society requires solicitors to do their best to conciliate complaints. If a solicitor is seen to have made a real effort to resolve the problem, that will count in the solicitor's favour if there is a formal adjudication.

## Example cases

### Modest

*90% of the awards we make in this category are £250 or less*

#### Example A

Mr T instructed solicitors to complete a remortgage of his property and register it jointly to himself and his wife. The remortgage was dealt with properly, but the solicitors forgot to change ownership from Mr T to Mr and Mrs T. The mistake came to light some years later. The original firm had charged £50 for the incomplete transfer and, by coincidence, Mr T's new solicitors made an identical charge. The original firm made a refund, but Mr T wanted compensation for his inconvenience. He said he was irritated by the situation but no more than that. There was no evidence that anyone had suffered anxiety or other distress, and we only made a modest award.

#### Example B

Mr O instructed solicitors in a personal injury claim. He made a number of complaints, including bad advice and delay. The only complaint which was upheld related to the solicitors' failure to explain some matters clearly at the time. For example, they didn't note their initial advice about the likely amount of the claim and they failed to explain why it may not have



been appropriate for Mr O's lists of questions to be put to counsel (legal advisers) or the medical expert. Overall, we were satisfied that the complaints upheld were fairly modest in effect and had involved little distress or inconvenience.

## Significant

*80% of the awards we make in this category are between £200 and £500*

### Example C

After his divorce, Mr Q instructed solicitors (who had not been instructed in the divorce itself) to deal with selling the former family home. Mr Q alone was responsible for paying the conveyancing bill. At the start, the solicitors estimated their costs at £313.50 including VAT. They didn't put this in writing. The final costs, which were taken from the proceeds of sale without Mr Q's approval, were £1513. The solicitors said they had run up extra costs in two transactions in dealing with a planning enquiry and having to deal with Mr Q and his wife separately. Only two vague, handwritten notes about 'costs overrunning' appeared on the solicitors' file. Mr Q was aware that he would have to pay extra but, until he received a final bill, he had no idea of the solicitors' charging rates or the likely cost of the extra work. We took the view that Mr Q knew there would be some extra charge but he had clearly been caused some anxiety and inconvenience by the unexpected amount of the bill.

### Example D

Mr and Mrs T were delighted when, after buying their house, their solicitors refunded money to them. They were told to go off and 'enjoy it'. They did so, but when they returned from holiday they were distressed to learn that the solicitors

should have kept the money to pay the stamp duty and land registration fees. Not only did the solicitors want the money back immediately, but they demanded even more because they had originally incorrectly worked out the amount they needed. Mr and Mrs T were not able to repay the money so the solicitors issued court proceedings and then made various accounting and other mistakes. We made five separate findings of poor service. Needless to say, Mr and Mrs T were extremely upset. They had to borrow money from their family, and had to go to county court – all because the solicitors refused to say sorry and agree a sensible arrangement for repayment. To make matters worse, the solicitors then failed to deal properly with their clients' complaint. As well as awarding compensation, we reduced the solicitors' bill.

### Example E

Solicitors handling a family law case:

- severely delayed in instructing counsel;
- delayed in reporting to the client;
- failed to answer letters;
- delayed in refunding an overpayment of counsel's fees; and
- delayed in sending copy letters which were needed in connection with a complaint to the Bar Council.

We were satisfied that these delays affected the client's progress and had caused him a lot of concern and anguish. As well as awarding compensation, we cancelled the solicitor's bill because the work which had been done had been made worthless by the poor service.

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## Example F

Solicitors dealing with a personal injury case acted reasonably for about nine months but from then on failed to provide any adequate advice on costs, risk and benefits and delayed the matter. The case was eventually not taken any further when funding from the Legal Aid Board stopped. The partner who had handled the case refused to deal with his client's complaints and deeply upset the young client and her father. Fortunately, the complaints handling partner took over and sorted things out as best he could. However, by then the client had lost all faith in the firm. As well as compensation, we ordered a refund of part of the client's legal aid contributions.

## Example G

After finalising buying a house, the solicitors mistakenly closed their file before completing registration at the Land Registry. Some months later the client asked for an update and the solicitors discovered their mistake. However, instead of urgently dealing with the registration, they took another 18 to 20 months to complete it. The poor service included lengthy delay, failing to keep their client informed and failing to deal properly with the complaint. When we asked them to offer some financial compensation, the solicitors said that their fees were so low there was no profit from which to offer anything. Not surprisingly, the client was very upset and concerned. His anxiety was made worse by the solicitors' failure to keep him informed.

## Serious

*80% of the awards we make in this category are between £500 and £1000*

## Example H

Solicitors applied for an urgent injunction for Ms P due to her partner's violent behaviour. However, they never told her about their increasing costs. Eventually, they charged her £1800 but then reduced this to £1200. They accepted cheques from her, but did not give her any amended account. Finally they took six months to serve the papers. Their explanation for this was that they had difficulties with serving them (but had made no note of it) and could not contact their process server because he had moved to a new address. They also failed to keep Ms P informed. They eventually served papers, but only after we had become involved. Ms P was clearly upset and distressed by this very poor service, although she had not chased her solicitors because she had not suffered further violence during the period of inactivity. If she had been assaulted again, the award would have been much higher.

## Example I

In this complaint, arising from the sale of a house, the solicitors failed to tell their client (Mr S) how he would pay the estate agents' charges that he had to pay when the sale was completed. They also failed to provide a proper 'client care' letter at the start and failed to deal with their client's complaint. The estate agents took county court proceedings against Mr S, who was then caught up in an unpleasant situation for a long time. Mr S was very unhappy and felt badly treated. The county court judge agreed with him and ordered the solicitors to pay the



claim as well as Mr S's costs. Neither partner in the solicitors' firm responded to our report on the case. One had his 'assistant' send a fax which was typical of the firm's attitude to client complaints.

### Example J

Mr F instructed a solicitor to act in buying a property. The solicitor knew from previous experience that the property had faults but failed to tell Mr F to have it surveyed. He also failed to give Mr F the answers he had received to enquiries about the property. The poor service also included the solicitor keeping the deeds and failing to deal with Mr F's complaints reasonably. Mr F's anxiety was made worse by his solicitor's letter rejecting his complaints and his attempt to hide behind 'technical' reasons for not doing things. The solicitor also knew that Mr F had limited English. In our view, that made matters worse – we awarded compensation, with a modest reduction in the solicitor's bill.

### Example K

By the time we considered this case, the solicitor's practice had been closed down and the solicitor was about to appear before the Solicitors' Disciplinary Tribunal. We found the poor service to be extremely serious. It included:

- extended delay;
- failing to keep the client informed;
- failing to respond to any communication;
- failing to acknowledge or deal with complaints;
- cancelling eight appointments unreasonably; and
- failing to send the client's file to new solicitors (as well as lying about it).

Not surprisingly, the client was extremely upset, frustrated and disillusioned.

### Extremely serious

*Although this case was decided when the limit of awards was £5000, the adjudicator would have awarded more if that had been possible. The limit on awards is now £15,000*

### Example L

Mr R asked the solicitor to take over acting for him in a fairly minor personal injury case. He was given no proper information about costs and the solicitor did not assess the risk of Mr R having to pay his opponent's costs if his claim was unsuccessful. He repeatedly assured Mr R there was no prospect of an order for costs being made against him, as he was receiving Legal Aid (although not during the whole case). Mr R lost his claim and had an order for costs against him. The solicitor assured him he was making an appeal but made a complete mess of it and lost the case for not turning up at the court – he didn't even tell Mr R about the hearing. The solicitor was served with the other side's bill but failed to tell Mr R. The bill was confirmed by the court and Mr R's opponent began enforcement action to get their payment. The first Mr R (a health professional) knew about it was when Sheriff's Officers came to both his home and consulting rooms. He had to take out a loan of over £15,000 to pay the costs. The solicitor repeatedly lied about what was happening and ignored correspondence. He tried to have the enforcement delayed but was too late and he made the wrong application. The solicitor was eventually struck off (for other matters) and Mr R recovered his proven financial losses through negligence proceedings in the

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court. We considered that Mr R and his family had suffered considerable distress, anxiety and depression – all because of the solicitor.

## Example M

Mr G and his sister lost their father and instructed a non-legal organisation to apply for probate, sell some land and property and wind up the estate. The organisation appointed a solicitor to deal with conveyancing. He said his fees would be “from £550 plus VAT” for the sale of each of two properties. He later sent them a completion statement showing that £11,200 plus VAT had been deducted, without explanation or authority. Mr G and his sister were extremely distressed and the difficulty was made worse by the solicitor’s refusal to speak to them about it. He merely referred them back to the organisation he had some arrangement with, and who wrote to Mr G asking him to “give me an indication of what it is that is troubling you”. The solicitor chose to do nothing further and totally ignored his clients.

## Example N

Mrs F had lost her husband and instructed the solicitors to sell a small property. The solicitor and his assistant lied to her over a fairly long period, misled her on the true position relating to the transaction and attempted to defraud her by persuading her to accept a ‘reduced’ sale price. The effect on Mrs F was devastating. Both the solicitor and his assistant were arrested and prosecuted, and received prison sentences. The solicitor was struck off the roll. Mrs F received the then maximum award of compensation.

## Example O

Miss T instructed solicitors in a number of matters including divorce, a property dispute

and a financial claim. The solicitors took on all three issues and in each:

- failed to protect Miss T’s interest;
- delayed in making any progress (the financial claim was ignored for over four years and was still in progress about 10 years after instructions were first given); and
- failed to provide any reliable costs and financial information.

Also, Miss T received legal aid for part of the time and she was not told about the Legal Services Commission Statutory Charge. She was shocked and distressed when she later discovered how much she owed the Commission. Although she successfully recovered her financial loss from the solicitors (who she sued in negligence), the court did not directly compensate her for the distress she had suffered. We were able to do so.

## Example P

Mr C and his wife sued their local housing authority, who had allegedly failed to carry out repairs. At the same time, and together with their daughter, they took separate action for damages for injuries caused in a road traffic accident. The solicitors totally confused the two issues, wrote letters which failed to deal with either issue satisfactorily and failed to give the family any advice about legal aid, the statutory charge or when a legal aid certificate should be properly ended. The family was left confused and distressed, and suffered a loss following legal aid complications that were easily avoided if proper action had been taken. At the time we made our decision our maximum award, including financial loss, was £5000, but the adjudicator would have awarded more if he had been able to do so.



## Further reading

### **'A Solicitor's Guide to Complaints Avoidance and Handling' by Michael Frith**

*Published by Emis Professional Publishing.*

31-33 Stonehills House, Howardsgate, Welwyn Garden City AL8 6PU.

DX 144000 Welwyn Garden City 5.

Phone: 01707 334823. Fax: 01707 335022. Email: [sales@emispp.com](mailto:sales@emispp.com)

### **'Excellent Client Service' by Heather Stewart**

*Published by the Law Society.*

Marston Book Services, PO Box 312, Abingdon, Oxon OX14 4YH.

DX 130431 Didcot 2.

Phone: 01235 465656. Fax: 01235 465660. Email: [law.society@marston.co.uk](mailto:law.society@marston.co.uk)

### **'Dealing with customer complaints' by Tom Williams**

*Published by: Gower Publishing Ltd.*

Gower House, Croft Road, Aldershot, Hampshire GU11 3HR.

Phone: 01252 331551. Website: <http://www.gowerpub.com>

### **'Who we are, what we do'** *Published by the Law Society.*

This leaflet, written for the users of legal services, outlines the role of the Law Society's Consumer Complaints Service. Please telephone 0845 608 6565 for copies.

### **'Can we help?'** *Published by the Law Society.*

This comprehensive guide, written for the users of legal services, explains in detail how the Society deals with customers complaints about solicitors. Please telephone 0845 608 6565 for copies.

### **The Client's Charter**

Copies of the Law Society's Client's Charter are available free by telephoning 020 7316 5605 or by emailing [customerguides@lawsociety.org.uk](mailto:customerguides@lawsociety.org.uk)

The Charter is also on the Law Society's website - [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

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