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# ealing With Client Complaints: a practical guide

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We spend our lives maintaining standards of excellence in pursuing and protecting our clients' rights in a system which we have in part inherited, but in which we have had opportunities to contribute to changes.

Why then, when there is a complaint about our professional conduct and the Legal Services Commissioner or Law Society conducts an inquiry, do we feel that we are being unjustly treated and that we are being let down by the same system which is obliged to question our integrity?

Perhaps our concern stems from fact that the Law Society is said to have a classic conflict of interest in representing us in matters other than complaints and yet prosecutes us - or as some would say - persecutes us - in disciplinary matters. Whatever the rights or wrongs of this system might be, we have to be accountable for our professional behaviour and if called into explain our conduct, we have a professional duty to do so.

For most of us a letter from the Professional Standards Department of the Law Society will lead us into a state of anxiety and indignation. Many a solicitor will be heard to say, "I worked my guts out for that client and I haven't even received a penny!" or "I told the client he didn't have a case" or "the settlement was the best I could do and if the case went on the client's credibility was at risk". In answer to these knee-jerk reactions it is tempting to say "so what" because it is quite likely that the complaint has arisen because the solicitor has not communicated adequately with his or her client so that the client understands what has happened and why it has happened.

On receipt of such a letter a cool and level-headed approach is needed. In most cases the supporting documentation will be found in the client's file and a well-reasoned response can be prepared. The difficulty will be that your former client has presented a rambling

and incoherent complaint which the Law Society has sought to reduce to a few headings which it perceives need to be addressed.

Do you answer every allegation made against you or do you address only those matters which the Law Society has identified? Do you respond to any attack on your personal behaviour and engage in correspondence which might seek to inform the Law Society that the complainant is not all goodness and righteousness as he or she claims to be? The best answer to these questions is to contact the legal officer at the Law Society handling the matter and discuss the approach which the legal officer thinks will assist in disposing of or resolving the complaint.

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However you answer the complaint, you are obliged to be frank and honest and failure to be either may itself constitute professional misconduct. In many cases a chronology may be useful and where appropriate copies of relevant documents and correspondence should be provided. Sometimes production of your file will assist.

Selective production of material favourable to your case and omitting material supportive of the complaint may have a detrimental effect on the outcome. It is often better to address the negative side of your conduct and explain it than await a further inquiry from the Law

Society.

You may think that the Law Society should provide particulars of the alleged professional misconduct or unsatisfactory professional conduct, but there is no obligation for it to do so. In all of this I hear you say, "I am being denied natural justice". "Not so," says the Law Society because its role at this stage is to investigate a complaint (with wide powers to inspect documents) and to form a view which may range between dismissing the complaint or instituting proceedings in the Legal Services Tribunal; it has no power to make any findings or orders against a solicitor. The Law Society must institute proceedings if it is "satisfied there is a reasonable likelihood that the legal practitioner will be found guilty of professional misconduct or unsatisfactory professional conduct". It is in a solicitor's best interests to make submissions and provide information which might convince the Law Society that there is no evidence upon which it can rely to reach the requisite level of satisfaction. After all, our discipline is to be skilled in the power of persuasion which we exercise for the benefit of our clients, so why not for ourselves.

In instituting disciplinary proceedings the Law Society is required to provide sufficient particulars of the allegation of professional misconduct or unsatisfactory professional conduct so that a solicitor knows the case to be answered. In those proceedings there is ample opportunity to adduce evidence to refute the allegations and for the principles of natural justice to prevail.

The process of answering complaints is difficult and complex and often a solicitor would be well-advised to seek independent advice. It is not a sign of weakness in a solicitor's case to obtain such advice but one of good practice and common sense and will lead, more often than not, to an early dismissal of the complaint.