



Complaints about a Member of the Institute

1. Introduction

One of the ways in which we help promote professional standards of service from legal service providers is by ensuring that membership of the Institute is denied to, or removed from, individuals and organisations offering a poor service to their clients.

Sometimes disputes are not straightforward. They might arise because either the client had unreasonable expectations, or because of a side issue, such as the manner in which the client's original complaint to the member was handled.

Regardless of how the problem has arisen, our goal is to try and help the parties reach an acceptable resolution and, where appropriate, sanction the member if at fault.

2. What Complaints Will We Consider?

We will consider complaints about poor service, for example how a matter was handled; how fees were charged, how the client was treated and the way in which any complaint directed to the member was handled.

What we cannot do is adjudicate claims that, in effect, require us to act like a court of law - for example complaints that the wrong advice was given, or that a case was not presented as effectively as it should have been. Not only are these highly subjective, but to reach a definite conclusion could require a complete "rerun" of the conduct of the case and obtaining a second and possibly even third written opinion from independent experts. We regret we do not have the resources to do this; nor the legal powers to require it.

We will not investigate anonymous complaints unless of a serious nature.

3. Our Powers

We are a private trade organisation, and membership is entirely voluntary. We are not a regulatory authority. We require members to cooperate with us in helping to resolve any complaints received. However we have no power to compel members to cooperate. Nor do we have any power to compel complainants to cooperate either.

If a member is found to have acted in an unprofessional manner they may be sanctioned or have their membership terminated.

If a member refuses to cooperate fully and in a timely manner with the Institute's investigation of the complaint, then their membership will most likely be terminated.

If a member resigns membership rather than cooperate with an investigation of a complaint then we cannot pursue the matter further.

What we cannot do is impose a fine on members who have acted in breach of the standards we expect of them, nor order/award compensation to wronged clients.

What we can do is to try and mediate an acceptable compromise between the member and client and/or sanction/terminate the membership of those members who we believe failed to live up to expect standards.

4. Legal Implications

The laws of defamation and other relevant laws still apply to complaints, and so both the complainant and the member may be subject to legal action from the other (or a third party) if they feel what was said constitutes a legal wrong.

In the interests of fairness, the Institute reserves the right to show all communications receive from the client to the member and vice-versa.

The Institute undertakes complaint handling as a necessary service to help improve standards of service. In becoming involved in the matter the Institute is not giving any legally binding promises, guarantees, representations or other types of assurance that it will (a) handle the complaint in any particular manner or timescale, (b) reach a resolution satisfactory to either complainant or member or at all (c) that it accepts any legal liability for its actions, errors or omissions in its handling or otherwise of the complaint and expressly refutes all legal liability for the same.

5. Complaints to Regulators

Some of our members are also subject to statutory regulation. Where this is the case we usually recommend that disgruntled clients lodge claims with the regulators first.

We suggest this because statutory regulators have powers of investigation and sanction (including sometimes the power to award compensation) that we lack. Unhappy clients therefore have a greater chance of receiving a satisfactory result.

Typically we will not adjudicate any complaint against a member whilst a complaint to statutory regulator is outstanding. Partly this is because it is not entirely fair to remember to have to handle two enquiries at the same time, but also because we would want to take into account the findings/decision of the statutory regulator before reaching our own conclusions.

We can advise on whether any statutory regulator is likely to be involved, but briefly:

5.1. Solicitors' firms, employees and agents

Solicitors' firms and the paralegals and other employees working for them (and as agents for them) are regulated by the Solicitors Regulation Authority (SRA). Because employees are, at law, usually seen as representing the employer, complaints about members employed by a solicitors' firm would be first to the firm. If that prove unsatisfactory then the matter can be raised with the SRA: www.sra.org.uk

Complaints may also in some circumstances be lodged with the Legal Ombudsman: www.legalombudsman.org.uk

5.2. Barristers, legal executives, costs lawyers, trademark agents, patent agents, licensed conveyancers, notary practices, employees and agents

Each of these types of lawyer, and their staff (paralegal or otherwise) and agents are subject to statutory regulation. Typically you would therefore complain to the firm about the way it handled your matter or about an individual member of staff. If you did not get satisfaction from that process, you would be entitled to raise the whole matter afresh with the regulator:

Barristers: www.barstandardsboard.org.uk

Costs lawyers: www.costslawyer.co.uk

Legal executives: www.ilex.org.uk/ips/ips_home.aspx

Licensed conveyancers: www.conveyancer.org.uk

Notaries: www.thenotariessociety.org.uk

Patent agents: www.cipa.org.uk

Trademark agents: www.itma.org.uk

5.3. Legal Service providers offering services under the Compensation Act 2006

The Compensation Act 2006 requires all legal service providers (solicitors and some other regulated lawyers excluded) offering any services related to:

- (a) personal injury, including work-related injury, disease or disability;
- (b) criminal injuries compensation;
- (c) industrial injuries disablement benefit;
- (d) employment;
- (e) housing disrepair; and
- (f) financial products and services

to be registered with the Ministry of Justice's Claims Management Regulation Division.

Companies providing services in these areas, along with their staff (paralegal or otherwise) are subject to statutory regulation. Typically you would therefore complain to the firm about the way it handled your matter or about an individual member of staff. If you did not get satisfaction from that process, you would be entitled to raise the whole matter afresh with the Ministry of Justice.

NB: do not be misled by the name "Claims Management Regulation". The Compensation Act 2006 is not limited to claims management companies. It covers many other legal service providers too.

Ministry of Justice, Claims Management Regulation Division

www.justice.gov.uk/guidance/inspection-and-monitoring/claims-management-regulation/index.htm

5.4. Legal service providers offering advice/assistance on immigration related matters

All legal service providers (solicitors and barristers excluded) offering advice and assistance on immigration related matters need to be registered with the Office of the Immigration Services Commissioner.

Companies providing services in these areas, along with their staff (paralegal or otherwise) are subject to statutory regulation. Typically you would therefore complain to the firm about the way it handled your matter or about an individual member of staff. If you did not get satisfaction from that process, you would be entitled to raise the whole matter afresh with the Commissioner.

Office of the Immigration Services Commissioner: <http://oisc.homeoffice.gov.uk/>

5.5. Trading Standards

Legal service providers are obliged to comply with consumer protection legislation. If they don't, then disgruntled clients are entitled to make a complaint to the Trading Standards Department covering the location where the legal service provider is based. See www.tradingstandards.gov.uk

6. **Making a Complaint**

We are happy to discuss potential complaints in confidence by telephone or e-mail.

Actual complaints must be submitted in writing - preferably by e-mail.

No two complaints are the same, so we have no complaints form. Somebody wishing to complain can tell us what their complaint is in their own way and words.

The complaint should be sent to office@theiop.org

7. Liaising with Parties

Once a formal complaint has been made we will only deal with the parties in writing. We appreciate that this may be inconvenient, and apologise for that. However it is important for evidential purposes that all allegations made, and supporting information given, be provided in writing.

Reliance on the file notes made by Institute staff as a result of telephone conversations is unreliable for a number of reasons.

8. The Complaint Process

As mentioned above, no two complaints are ever the same. Accordingly we adopt a flexible approach to handling the complaint with the goal of ensure maximum fairness to both sides.

Broadly speaking however, we:

- Consider the formal complaint
- Decide whether it is something we can or should pursue
- Tell the complainant of our decision
- Seek additional information or clarification if required
- Identify what resolution (if any) the complainant is seeking
- Forward the complaint to the member
- Receive and consider the member's response
- As appropriate continue the discussion between the two sides; end the complaint process or sanction the member/terminate the membership
- Report to both sides

We are a small organisation and have to use our time and resources as effectively as possible. This might mean that we cannot respond to every complaint/issue in the way a complainant or member would like, if in doing so it would take up a disproportionate amount of time and resources.

9. Obligations of Complainant and Member

Frequently one or both sides in a complaint feel very aggrieved, upset or distressed. Although we understand this, we cannot let Institute staff be subject to unreasonable behaviour by either side, nor have Institute staff subject to aggressive or abusive communications, or be subject to unreasonable demands, for example:

- threats
- verbal abuse
- racist and sexist language
- derogatory remarks
- offensive language
- rudeness
- making inflammatory statements
- raising unsubstantiated allegations
- requesting responses to unreasonable timescales
- insisting on speaking with certain members of staff
- adopting a "capture-all" approach by contacting many staff members and third parties
- continually contacting us while we are in the process of looking at a matter
- make a number of approaches about the same matter without raising new issues
- refuse to accept a decision made where explanations for the decision have been given
- continue to pursue complaints/issues which have no substance
- continue to pursue complaints/issues which have already been investigated and determined
- continue to raise unfounded or new complaints arising from the same set of facts

The above are merely examples.

Should a complainant exhibit unreasonable behaviour then the Institute reserves the right to immediately cease handling the complaint and to cease all further communications with the complainant.

Should a member exhibit unreasonable behaviour then the Institute reserves the right to immediately terminate the member's membership without refund of membership fees.

The Institute has a zero-tolerance position on unreasonable behaviour in so may not give prior warnings about moderating unreasonable behaviour before exercising the above options.

Violence and threats against Institute staff will always be reported to the police.

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