

Compensation orders

A complainant may request the Law Society (in consumer and certain disciplinary matters) or the Civil and Administrative Tribunal (in disciplinary matters commenced by the Law Society) to make a compensation order in favour of the complainant or a third party. A request for compensation must describe the loss suffered by the complainant or third party and the relevant circumstances. Compensation is only awarded in very limited circumstances.

Unless the complainant and solicitor agree, the Law Society or the Civil and Administrative Tribunal must not make a compensation order unless it is satisfied that the loss was suffered because of the solicitor's conduct and it is in the interests of justice that a compensation order be made. A compensation order will not be made where the complainant or client has or is entitled to receive compensation under an order that has been made by a court or compensation paid or payable from a fidelity fund, where a claim for payment has been made or determined.

An order for compensation made by the Law Society cannot exceed \$25,000. An order for compensation made by the Civil and Administrative Tribunal cannot exceed \$25,000 unless a greater amount is agreed to by both the complainant and the solicitor.

A compensation order may be filed in the Local Court of New South Wales and enforced as if it were an order of the court.

Review

The determination of a complaint or matter by the Law Society is final.

The Legal Services Commissioner may, at his absolute discretion, conduct a review of a determination made by the Law Society regarding a complaint if the Legal Services Commissioner considers it appropriate to do so. An application for review must be made within 30 days of the date of notice of the decision.

A solicitor may make an application to the Civil and Administrative Tribunal appealing or seeking review of a determination of the Law Society:

- in relation to a compensation order for more than \$10,000; or
- a determination of unsatisfactory professional conduct made under section 299 of the Uniform Law.

Register of disciplinary action

The Legal Services Commissioner maintains a Register of Disciplinary Action which includes particulars of the disciplinary action taken against a solicitor. The Register of Disciplinary Action is available for inspection on the website of the Office of the Legal Services Commissioner.

Other matters

- The making of a complaint does not operate as a stay or bar to any other legal proceedings between or involving the complainant and solicitor.
- The making of a complaint does not prevent ongoing communication between the solicitor and the complainant on other matters, or for the purposes of dealing with the subject matter of the complaint.
- The making of a complaint does not terminate a solicitor/client relationship between the solicitor and complainant, if there is one. A complaint however, may indicate a loss of confidence or trust in a solicitor which may make it appropriate for a solicitor to cease to act for a complainant.
- The making of a complaint cannot achieve a review or reconsideration of a decision made by a court, Tribunal or other authority.
- Solicitors should not make complaints about other solicitors without first exploring every avenue of resolution.
- Unfounded allegations by a solicitor about another solicitor may be the subject of a breach of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

Further information

For further assistance or information please contact:

Professional Standards Department
The Law Society of New South Wales

Telephone: (02) 9926 0110



**PROFESSIONAL
STANDARDS**
THE LAW SOCIETY
OF NEW SOUTH WALES

COMPLAINTS PROCESS INFORMATION

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The Law Society was established in 1884 and has since that date, been responsible for the regulation of the solicitors' branch of the legal profession, initially as the sole regulator and from 1994, as a co-regulator with the Office Legal Services Commissioner.

From 1 July 2015, the procedure for making and determining complaints about solicitors is governed by the Legal Profession Uniform Law (Uniform Law). This document outlines the procedure and has been prepared to assist complainants and solicitors. If you need clarification of any of the points covered or further information, please contact the Professional Standards Department investigator dealing with the matter.

Making a complaint

All complaints about solicitors must be sent to the Legal Services Commissioner who may investigate a complaint, mediate a complaint, refer a complaint to the Law Society for investigation, or close a complaint.

Any person or body may make a complaint about a solicitor. A complaint may relate to any dispute or issue about any conduct of a solicitor, a law practice, or both.

A complaint must be made within three years of the date on which the conduct being complained about occurred, however the time requirement may be waived in certain circumstances. However, please note that cost disputes must be made within 60 days after legal costs become payable or if an itemised bill is requested, 30 days after the request was complied with.

A complaint must be made or recorded in writing and must identify:

- the complainant;
- the solicitor or law practice about whom the complaint is made; and
- the alleged conduct that is the subject of the complaint.

The Law Society cannot investigate complaints about judges or magistrates.

Types of complaints

A complaint may be about a consumer matter, a disciplinary matter, or both.

Consumer matters

A consumer matter relates to the provision of legal services to the complainant by the solicitor or law practice, and includes disputes about legal costs between the solicitor or law practice and the person charged with the legal costs (generally a client) or a third party payer.

You should make every effort to resolve the matter before making a complaint as the Law Society is not to take action towards resolving a consumer matter unless it is of the opinion that at least one of the parties has made a reasonable attempt to resolve the matter and the attempt has been unsuccessful, or that it would be unreasonable to expect the complainant to be involved in such an attempt.

The Law Society will attempt to resolve consumer matters by informal means as soon as possible. The Law Society may also order the parties to attend mediation.

If the matter is not resolved, the Law Society may make a determination that, in the Law Society's view, is fair and reasonable in the circumstances.

Cost disputes

The Law Society may deal with costs disputes if:

- the total bill for legal costs is less than \$100,000 (indexed) payable in respect of any one matter; or
- the total bill for legal costs equals or is more than \$100,000 (indexed) payable in respect of any one matter, but the total amount in dispute is less than \$10,000 (indexed).

The Law Society may make a binding determination if it is unable to resolve a cost dispute (either wholly or partly) and the total amount of legal costs still in dispute is less than \$10,000 (indexed). Otherwise, it will cease dealing with the costs dispute and inform the parties of the right to apply for a costs assessment or to make an application under jurisdictional legislation for the matter to be determined.

Disciplinary matters

A disciplinary matter relates to conduct of a solicitor or law practice that would, if the conduct concerned was established, amount to unsatisfactory professional conduct or professional misconduct.

Unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law 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.

Professional misconduct includes:

- unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

Professional misconduct also includes conduct "which would be reasonably regarded as disgraceful or dishonourable by the person's professional brethren of good repute and competency."

Generally, the unsupported word of a complainant against the unsupported word of a solicitor is not sufficient to sustain a complaint.

A claim for negligence against a solicitor is more properly brought in proceedings commenced in the courts. Complainants should consider obtaining independent legal advice as to their rights noting that limitation periods may apply. In the Society's experience, it is only in very limited circumstances that complaints of negligence against a solicitor amount to unsatisfactory professional conduct or professional misconduct.

Investigation of complaints by the Law Society

Complaints referred by the Legal Services Commissioner to the Law Society are investigated by an investigator in the Professional Standards Department. Investigations are fair and impartial and complaints are dealt with as efficiently and expeditiously as possible.

The parties are to correspond with the Society in writing at all times concerning the complaint.

Preliminary assessment

The Law Society will undertake a preliminary assessment of the complaint, and may require further information to be provided by the complainant, the solicitor, or a third party. After the preliminary assessment, the Law Society may determine to close part or all of the complaint or proceed to an investigation pursuant to the Uniform Law.

Investigation of complaints

Those complaints that are not closed after preliminary assessment are investigated. The Law Society may investigate the whole or part of any complaint and may also appoint a suitably qualified person to conduct an investigation.

The investigation deals with matters the subject of the complaint, however may be extended in scope if the Law Society considers it appropriate to do so.

Matters may also be referred to costs assessment.

Information obtained by the Law Society, a complainant or a solicitor as part of an investigation of a complaint is confidential and should not be disclosed.

Obligations of complainant

The complainant must assist in the investigation by providing evidence or information if required by the investigator. Failure by the complainant to assist in the investigation may result in the closure of the complaint.

Obligations of solicitor

The solicitor must assist in the investigation by providing evidence or information if required by the investigator. A solicitor must not obstruct or mislead an investigator. Failure by the solicitor to assist in the investigation may amount to unsatisfactory professional conduct or professional misconduct or render the solicitor liable to civil penalties.

Report

After completion of the investigation, the investigator reports to the Professional Conduct Committee of the Law Society. The report is confidential and is not provided to the complainant or the solicitor.

Determination of complaints

Complaints are determined by the Professional Conduct Committee of the Law Society who may:

- close the complaint.
- find that the solicitor has engaged in unsatisfactory professional conduct and order that the solicitor:
 - be cautioned;
 - be reprimanded;
 - apologise to the complainant
 - re-do the work the subject of the complaint at no cost or waive or reduce the fees for the work;
 - undertake education, training, counselling or be supervised;
 - pay a fine of a specified amount not exceeding \$25,000 to the Public Purpose Fund; or
 - recommend a specified condition be imposed on the solicitor's practising certificate.
- initiate proceedings in the Civil and Administrative Tribunal against the solicitor.

A written notice of the Committee's determination is generally provided to the complainant and solicitor pursuant to the Uniform Law.

Proceedings in the Civil and Administrative Tribunal

The Law Society may file an application in the Civil and Administrative Tribunal, Occupational Division, seeking disciplinary findings and orders against a solicitor if it is of the opinion that:

- the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the Tribunal; or
- the alleged conduct may amount to professional misconduct.

If the Civil and Administrative Tribunal finds the solicitor guilty of unsatisfactory professional conduct or professional misconduct, it may make any order it thinks fit, including orders:

- recommending the removal of the solicitor's name from the Roll of lawyers kept by the Supreme Court of NSW;
- suspending for a period or cancelling the solicitor's practising certificate;
- directing that a specified condition be imposed on the solicitor's practising certificate;
- cautioning or reprimanding the solicitor; or
- imposing a fine on the solicitor.