

The Duty on Firms to Investigate Complaints – Guidance on How to Handle or Avoid Them

*Please note that complaints concerning **investment business** conducted between October 1988 and November 2001 are governed by the specific requirements of the Institute’s Investment Business Regulations 2.38 and 2.39. However, the following advice may also be helpful in that area.*

A The Duty

1 The Bye-laws have, since June 1993, placed a duty on firms to investigate complaints. The duty requires, inter alia, that:

- (a) A firm must ensure that all new clients are made aware in writing of the principal to be contacted in the event of their wishing to complain about the firm’s services and of their right to complain to the Institute.
- (b) If a firm receives a complaint concerning the services it has provided or failed to provide to a client or former client it must immediately cause the complaint to be investigated by a principal.
- (c) If, following such an investigation the firm is of the opinion that the complaint is justified in whole or in part it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, the provision of information, the return of books or documents, the reduction or repayment of fees, or otherwise.

Informing the Client

2 The requirements include a formal duty to advise all **new** clients in **writing** of their right to complain to the Institute and of the name of a principal in the firm whom they should contact if they wish to complain. Although the duty as phrased only applies to ‘new clients’, it is best practice for firms to ensure that all clients of the practice, including existing clients, receive such a notification. In the case of new clients it would be most convenient to include this notification in the engagement letter. Notification need not be a burden, nor should it be couched in legal or bureaucratic language. It might, for example, take the following form:

HELP US GIVE YOU THE BEST SERVICE

If at any time you would like to discuss with us how our service to you could be improved or if you are dissatisfied with the service you are receiving please let us know by telephoning [*insert name of relevant person*].

We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your

complaint to your satisfaction you may of course take up the matter with the Institute.

[NB. General advice on engagement letters is given in a Help Sheet – ‘*Engagement Letters*’ – produced by Advisory Services and available at www.icaew.co.uk or by telephoning 01908 248032]

Internal Complaints Procedures

3 The duty does not include a requirement for a formal complaints procedure. However, most firms, and particularly medium and large sized firms may well find it convenient to have such a procedure. A good complaints procedure will include the following elements:

- (i) review by a principal other than the principal responsible for the client’s affairs;
- (ii) reference to the client where the facts are not clearly established;
- (iii) prompt rectification of the error, with apology and offer of waiver or reduction of fee where appropriate – see paragraph 18 below;
- (iv) full explanation to client if complaint unjustified (this is usually best achieved face to face, but it is always wise to record this explanation in the form of a letter);
- (iv) if complainant remains unsatisfied notifying them of their right to make a complaint to the Institute;
- (v) drawing serious complaints to the attention of the senior principal.

4 If a complainant reports a matter to the Institute the firm concerned may have to demonstrate their compliance with the duty. In such circumstances, it is desirable that:

- (a) the steps in the complaints procedure are set out in writing in a policy document, and
- (b) the observance of the procedure is documented in the case of every complaint received.

The Investigating Principal

5 Personal responsibility lies with the investigating principal, once they have received the complaint, to ensure that:

- (i) the steps in any formal complaints procedure (see above) are complied with;
- (ii) they deal personally with the complaint, thoroughly, expeditiously and with courtesy;
- (iii) the senior principal (or their nominee) is informed of the progress of the investigation;
- (iv) if the investigation does not resolve the complaint, in the case of a client remaining dissatisfied, the procedure set out in section C below is properly concluded.

Although the requirement to investigate complaints is framed so as to lie upon the firm, a principal who has been informed by the client of a complaint and

who fails to pursue it in accordance with the above may personally become liable to disciplinary action also.

Sole Practitioners

6 The formal procedure indicated in paragraph 3 (above) will be impracticable for a sole practitioner, but they are likely to find it helpful to establish an arrangement whereby complaints which they believe to be unsubstantiated but which the client persists in making are reviewed by their alternate. Additionally, sole practitioners could ask a support member to review the complaint.

Paragraph 4 (above) recommends documentation of the observance of the complaints procedure in the case of every complaint received. Since a sole practitioner is ultimately answerable in respect of any allegation regarding their firm, once a complaint is received such documentation is of equal importance to the practitioner.

B Practical Ways to Avoid or Defuse Complaints

7 Complaints received by the Institute relating to the services provided (or alleged lack thereof) by firms fall into the following main groups:

- Fee disputes
- Delay
- Failure to respond to correspondence
- Failure to carry out duties
- Poor work/poor advice.

The Institute's experience is that a large majority of these complaints could have been avoided by a few simple measures usually at no extra cost to the firm. By contrast, the cost of dealing with a complaint, in terms of chargeable time and general hassle can be considerable. The following are a few practical suggestions to avoid the most obvious pitfalls which emerge from a consideration of complaints received.

Fees

8 Where an estimate or quotation is given, confirm it in writing and identify precisely the work which will be carried out.

Where there is likely to be an over-run on estimated fees, let the client know as soon as possible. Tell the client why the over-run has occurred, estimate the additional cost to finish the work, and get the client's agreement to continue. Confirm the new agreement in writing as soon as possible.

Where no estimate or quotation has been given keep a sense of proportion between the cost to the client for the work and the value to the client of the work. If in doubt, refer to the client to confirm the instructions. (Further

advice on Fee Disputes is given in paragraph 14, and on the Fee Arbitration Service in section **D** below.)

Delay

9 Prioritise work. Find out when the client wants it completed by and work to that date or earlier if possible.

If work has to be re-prioritised, make sure that the moving of clients' work down the queue does not create problems for the clients themselves.

Don't take on more work than your practice can handle. If you find that you have done so, consider the use of (reliable) sub-contractors or, if the increase in work looks permanent, engaging more staff.

If for whatever reason you are unable to attend to your clients' affairs for a period, let them know what is happening and give realistic estimates for the length of delay which will be involved. Wherever possible delegate the work to an appropriate level within your practice.

Failure to respond to correspondence

10 Consider instituting internal performance standards, communicated to clients, whereby a substantive response to correspondence is made within a (specified) reasonable period. Where this is not practicable or desirable, then:

- ensure all incoming correspondence is acknowledged – even if only by way of card – upon receipt;
- prioritise correspondence between urgent and non-urgent; use the phone/fax/e-mail to transmit urgent information, and confirm by way of letter.

If it is not convenient to deal with the matter now, and if it is not urgent, send a holding reply indicating when you are likely to be able to respond.

Ensure that your office systems are such that correspondence does not get overlooked or mislaid.

Failure to carry out duties

11 Agree and confirm with your client the exact work you are going to be doing. Many complaints in this area relate to work which the clients *assume* will be done by their accountant but no specific instructions were given. Make your engagement letters comprehensive and confirm in writing any additions or alterations thereto.

Make sure *you* understand what your client has instructed you to do.

Install review procedures to ensure that all work has been properly completed.

Poor work/poor advice

12 Institute a system of quality control within your practice.

Again, be careful not to take on more work than your practice can handle. If you find that you have done so, consider the use of another firm or reliable sub-contractors or, if the increase in work looks permanent engage more staff.

Make sure that:

- work within your practice is delegated to the appropriate level;
- the advice which you give is applicable to the client's particular circumstances;
- you have procedures to include diarising key dates, e.g. tax election dates;
- you keep up to date with changes, especially in those areas subject to frequent change e.g. taxation legislation.

However, even in the best regulated of practices clients may complain. When this occurs the following general and specific guidance may prove to be useful.

When a complaint comes in

13 The guidance which follows applies to all principals and not just the firm's nominated investigating principal.

Complaints are often construed – and sometimes presented – as personal criticism. Try not to assume an adversarial stance in dealing with a complaint because if this occurs then objectivity, and often reasoned argument, disappear.

However emotionally a complaint is presented, at the outset there is usually still a reservoir of goodwill held by clients for their accountants. Often a genuine apology or offer to make amends, without admitting liability, at this stage will resolve the matter to everybody's satisfaction.

When dealing with a complaint, recognise that it is a sad fact of life that whilst clients who have the highest regard for their accountant will only recommend the practice to one or two close acquaintances, those who have a grievance which they feel is not being sufficiently addressed will spread the news to anyone willing to listen. The effect of this adverse publicity on a practice can be totally out of proportion to the matter at issue.

Try to see the matter from the client's viewpoint. Remember how you felt when you last had a problem with one of your suppliers or your local garage.

Try to resolve the matter speedily. Unresolved grievances can take up a disproportionate amount of your (otherwise chargeable) time.

Wherever possible, meet the client. Letters can appear impersonal and even telephone conversations can be misleading as to what is truly being expressed. A meeting can do a lot to resolve matters speedily to everyone's satisfaction. However, in certain cases you must be prepared for the meeting to open stormily as the client vents their anger. If this happens, let the client have their say and do not be drawn on individual issues. If asked to comment, state that

you will respond once you have heard all that your client has to say. Once the client has vented their anger, provided that you have maintained an attitude of reasoned concern over what they have had to say, you will usually find that the subsequent discussion is more reasonable and productive.

You should always consider whether any complaint should be notified to your PII insurers. (See 31, below.)

Fee Disputes

14 Your client is entitled, on request and without further charge, to a detailed breakdown of the bill in dispute. The *minimum* information which you should give is the number of hours involved, the chargeable rate per hour, and a description as to what the work related to. Show any discounts/writes-offs that you have already applied in arriving at the fees invoiced. A leaflet is available at www.icaew.co.uk or by telephoning the Helpline 01908 546235.

The right of lien is far from straightforward. Before exercising *any* lien over a client's property in your possession, check that it is in accordance with the guidance set out in the Members' Handbook Section 9.4 – 'Documents and records: ownership, lien and rights of access'. If in doubt consult your solicitors.

Remember that the purpose of a lien is to persuade an otherwise reluctant client to pay the amount properly due by him and not to exact payment from a client who has genuine reservations over the bill. Where a client has indicated that the bill is in dispute and especially where the dispute is to be resolved by formal means (e.g. arbitration or litigation) the continued exercise of a lien may be inappropriate and may well be construed by the client as mere vindictiveness.

Your particular attention is drawn to Section 240 of the Code of Ethics – Fees and Other Types of Remuneration, particularly paragraph 240.4F (see the Members' Handbook Section 3.2) which requires that a member exercising a lien should take reasonable and prompt steps to resolve any dispute relating to the amount of the fee so that the exercise of the lien becomes unnecessary.

The Institute has, for many years, operated its own Fee Arbitration Scheme – (see section **D** below).

Delay

15 Explain to the client the reason for the delay. Agree (and confirm in writing) a time-scale for the work to be completed *and then adhere to it*.

Where you accept that you are responsible for the delay and there is any possibility of a claim for damages, you should consult with your PII insurers. In other cases, make your apologies to the client and consider making an ex gratia monetary offer, if appropriate.

Where the delay has been caused by outside third parties let the client know this and the efforts you have been making to progress matters.

Where the delay has been caused because you have been waiting for information from the client, check that they know this – did they actually receive your letter?

Failure to respond to correspondence

16 Find out the reason for the failure – did you receive the letter in the first place?

Explain to the sender the reason for the delay. Agree a timetable for reply *and then adhere to it*.

Use the phone/fax/e-mail to transmit information required and then confirm later by way of letter.

Failure to carry out duties

17 Examine the complaint impartially. Was it clearly agreed that you would do this work? If so explain to the client the reasons why it was not done and, without admitting liability, make a suitable apology or offer of amends.

If it was not clearly agreed that you would do the work then was it reasonable for the client to assume that you would be doing it? If there is any possibility of a claim for damages, consult with your PII insurers. Otherwise, explain to the client the reason for the misapprehension and, if appropriate, make a suitable apology or offer of amends.

If it was not reasonable for your client to assume that you would be doing the work then explain the point at issue and why you require specific instructions to do the task. If they still wish you to act then get those specific instructions and find out if there are any other similar areas where the client has mistakenly assumed that you will be acting.

Poor work/poor advice

18 This is the most emotive of all of the areas of complaint as there is often actual or implied personal criticism. Try to react impartially and to divorce the problem (which is both yours and your client's) from the person involved (you).

Define the precise area of dissatisfaction and the reasons why your client is dissatisfied. By concentrating on and dealing with these you will stop the matter developing into a wide-ranging and unfocused complaint about the overall standard of work which nobody can defuse because it is too generalised.

Where on consideration you feel that the client has not received the standard of service which they could reasonably expect, and there is any possibility of a claim for damages, consult with your PII insurers. In other cases be frank and open about it, and make a suitable apology or offer of amends.

On the other hand, where you find no grounds for the complaint do not dismiss it out of hand. Go through it with your client again, explaining why what happened did happen. Make sure your client understands what you are saying and try not to introduce too many technical terms into your explanation if this is likely to cause confusion.

Where there is a mixture of both a 'good' and a 'bad' level of service provided, talk it through with your client. Explain where and why you do not agree with him, state where you are in agreement, and come up with positive proposals as to how to right the matter.

Above all, try to see matters from your client's viewpoint. Put yourself in their shoes and think how *you* would feel were the positions reversed.

19 Remember, all complainants start with a problem that has given them a sense of grievance. To defuse a complaint you must remove either the problem (which can include explaining why there is no problem) or the sense of grievance. Such removal is far more easily done in co-operation with your client than by attempting to dictate terms.

In other words agree a solution – don't try to impose one.

C Referral of a Complaint to the Institute Where the Client Remains Dissatisfied

20 If a mutually acceptable resolution to the problem cannot be reached between you and your client you should remind them of their right to refer the matter to the Institute.

21 Any fears which you may have about the repercussions of this will probably be misplaced, and may well be based upon the fact that your only contact with the Professional Conduct Directorate of your Institute has been through a reading of the reports of the Professional Conduct Committees published in *Accountancy* each month. Such reports, however, represent a very small proportion of the total workload handled by that Department.

22 The first reaction by the Institute upon receipt of a letter from your client will usually be to see whether a mutually acceptable resolution to the problem can be found by the impartial intervention of a member of staff acting as a conciliator. In fact, about 80 per cent of all complaints received by the Institute are resolved at staff level and never go to a Professional Conduct Committee.

23 This conciliation process is intended to be a user-friendly service. It is not legalistic in nature, nor is it adversarial, but concentrates upon the problem and the sense of grievance generated therefrom and, by setting these in the context of the Institute's Bye-laws, Guidance and Regulations, tries to remove

one or the other. Where a matter is resolved by this process it is most unlikely that disciplinary proceedings will ensue.

24 It is only if the conciliation process fails that the matter may be transferred to a case manager for investigation. This is a process of an entirely different nature. The aim is to gather and impartially consider the evidence available to ascertain whether it justifies formal disciplinary proceedings. It is necessarily a more rigorous approach and may foster a more adversarial attitude between the parties concerned.

25 For further information ask for the leaflet, *What Happens if a Complaint is Made Against You*.

D Fee Arbitration Service

26 Fee disputes are one of the commonest causes of complaint against Chartered Accountants, but the Institute will not in general adjudicate upon them because they are essentially questions for resolution in a court of law. (Fees for Investment Business conducted between October 1988 and November 2001 are an exception: Institute regulations explicitly require those not to be 'unfair' or 'unreasonable' and a complaint of unfairness or unreasonableness will be examined by the Institute.)

27 As a service to members and their clients the Institute offers a fixed cost Fee Arbitration Scheme. Arbitration is a consensual process and thus the Scheme requires the agreement of both parties.

28 The cost of the Institute's Fee Arbitration Scheme is fixed in proportion to the fee in dispute. That cost is allocated between the parties in accordance with the following formula: where the arbitrator's award makes no change to the fee charged or is within 5 per cent of that figure the client will be liable to pay the award and arbitration cost. If the award is between 5 and 15 per cent below the amount in dispute the client will pay the award and share the arbitration cost equally with the member. If the award is 15 per cent or more below the amount in dispute the member will bear all the arbitration cost.

29 Both parties are required to put the arbitration cost 'into the pot' at the outset, and the 'winner' under the formula above is refunded. The Institute makes a (non-returnable) administrative charge to both parties.

30 An explanatory leaflet and full information about fee arbitration are available at www.icaew.co.uk or by telephoning 01908 546299.

E Professional Indemnity Insurance

31 A complaint may be a prelude to a claim which will need to be referred to Professional Indemnity Insurers. It is essential that an assessment is made of

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all complaints when they are lodged. In the event that a complaint is considered to have the potential for a claim insurers/brokers should be notified at once.

Where a complaint has to be referred to insurers it will be essential if cover is not to be affected to act in accordance with advice proffered by the insurers.

Where complaints which have not been assessed as potential insurance claims are concerned any concession that is made should be accompanied by a phrase such as 'As a gesture of goodwill and without admission of liability we are prepared to . . . '.

(Amended 26 August 2004; further amended 31 August 2006 – Professional Standards Board)