



# *The duty on firms to investigate complaints - guidance*

EFFECTIVE FROM 31 AUGUST 2006

# **GUIDANCE FOR FIRMS ON AVOIDING AND DEALING WITH COMPLAINTS FROM CLIENTS.**

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## **DUTY ON FIRMS TO INVESTIGATE COMPLAINTS - GUIDANCE ON HOW TO HANDLE OR AVOID THEM.**

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# 1. THE DUTY

## 1.1 Institute bye-laws

- 1.1.1 The bye-laws place a duty on firms to investigate complaints. The duty includes the requirement that:
- 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;
  - 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; and
  - 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.

## 1.2 Informing the client

- 1.2.1 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 contacting [insert name and telephone number 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.'

- 1.2.2 General advice on engagement letters is given in a helpsheet, Engagement Letters, produced by Advisory Services and available at [www.icaew.com/helpsheets](http://www.icaew.com/helpsheets) or by phoning + 44 (0)1908 248 250.

## 1.3 Internal complaints procedures

- 1.3.1 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:
- review by a principal other than the principal responsible for the client's affairs;
  - reference to the client where the facts are not clearly established;
  - prompt rectification of the error, with apology and offer of waiver or reduction of fee where appropriate - see section 2.6 below;

- 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);
- if complainant remains unsatisfied, notifying them of their right to make a complaint to the Institute;
- drawing serious complaints to the attention of the senior principal.

- 1.3.2 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:
- the steps in the complaints procedure are set out in writing in a policy document; and
  - the observance of the procedure is documented in the case of every complaint received.

## **1.4 The investigating principal**

- 1.4.1 Personal responsibility lies with the investigating principal, once they have received the complaint, to ensure that:
- the steps in any formal complaints procedure (see above) are complied with;
  - they deal personally with the complaint, thoroughly, expeditiously and with courtesy;
  - the senior principal (or their nominee) is informed of the progress of the investigation;
  - if the investigation does not resolve the complaint, in the case of a client remaining dissatisfied, the procedure set out in section 3 below is properly concluded.
- 1.4.2 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.

## **1.5 Sole practitioners**

- 1.5.1 The formal procedure indicated in section 1.3 (above) will be impracticable for sole practitioners, 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.
- 1.5.2 Section 1.4 (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.

## 2. PRACTICAL WAYS TO AVOID OR DEFUSE COMPLAINTS

### 2.1 Types of complaint

- 2.1.1 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 or poor advice.
- 2.1.2 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 disruption can be considerable. The following are a few practical suggestions to avoid the most obvious pitfalls which emerge from a consideration of complaints received.

### 2.2 Fees

- 2.2.1 Where an estimate or quotation is given, confirm it in writing and identify precisely the work which will be carried out.
- 2.2.2 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 of finishing the work, and get the client's agreement to continue. Confirm the new agreement in writing as soon as possible.
- 2.2.3 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 section 2.8, and on the fee arbitration service in section 4 below.)

### 2.3 Delay

- 2.3.1 Prioritise work. Find out when the client wants it completed by and work to that date or earlier if possible.
- 2.3.2 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.
- 2.3.3 Don't take on more work than your practice can handle. If you find that you have done so, you should consider using (reliable) sub-contractors or, if the increase in work looks permanent, engaging more staff.
- 2.3.4 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. Wherever possible, delegate the work to an appropriate level within your practice.

### 2.4 Failure to respond to correspondence

- 2.4.1 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 upon receipt even if only by way of card; and

- prioritise correspondence between urgent and non-urgent. Use phone, fax or e-mail to transmit urgent information, and confirm by way of letter.
- 2.4.2 If it is not convenient to deal with the correspondence now, and if it is not urgent, send a holding reply indicating when you are likely to be able to respond.
- 2.4.3 Make sure your office systems are such that correspondence does not get overlooked or mislaid.

## 2.5 Failure to carry out duties

- 2.5.1 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.
- 2.5.2 Make sure **you** understand what your client has instructed you to do.
- 2.5.3 Install review procedures to ensure that all work has been properly completed.

## 2.6 Poor work or poor advice

- 2.6.1 Implement a system of quality control within your practice.
- 2.6.2 Be careful not to take on more work than your practice can handle. If you find that you have done so, you should consider using another firm or reliable sub-contractors or, if the increase in work looks permanent engaging more staff.
- 2.6.3 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, eg, tax election dates;
  - you keep up to date with changes, especially in those areas subject to frequent change, eg, taxation legislation.

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

## 2.7 When a complaint comes in

When a complaint comes in the guidance which follows applies to all principals and not just the firm's nominated investigating principal.

- 2.7.1 Complaints are often construed (and sometimes presented) as personal criticism. Try not to be adversarial when you deal with a complaint because, if this occurs, objectivity and reasoned argument often disappear.
- 2.7.2 However emotionally a complaint is presented, at first clients usually still have a reservoir of goodwill for their accountants. At this stage, a genuine apology or an offer to make amends (without admitting liability), will often resolve the matter to everybody's satisfaction.
- 2.7.3 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 that 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.
- 2.7.4 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.

- 2.7.5 Try to resolve the matter speedily. Unresolved grievances can take up a disproportionate amount of your (otherwise chargeable) time.
- 2.7.6 Wherever possible, meet the client. Letters can appear impersonal and even telephone conversations do not always allow you to gain an accurate view of what is 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 and allow the client to vent 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 everything that your client has to say. Once the client has vented their anger, provided you have appeared to be concerned by what they have had to say, you will usually find that the subsequent discussion is more reasonable and productive. You should always consider notifying your PII insurer about a complaint. (See section 4 below.)

## 2.8 Fee disputes

- 2.8.1 Your client is entitled, on request and without further charge, to a detailed breakdown of the bill in dispute. The minimum information that you should give is the number of hours involved, the chargeable rate per hour, and a description of the work undertaken. Show any discounts or write-offs that you have already applied in arriving at the fees invoiced. A helpsheet, **Fee disputes**, is available from [www.icaew.com/complaints](http://www.icaew.com/complaints) or by phoning the helpline, +44 (0)1908 546 235.
- 2.8.2 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 **Documents and records: ownership, lien and rights of access**. If in doubt consult your solicitors.
- 2.8.3 Remember that the purpose of a lien is to persuade otherwise reluctant clients to pay the amount they properly owe and not to exact payment from a client who has genuine reservations over the bill. If a client has indicated that the bill is in dispute (and especially where the dispute is to be resolved by formal means, eg, arbitration or litigation) the continued exercise of a lien may be inappropriate and may well be construed by the client as mere vindictiveness.
- 2.8.4 Your particular attention is drawn to the Code of Ethics - Fees and Other Types of Remuneration, particularly paragraph 240.4F which requires a member exercising a lien to 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.
- 2.8.5 The Institute has, for many years, operated its own fee arbitration scheme (see section 4 below).

## 2.9 Delay

- 2.9.1 Explain to the client the reason for the delay. You should agree (and confirm in writing) a timetable for the work to be completed and then adhere to it.
- 2.9.2 If you accept that you are responsible for the delay and there is a possibility of a claim for damages, you should consult with your PII insurer. In other cases, apologise to the client and consider making an ex gratia monetary offer, if appropriate.
- 2.9.3 If the delay has been caused by outside third parties, tell the client and explain what you have been doing to progress matters.

- 2.9.4 If the delay has been caused because you have been waiting for information from the client, check that they realise this. Are you sure they received your letter?

## **2.10 Failure to respond to correspondence**

- 2.10.1 Find out why your firm has not responded. Did your firm receive the letter in the first place?
- 2.10.2 Explain the reason for the delay to the person who sent the letter. Agree a timetable for reply and adhere to it.
- 2.10.3 Use phone, fax or e-mail to transmit information required and then confirm later by letter.

## **2.11 Failure to carry out duties**

- 2.11.1 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, apologise or offer to make amends.
- 2.11.2 If it was not clearly agreed that you would do the work, ask yourself whether it was reasonable for the client to assume that you would be doing it. If there is any possibility of a claim for damages, consult your PII insurer. Otherwise, explain to the client the reason for the misunderstanding and, if appropriate, apologise or offer to make amends.
- 2.11.3 If it was not reasonable for your client to assume that you would be doing the work, explain the point at issue and why you require specific instructions to do the task. If they still wish you to act, 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.

## **2.12 Poor work or poor advice**

- 2.12.1 This is the most emotive area of complaint as there is often actual or implicit personal criticism. Try to remain impartial and focus on the problem (which is both yours and your client's) rather than the person involved (you).
- 2.12.2 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 will be able to defuse because it is too generalised.
- 2.12.3 If, on consideration, you feel the client has not received the standard of service that they should reasonably expect, and there is any possibility of a claim for damages, consult your PII insurer. In other cases, be frank and open, and apologise or offer to make amends.
- 2.12.4 If, however, 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 use too many technical terms if this is likely to cause confusion.
- 2.12.5 If the level of service provided is both good and bad, talk it through with your client. Explain where and why you do not agree with them, state where you are in agreement, and come up with positive proposals to resolve the matter.
- 2.12.6 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.



## 2.13 Conclusion

- 2.13.1 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. You can do this far more easily in cooperation with your client than by attempting to dictate terms.
- 2.13.2 In other words, agree a solution; don't try to impose one.

## 3. REFERRAL OF A COMPLAINT TO THE INSTITUTE BECAUSE THE CLIENT REMAINS DISSATISFIED

- 3.1.1 If you and your client cannot reach a mutually acceptable solution to the problem, you should remind them of their right to refer the matter to the Institute. If they are complaining about you as an insolvency practitioner in the UK they will need to send their complaint to the [Insolvency Service](#).
- 3.1.2 Don't worry about the possible repercussions. Your fears will probably be misplaced and may well be based on the monthly reports of the professional conduct committees published in 'economica'. Such reports represent a very small proportion of the total workload handled by the Professional Conduct Department.
- 3.1.3 When the Institute receives a letter from your client, our first reaction will usually be to see whether an impartial member of staff acting as a conciliator can intervene to help find a mutually acceptable resolution to the problem. In fact, about 80% of all complaints received by the Institute are resolved at staff level and never go to a professional conduct committee.
- 3.1.4 The conciliation process is a user-friendly service. It is not legalistic in nature, nor is it adversarial. It concentrates on both the problem and the sense of grievance and, by setting these in the context of the Institute's bye-laws, guidance and regulations, tries to remove one or the other. If a matter is resolved by conciliation, it is most unlikely that disciplinary proceedings will follow.
- 3.1.5 It is only if the conciliation process fails that the matter may be transferred to a case manager for investigation. This is an entirely different process. The aim is to gather and impartially consider the evidence available to determine whether the matter justifies formal disciplinary proceedings. The approach is necessarily more rigorous and may foster a more adversarial attitude between the parties.
- 3.1.6 For further information, ask for our booklet, [How we investigate complaints](#).

## 4. PROFESSIONAL INDEMNITY INSURANCE

- 4.1.1 A complaint may be the first step along the road to making a claim that you will need to refer to your professional indemnity insurer. You must assess all complaints when they are lodged. If you consider that a complaint has the potential for a claim, you should notify your insurer or broker immediately.
- 4.1.2 If a complaint has to be referred to insurers, you must follow your insurer's advice so that your cover is not affected.
- 4.1.3 If you conclude that a complaint is not a potential insurance claim, any concession you make should be accompanied by a phrase such as, 'As a gesture of goodwill, and without admission of liability, we are prepared to . . .'