
Guidance Note

Complaints Procedures



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Costs Lawyer Standards Board

CLSB


In this guidance note

Introduction.....	3
The need for a complaints procedure.....	3
Why do I need to have a complaints procedure?.....	3
Do my practising arrangements affect the need to have a complaints procedure?	4
Getting started	4
What is a complaint?	4
What are the requirements for a complaints procedure?	5
Providing your complaints procedure.....	5
Should a complaints procedure be published?	5
When should I provide a client with my complaints procedure?	5
Handling complaints.....	6
What kind of approach should I take to complaint handling?	6
Who should investigate a complaint?	7
What if a client makes a verbal expression of dissatisfaction?	8
What action must I take on receiving a complaint?	8
What remedies should be considered?	9
Can I charge for complaint resolution?	9
Second-tier complaints.....	9
What is the role of the Legal Ombudsman?	9
What is the role of the CLSB?	10
When is the Legal Ombudsman or CLSB notified of a complaint?	10
What are the timescales for second-tier complaints?	10
Do I need to use an approved ADR body as well as the Legal Ombudsman?	11
Supervision by the CLSB	11
Do I need to lodge my complaints procedure with the CLSB?	11
How does the CLSB use data about complaints?	12
How can my complaint data assist me as a Costs Lawyer?	13

Introduction

1. Costs Lawyers who are regulated by the CLSB must have in place, individually or through their employer, an internal procedure for handling complaints from clients or members of the public.
2. Complaints that are made directly to a provider of legal services are often referred to as “first-tier complaints”, while complaints that are escalated to the CLSB or Legal Ombudsman are known as “second-tier complaints”.
3. This guidance note is intended to help Costs Lawyers produce an effective procedure for handling first-tier complaints. It also covers questions that the Legal Ombudsman or CLSB might ask about the adequacy of a first-tier complaints procedure.

The need for a complaints procedure

Why do I need to have a complaints procedure?

4. Pursuant to section 112 of the Legal Services Act 2007, it is a requirement that a Costs Lawyer has effective procedures in place for the resolution of service and conduct complaints. The CLSB seeks to ensure that consumers of Costs Lawyers’ services have confidence that any complaints will be handled appropriately, and that a Costs Lawyer’s complaints procedures are fair, transparent and provide effective safeguards.
5. The CLSB’s primary requirements in relation to first-tier complaints procedures and complaint handling are contained in the Costs Lawyer Code of Conduct under Principle 3 (Costs Lawyers must act in the best interests of their client). Pursuant to the Code of Conduct, Costs Lawyers must provide for an effective first-tier complaints procedure which is simple and transparent, ensures that a complaint can be made by any reasonable means, and takes into account the individual needs of clients (in particular the needs of vulnerable clients).

Do my practising arrangements affect the need to have a complaints procedure?

6. You are required to have a complaints procedure in place if you work:

For a firm of Costs Lawyers	Your employer should have a first-tier complaints procedure in place for your use
As a sole practitioner	You will need to produce your own first-tier complaints procedure
For a firm of solicitors	Your firm should have a first-tier complaints procedure in place that complies with the requirements of the Solicitors Regulation Authority, which the CLSB will accept as being adequate so long as it is provided to your clients in all cases
In-house	But only insofar as you provide costs law services externally to clients other than your employer

Getting started

What is a complaint?

7. A complaint means an oral or written expression of dissatisfaction, whereby the complainant communicates a belief that something should have been done differently.
8. A complaint might involve an allegation that the complainant has suffered (or could suffer) financial loss, distress, inconvenience or other detriment. A complaint might also include a request for the situation to be remedied, but this will not always be the case.

What are the requirements for a complaints procedure?

9. Your complaints procedure should:

- Be in writing.
- State the date it became effective or was last updated.
- Be clear and simple with as few steps as possible.
- Identify the person to whom the complaint should be made.
- Be reasonable, fair, proportionate and responsive.
- State clearly the timeframe for a complaint to be raised – this should be within one year of the complaint arising (i.e. when the issue first occurred or when the complainant should reasonably have become aware of the issue).
- State clearly the timeframe for a complaint to be resolved – this should be within eight weeks of receipt of the complaint.
- Advise that if the complainant is not satisfied with the outcome of the complaint under the complaints procedure, or the complaint has not been resolved within eight weeks, then the complainant has the right to refer a service complaint to the Legal Ombudsman, or refer a conduct complaint to the CLSB, and provide the timeframes for referral.
- Provide contact details for the Legal Ombudsman and CLSB.
- Advise the complainant of an approved alternative dispute resolution (ADR) body and state whether you agree to use that body's services.

Providing your complaints procedure

Should a complaints procedure be published?

10. Under its 2016 legal services market study, the Competition and Markets Authority recommended that all providers of legal services publish their complaints procedure on their website, where they have one.

When should I provide a client with my complaints procedure?

11. Research conducted by YouGov and the Legal Ombudsman suggests that many clients do not recall being provided with details of the complaints procedure in the

relevant client care letter. It is therefore important to ensure that your client care letter is easy to understand and not overly long, and that the complaints procedure is clearly identifiable. It is also important to remind the client of your complaints procedure as their matter progresses.

12. In particular, your complaints procedure should be provided to your client on each of the following occasions:
- when the client first contracts with you;
 - if an existing client, upon a new instruction at the first appropriate opportunity;
 - in the event of a change of contractual terms;
 - in the event of a change to your complaints procedure;
 - once a complaint has been made;
 - at the conclusion of a complaint;
 - when asked for, at any time.

Handling complaints

What kind of approach should I take to complaint handling?

13. Research highlights how the type of language used in the complaints process can affect clients' decisions, particularly whether to escalate a complaint. In 2017, the Legal Ombudsman suggested the following tips for handling complaints:
- a) **Keep it simple** - Avoid jargon, pretentious language and using legal or technical terms. They may seem commonplace to you but they can be confusing and intimidating to the client. If you need to use legal or technical terms, you need to explain what they are.
 - b) **Take it seriously** - Ensure that it is clear that you are taking the complaint seriously. Overly informal language or poor grammar / processes can suggest that no formal investigation is underway; avoid phrases such as "I've had a word with (X)".

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- c) **Acknowledge stress or inconvenience caused** - For many, the decision to make a complaint is not taken lightly. Complaining is seen as negative activity, the client may lack confidence in the process and fear jeopardising their relationship with you. It is therefore important to empathise with the situation they are in and reassure them that you understand their position.
 - d) **Don't be afraid to apologise** - Start with a proper apology and avoid burying it at the end of lengthy letters. If you've made a mistake say 'sorry' without caveats and conditions. Justifying what has happened can play to client fears that the complaint handling stage will be subject to the same negativity as the original transaction. Avoid subjective sentences such as "I'm sorry you feel this way" or "I'm sorry you have felt the need to complain".
 - e) **Appreciate feedback** - Demonstrate to the client that you appreciate their feedback and the opportunity to improve your service. There can be positive aspects of complaining, this can also reassure the client that their complaint is being taken seriously. For example, "We assure you that client satisfaction is a key priority for us and we want the service you receive to reflect that principle".
 - f) **Be clear** - When responding, detail the client's concerns one by one. Use bold headings to structure the response around the details of the complaint. It is also important to give an explanation of what evidence you have looked at and what your conclusions are. Ensure that, when you signpost a client to the CLSB (conduct complaints) or Legal Ombudsman (service complaints), the information is clear and easy to find. This will reassure complainants and give them a sense of security that there are other avenues.

Who should investigate a complaint?

14. YouGov and Legal Ombudsman research has shown that clients would like someone independent to look into their complaint. Where reasonably possible, the complaint investigator should be someone:
- not involved in the matter leading to the complaint;
 - with the appropriate seniority, training and understanding to provide a good complaint handling process.

15. If you are a sole practitioner, you may have to deal with a complaint yourself.

What if a client makes a verbal expression of dissatisfaction?

16. YouGov and Legal Ombudsman research has shown that many verbal complaints go unrecorded. However, 83% of those surveyed expected their legal adviser to act on their expression of dissatisfaction. In fact, it was found that clients who complain verbally (only) are more likely to want a simple explanation or apology rather than to invoke a formal complaints procedure.
17. You should therefore respond to a verbal expression of dissatisfaction by acknowledging the issue and asking the complainant what they are looking for to resolve their concerns. It will usually be appropriate to respond in writing and include an explanation and apology. You should also remind the complainant of your formal complaints procedure, should they wish to take the matter further.

What action must I take on receiving a complaint?

18. The investigator of a complaint should:
- acknowledge receipt of the complaint in writing;
 - investigate thoroughly and promptly;
 - record their management of the complaint and their findings;
 - keep their investigation file separate from the main client file;
 - advise the Costs Lawyer of the outcome of the investigation;
 - ensure the complainant is advised in writing of the outcome of the investigation within eight weeks of receipt of the complaint;
 - ensure any remedial action is followed through.
19. Any decision made in the context of investigating a complaint should be impartial and based on the evidence, without bias or prejudice.
20. Complainants should always be informed in writing once you feel your first-tier complaints procedure has been exhausted.

What remedies should be considered?

21. If appropriate following an investigation, one or more remedies should be offered to the complainant. There are numerous remedies that could be considered, including an apology, an explanation of what went wrong, financial compensation, repeat provision of the relevant service, and remedial steps to reduce the impact on the complainant. The investigator should consider all appropriate remedies, even if they were not expressly sought by the complainant.
22. An investigation may also identify areas in which service could be improved. If so, ways of working should be revised to avoid further poor outcomes in the future.

Can I charge for complaint resolution?

23. The Legal Services Board has issued guidance on section 112 of the Legal Services Act 2007 stating that complaint resolution should be free of charge. The CLSB would not expect a Costs Lawyer to charge for complaint resolution in relation to the Costs Lawyer's own service provision.

Second-tier complaints

What is the role of the Legal Ombudsman?

24. The Legal Ombudsman deals with service complaints about Costs Lawyers in an independent and objective way. The Legal Ombudsman can award a variety of remedies, including financial compensation. A complainant can accept the Legal Ombudsman's determination, in which case it is binding on the Costs Lawyer. However, the complainant does not have to accept the determination and can pursue redress via other means (including the courts).
25. Before the Legal Ombudsman will consider a service complaint, the Costs Lawyer must first have tried to resolve the complaint themselves under their first-tier complaints procedure. Should a service complaint be referred to the Legal

Ombudsman, they will look not only at the substance of the complaint but also the way in which the complaint was initially dealt with by the Costs Lawyer.

What is the role of the CLSB?

26. The CLSB deals with conduct complaints about Costs Lawyers in accordance with its prevailing Disciplinary Rules and Procedures. The Costs Lawyer should first try to resolve the complaint themselves under their first-tier complaints procedure.
27. If a Costs Lawyer does not have a complaints procedure, does not follow their complaints procedure, or otherwise deals poorly with a complaint, this may give rise to a conduct issue in itself regardless of the nature of the underlying complaint.

When is the Legal Ombudsman or CLSB notified of a complaint?

28. There is no requirement for you to notify the Legal Ombudsman or CLSB upon initially receiving a complaint under your complaints procedure. It is anticipated that complaints will be satisfactorily resolved at that level. It is for the complainant to refer the matter to either the Legal Ombudsman or CLSB in the event they are not happy with the outcome or the matter has not been resolved within eight weeks. The CLSB will, however, ask Costs Lawyers to report data about first-tier complaints annually for supervision purposes.
29. Where a complaint is not resolved by the Costs Lawyer, it is for the complainant to identify whether they have a service complaint (for the Legal Ombudsman) or a conduct complaint (for the CLSB). However, should the CLSB receive a complaint that is not in its jurisdiction it may refer the matter to the Legal Ombudsman, and vice versa. If a complaint involves a mix of service and conduct issues, the Legal Ombudsman will usually consider the complaint in the first instance.

What are the timescales for second-tier complaints?

30. First-tier complaints to Costs Lawyers should be made within one year of the complaint arising (i.e. when the issue first occurred or when the complainant should reasonably have become aware of the issue).

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31. Second-tier service complaints to the Legal Ombudsman must ordinarily be made within six months of the Costs Lawyer providing a final response to the complaint at first-tier, and no more than six years from the date of the matter giving rise to the complaint, or no more than three years from when the complainant should reasonably have known there was cause for complaint.
 32. Second-tier conduct complaints to the CLSB must ordinarily be made within 12 months of the date on which the matters giving rise to the complaint occurred or the date on which the complainant first became aware that they had grounds for the complaint. This period can be extended in exceptional circumstances.

Do I need to use an approved ADR body as well as the Legal Ombudsman?

33. Under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, you should inform consumers about their ability to escalate their complaint to an approved alternative dispute resolution (ADR) body upon exhaustion of your first-tier complaints process. The Legal Ombudsman is not currently an approved ADR body for these purposes. A list of approved ADR bodies can be found on the Trading Standards website.
34. Despite the requirement to provide this information, you do not have to agree to engage with the ADR processes of an approved ADR body. You should therefore inform consumers of the name and website address of an approved ADR body that would be competent to deal with the complaint and state whether you agree to use the ADR scheme operated by that body.

Supervision by the CLSB

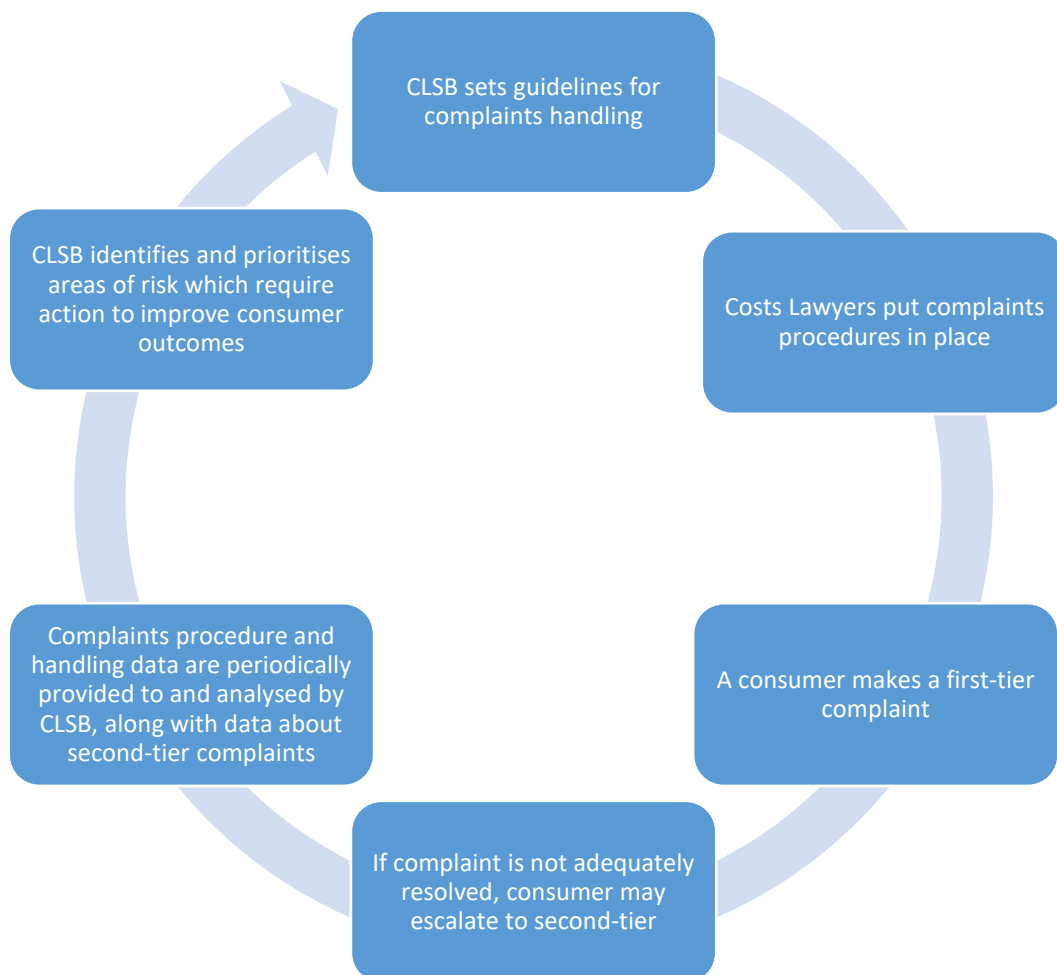
Do I need to lodge my complaints procedure with the CLSB?

35. Yes. Since 2012, all Costs Lawyers have been required to file their complaints procedure with their annual application for a practising certificate. This allows the

CLSB to supervise compliance with the obligation to maintain an appropriate complaints procedure.

How does the CLSB use data about complaints?

36. The CLSB collates information about the volume and type of complaints dealt with by individual Costs Lawyers, along with Costs Lawyers' complaints procedures, data sourced from the Legal Ombudsman and data about complaints to the CLSB. The complaints data loop below shows how this information informs the risk assessment process, enabling the CLSB to target its regulatory interventions in areas where consumer outcomes can most effectively be improved.



How can my complaint data assist me as a Costs Lawyer?

37. Analysis of the number of complaints, the nature of complaints and their outcomes will assist you in improving the effectiveness of the service you offer to your clients. Consider taking further steps to better understand your clients' expectations, such as collecting feedback throughout a matter and at its conclusion.

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