

## **GUIDANCE NOTES: COMPLAINTS PROCEDURE**

### **Costs Lawyer Standards Board**

**Effective date: 24 October 2018**

The Costs Lawyer Standards Board (“CLSB”) authorises and regulates individual Costs Lawyers through an annual practising certificate (“Costs Lawyers”). This guidance note seeks to assist Costs Lawyers in complying with the requirement that they have in place, individually or through their employer, an internal complaints procedure. Such a complaints procedure is also known as a first-tier complaints procedure.

The guidance herein covers questions the Legal Ombudsman and CLSB may ask a Costs Lawyer if a complaint is subsequently referred to them (second-tier complaint).

#### **Why do I have to have a complaints procedure?**

Pursuant to Section 112(1) 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. As an approved regulator, the CLSB seeks to ensure that consumers have confidence that complaints handling procedures are in place, and that they are fair, transparent and provide effective safeguards.

#### **What is deemed a complaint?**

A complaint means an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment.

#### **Is there a timescale for a complaint being raised with a Costs Lawyer?**

Yes, a complaint must be raised under a Costs Lawyers complaints procedure within one year of the complaint arising (i.e. when the problem first occurred or when the complainant should reasonably have become aware of the problem) and this must be clearly stated in the complaints procedure so the client is aware of this.

#### **What are the requirements for my complaints procedure?**

When establishing and revising your complaints procedure it must:

- Be in writing.
- State the effective date.
- 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 timescale for a complaint being raised (one year from the complaint arising i.e. when the problem first occurred or when the complainant should reasonably have become aware of the problem).
- State clearly the timescale for a complaint being resolved (within 8 weeks from receipt of the complaint).
- Advise that in the event the complainant is not satisfied with the outcome of the complaint under your complaints procedure or the complaint has not been resolved within the designated 8 week period, then the complainant has the right to refer a service complaint to the Legal Ombudsman or conduct complaint to the CLSB within 6 months of the last response on the complaint.
- Provide contact details for the Legal Ombudsman.
- Provide contact details for the CLSB.
- Advise that the complainant can refer a complaint to the CLSB: within 12 months from the date on which the matters giving rise to the complaint occurred; or within 12 months from the date on which the complainant first became aware that they had grounds for the complaint.
- Advise the complainant of alternative dispute resolution (ADR) services, although you are not obliged to use them.

### **The Importance of the language used in communicating with a client where a complaint is raised**

Research highlights how the type of language used in the complaints process can affect client decisions, particularly whether to escalate a complaint. In November 2017, the Legal Ombudsman suggested the following tips when handling a complaint:

1. Keep it simple - Avoid jargon, pretentious language and using legal / technical terms. They may seem common place to you but they can be confusing and intimidating to the client. If you need to use legal / technical terms, you need to explain what they are.
2. 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)'*.
3. 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.
4. 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'*.

5. 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'*.
6. Be clear - When responding, detail the clients 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.

### **Should a complaints procedure be published?**

Under a report by the CMA dated 15 December 2016, it was recommended that a complaint procedure be published on any website of the Costs Lawyer or their employer.

### **When should I provide a client with my complaint procedure?**

Research conducted by YouGov and the Legal Ombudsman suggests that many clients do not recall being provided with details of the complaint procedure in the client care letter. It is therefore important to ensure that your client care letter is easy to understand and not overly long. It is also important to remind the client of the complaint procedure as their instruction progresses.

Your complaint procedure should be provided to your client on each of the following occasions:

- (i) When the client first contracts with you.
- (ii) If an existing client, at the next appropriate opportunity.
- (iii) In the event of a contractual change of terms.
- (iv) In the event of any change to your First-Tier Complaints Procedure (as previously provided to the client).
- (v) Once a complaint has been made.
- (vi) At the conclusion of a complaint.
- (vii) When asked for, at any time.

### **I work for a firm of Costs Lawyers, am I required to have a complaints procedure in place?**

Yes, your employer should have this in place for your use.

### **I am a sole practitioner, am I required to have a complaints procedure in place?**

Yes.

**I work in-house, am I required to have a complaints procedure in place?**

If you contract to provide costs law services outside of your employer, then yes.

**I work for a firm of Solicitors, would their complaints procedure be acceptable to the CLSB as my complaints procedure?**

Yes, CLSB will accept this as an adequate level of cover as long as it is provided to the client by way of letter of engagement.

**Who should investigate a complaint?**

YouGov and Legal Ombudsman research evidenced 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.
- Having the appropriate seniority, training and understanding to provide a good complaints handling process.

If you are a sole practitioner, then clearly you will have to deal with the complaint yourself.

**What if the consumer makes a verbal expression of dissatisfaction; should I treat this as a formal complaint?**

YouGov and Legal Ombudsman research evidenced that many verbal complaints go unrecorded. However, 83% of those surveyed expected their legal advisor to act on their expression of dissatisfaction. In fact, clients who complain verbally only are more likely to want a simple explanation or apology rather than to invoke a complaint procedure.

You should therefore respond to a verbal expression of dissatisfaction by responding in writing, acknowledging the issue; ask the complainant what they are looking for to resolve their expression of dissatisfaction. If appropriate, your letter should provide an explanation/apology. The letter should also remind the complainant of your formal complaint procedure, should they wish to take the matter further.

**What action must I take on receiving a complaint?**

The investigator should:

- Immediately acknowledge safe receipt of the complaint in writing.
- Investigate thoroughly and promptly within 8 weeks of receipt.
- Record their management of the complaint and their findings.
- Keep their investigation file separate from the main client file.
- Advise the complainant in writing of the outcome of their investigation within 8 weeks of receipt.
- Advise the Costs Lawyer of the outcome of their investigation.
- Ensure any remedial action is followed through.

**When investigating a complaint, on what basis should a decision be made?**

A decision should be impartial and based on the evidence without any discrimination or prejudice.

**What remedies should be considered?**

If appropriate following investigation, a full letter of apology offering an explanation as to what went wrong and/or an offer of proportionate redress. The investigation may also have identified ways to improve service, if so, ensure ways of working are revised to avoid any repeat of the complaint.

**What is the role of the Legal Ombudsman and how do I advise clients of their role?**

The Legal Ombudsman has formal powers to deal with service complaints against Costs Lawyers and undertakes to deal with those complaints in a fair and independent way. Before they will consider a service complaint however, 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 them they will look not just at the nature 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 and how do I advise clients of their role?**

The CLSB is the regulator of Costs Lawyers under delegated authority of the Association of Costs Lawyers. The CLSB has formal powers to deal with conduct complaints against Costs Lawyers and undertakes to deal with those complaints in accordance with its prevailing Disciplinary Rules & Procedures. Before they will consider a conduct complaint however, the Costs Lawyer must first have tried to resolve the complaint themselves under their First Tier Complaints Procedure. Should a conduct complaint be referred to them they will look not just at the nature of the complaint, but also the way in which the complaint was initially dealt with by the Costs Lawyer.

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

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 complaints will be satisfactorily resolved at that level. If not, 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 the defined 8 week period.

It is for the complainant to identify whether they have a service complaint (Legal Ombudsman) or conduct complaint (CLSB). That said, should the CLSB receive a complaint that is not in its jurisdiction it will refer the matter to the Legal Ombudsman on behalf of the complainant, and vice versa. There may well be circumstances where the complaint is deemed a "hybrid complaint" where it raises both service and conduct issues. In such circumstances, it has been agreed with the Legal Ombudsman that they will first deal with the service element of the complaint before the conduct element is considered by the CLSB, unless the conduct element is the more serious in nature.

### Can you just confirm timescales for me?

Complaint to Costs Lawyer: Within one year of the complaint arising (i.e. when the problem first occurred or when the complainant should reasonably have become aware of the problem).

Service complaint to the Legal Ombudsman (second-tier): Within 6 months of the last response on the complaint.

Conduct complaint to the CLSB (second-tier): In accordance with CLSB Disciplinary Rules & Procedures, a complaint must be received by the CLSB:

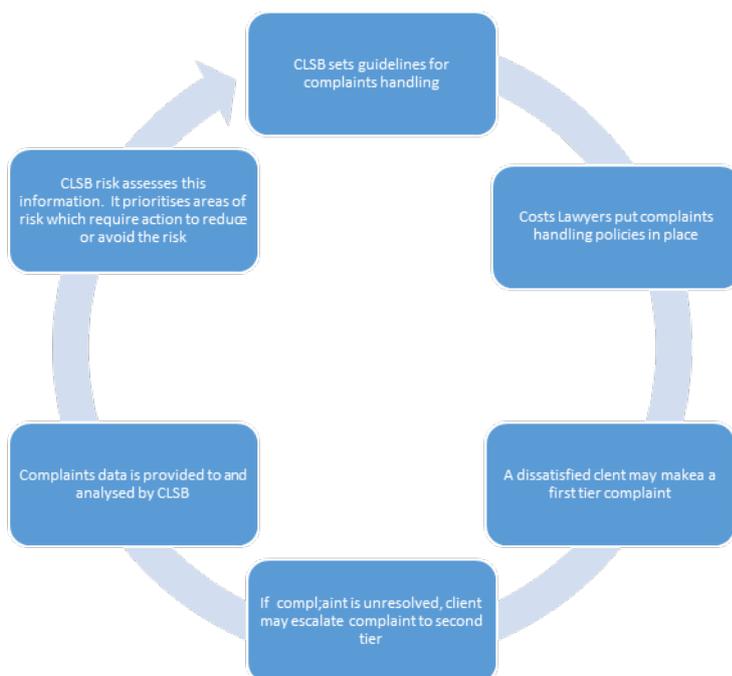
- (a) within 12 months from the date on which the matters giving rise to the complaint occurred; or
- (b) within 12 months from the date on which the complainant first became aware that they had grounds for the complaint.

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

Yes. Since practising year 2012 a Costs Lawyer has been required to file their complaints procedure with their annual application for a practising certificate. This ensures compliance by CLSB with section 112(1) of the Legal Services Act 2007.

### How do the CLSB use this information?

As an approved regulator, it is the role of the CLSB to improve complaint handling outcomes for consumers. To achieve this the CLSB operates a risk assessment process. A Costs Lawyers complaints procedure provides important information to the CLSB to enable it to develop improved practices to reduce risk to consumers. The complaints data loop below shows how this information informs this risk assessment process.



The CLSB will monitor and analyse a Costs Lawyers complaints data to monitor the effectiveness of that Costs Lawyers process. Similarly, the CLSB will monitor and analyse the complaint data at second-tier data level (CLSB and the Legal Ombudsman.)

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

Analysis of the number of complaints, the nature of complaints and their outcomes will assist you in improving the effectiveness and efficiency of the service you offer to your client. Consider taking further steps to better understand your client expectation, such as collecting feedback throughout the case and at its conclusion, using feedback forms.

**Can I charge for complaint resolution?**

The Legal Services Board has issued guidance on S.112 of the Legal Services Act 2007 which states complaint resolution should be free of charge and the CLSB would not expect a Costs Lawyer to charge for complaint resolution.

**END**