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# LEGAL OMBUDSMAN AND COMPLAINTS HANDLING UPDATE

The Law Society has published a revised Practice Note on complaints handling (13 August) which provides a useful refresher to those experienced in complaints handling and an essential guide to those new to the job. The revised note is shorter than the version it replaces and seems to concentrate more on the practicalities of complaints handling rather than the more general contents that were to be found in earlier versions.

Particularly worthy of mention is the SRA's list of the 15 categories of complaints that it recognises. The note suggests that it might be helpful to keep records of complaints using these categories in case they are required as part of the SRA's annual renewal process. It does warn, however, that the SRA categories may be subject to change.

Other changes to note are the suggestion that an initial response – even if simply an acknowledgement – should be made within two days rather than the three days suggested beforehand and the advice always to consider the complaint from the client's perspective. A research paper by Bristol University in the 1990s identified the tendency of too many firms to view complaints in a *'semi-judicial'* manner, whereby the complainant would be under a duty to establish the validity of their points with the firms resisting the complaint until sufficient evidence had been provided and comments in the Practice Note suggests that this may remain too much the case. Better by far, that research paper suggested, to adopt a *'consumerist'* approach to the issue and thus recognise that the client is unhappy – right or wrong – and simply seek to put the situation right.

By chance, the publication of the Practice Note coincides with another report of contempt proceedings taken against a solicitor who refused to co-operate with the Legal Ombudsman ("LeO"). In the most recent case, a solicitor failed to forward files to his client. It is reported that the delay caused the client's medical negligence claim to become time-barred. The solicitor was fined £5000 and ordered to pay costs. In the previous three contempt cases brought by the LeO, one

solicitor received a suspended sentence, another a fine and the third is awaiting sentencing.

As Principle 7 imposes a duty *"to deal with your regulators and ombudsmen in an open, timely and co-operative manner"*, one can imagine that the SRA may well be interested in all such actions for contempt.

Whilst contempt cases are a minority the damage to the reputation of the legal services market by such publicity is immense. The same might be said of the other recent announcement that too many elderly clients have undue pressure put upon them to accept the advice provided – a short step from suggesting that older clients receive poor service from the profession as a whole.

During 2012, the LeO started 213 formal enforcement cases and recovered a total of £97,000 through actual or threat of legal action on behalf of clients. The number of cases being accepted for investigation by the LeO is steady at about 8.400 per annum with formal decisions by the LeO at 2,900 in the year to 31 March 2013. 93% of complainants surveyed are said to speak highly of the LeO service as would one expect. Interestingly, 63% of lawyers would do the same.

We are also reminded in the Practice Note that as from 1 April 2013 all firms that the LeO investigates will incur a £400 case fee and that those declined a service can also now complain through the service. The discretionary waiver of the £400 fee will require the firm to have provided a suitable response to the complainant and to have handled the issue in an appropriate manner. For this reason it is important to adopt a suitable complaints handling procedure and then follow it to the letter, offering an apology and compensation where appropriate. The primary objective should always be a swift resolution, whether the complaint is seen as being justified or not. ■

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