Office of the NSW Legal Services Commissioner

olsc.nsw.gov.au

Fact Sheet 1 - What happens when you complain to the OLSC

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The Office of the NSW Legal Services Commissioner (OLSC) receives all complaints about solicitors and barristers licensed in NSW. We co-regulate the profession with the Council of Law Society of NSW ("Law Society Council") and the Council of NSW Bar Association ("Bar Council") with whom we share responsibility for dealing with complaints and providing education. Formal complaints to the OLSC must be made or recorded in writing. We receive 2,500 - 3,000 complaints each year.

The OLSC deals with complaints about lawyers pursuant to the Legal Profession Uniform Law ("LPUL") in the public interest. The OLSC does not act for complainants or lawyers. Pursuant to section 316 of the LPUL, the OLSC has a duty to act in a fair manner having regard not only to the interests of the complainant but also the lawyer and the public interest.

The OLSC cannot provide legal advice or representation. If you require legal advice you should contact a lawyer. The following points of contact may assist you in terms of getting legal advice: LawAccess NSW, telephone 1300 888 529 and Law Society of NSW Solicitor Referral Service (SRS), telephone 02 9926 0300.

What happens once I make my complaint?

A file is created and a reference number allocated when your correspondence is received at the OLSC. Your complaint is usually triaged within two days of being received by senior staff and they will determine how your complaint is to be handled.

If your complaint is retained by the OLSC your file is allocated to an officer and an acknowledgement letter is dispatched within two days. Generally, first steps will be taken in relation to your complaint within six to eight weeks.

Types of complaints

Complaints are treated as falling broadly into two categories:

- Consumer matters, including costs disputes, relating to the provision of legal services by a lawyer or law practice to a complainant.
- Disciplinary matters involving issues of professional misconduct or unsatisfactory professional conduct, and which may result in disciplinary action against a lawyer.

Who deals with my complaint?

We determine whether or not to deal with a complaint at the OLSC or refer it to the Law Society Council (for complaints about solicitors) or the Bar Council (for complaints about barristers).

Complaints regarding the conduct of solicitors, such as allegations of fraud or serious breaches of the trust account provisions, may be referred to the Law Society Council. The OLSC is more likely to deal with complaints that are in the public interest, arise out of referrals from courts or tribunals or involve a conflict of interest for the professional associations.

Consumer matters, including disputes about costs, non-communication, delay and failure to transfer documents, are usually handled at the OLSC where we try to resolve the complaint by informal means (usually telephone calls, and/or an exchange of letters).

Complaints can also be referred to the Law Society Council if they are outside the jurisdiction of the NSW Legal Services Commissioner. Such complaints include those about people holding themselves out as solicitors when they are not qualified or complaints about law clerks and paralegals.

How long does it take to deal with my complaint?

The OLSC aims to complete 55 per cent of complaints containing consumer matters/costs disputes within three months. Most consumer matters are finalised within 4 months and often sooner. Complaints containing disciplinary matters can take longer, particularly if they are complex or we have difficulty obtaining information from either party or from third parties. The majority of investigations by the Law Society Council or the Bar Council are finished within twelve months but can also take longer.

How do I know what happens to complaints referred to the Law SocietyCouncil or the NSW Bar Council Association?

You will be notified if your complaint is referred to the Law Society Council or the Bar Council. The Law Society Council or the Bar Council will communicate directly with you in the course of dealing with your complaint, and inquiries about the progress of your complaint should be directed to the Law Society Council via its Professional Standards Department or the Bar Council via its Professional Conduct Department.

Whilst OLSC has a role in overseeing complaints delegated to the Law Society Council or the Bar Council, we are not involved in the day to day conduct of their investigations. Written reports on the progress of your complaint can, however, be requested if concerns arise.

We can also take over Law Society Council or the Bar Council investigations in appropriate cases, for example where the investigation has not progressed, where relationships with the investigator have broken down or where a conflict of interest arises.

What can I do if I am not happy with a decision of the NSW Legal Services Commissioner, the Law Society Council or the Bar Council?

Decisions made by the Commissioner, the Law Society Council and Bar Council are final except that the Commissioner may, at their absolute discretion, conduct an internal review of a decision they have made, or a decision made by the Law Society Council or the Bar Council, if they consider it appropriate to do so.

If you seek that the Commissioner review a decision, you must:

- make a written request to this Office within 30 days from the date of the decision letter
- clearly identify the part(s) of the decision that you dispute
- give detailed reasons why you say the decision should be reviewed

Please be aware that the Commissioner's consideration of a request for internal review does not involve reinvestigation of a complaint. Broadly, the Commissioner may consider whether the:

- process of handling a complaint was fair
- conclusions reached were reasonable on the information available
- decision was adequately explained

Reviews/Appeals to the NSW Civil & Administrative Tribunal (Tribunal)

The NSW Civil and Administrative Tribunal has jurisdiction to conduct an administrative review of some decisions made by the Commissioner, the Law Society Council and the Bar Council, on application by the lawyer. Complainants have no right to apply for administrative review, only a lawyer may apply.

When complaints are closed, no further action is taken

We close complaints for a number of reasons. The complaint may be misconceived or based on inaccurate information, or not be a complaint the NSW Legal Services Commissioner has power to deal with (such as those made about Judges or Magistrates, which should be referred to the Judicial Commission, or people holding themselves out as lawyers when they are not qualified, which should be referred to the Law Society Council or the Bar Council).

Pursuant to section 277(3) of the LPUL, a complaint may be closed under section 277 without any investigation or without completing an investigation. Further, pursuant to section 277(4) of the LPUL, there is no requirement that complainants and lawyers be given the opportunity to be heard or make a submission before a determination is made to close a complaint pursuant to s 277 of the LPUL.

Complainants have NO right of appeal or review to the NSW Civil & Administrative Tribunal of a decision to close a complaint or the Commissioner's decision to decline to exercise the discretion to conduct an internal review.

For further information about complaints can be found on the Office of the NSW Legal Services Commissioner website or contact us toll free on 1800 242 958 or on (02) 9377 1800.