Understanding and Avoiding Complaints

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INTRODUCTION

Each year, between 450 and 500 written complaints about the conduct of legal practitioners are lodged with the Law Complaints Officer for consideration by the Legal Profession Complaints Committee ("LPCC"). Whilst some practitioners have lengthy legal careers without complaint, many others will deal with one or more such complaints during his or her professional career. Some practice areas (such as litigation generally, and particularly areas such as family disputes, criminal matters and personal injury matters) seem especially prone to generating complaints. However, the LPCC also receives complaints against practitioners involved primarily in commercial transactions.

Understanding the complaints process with a view to avoiding complaints makes good business sense for all practitioners. Complaints are not inevitable and most complaints can be avoided by quite simple measures (such as more effective communication). In this paper, I hope to provide practitioners with a better understanding of the types of complaints made against commercial practitioners involved primarily in non-litigious work, with a view to avoiding the problems which tend to give rise to such complaints.[1]

In this paper I will first briefly outline the regulatory framework of the complaints system in Western Australia, including the processes in place for dealing with complaints and the Committee's powers. Next, I will briefly outline a "snapshot" of complaints to provide a better understanding of the types of complaints received by the LPCC with a view to identifying some risk areas. I will then discuss a few examples of common complaints made against commercial practitioners, and conclude with suggestions for "risk management" to assist practitioners in avoiding "avoidable" complaints.

[1] I note that the subjects "Ethical Issues in Litigation" and "A Positive Approach to Complaints" will be covered in seminars being offered later this month and therefore have not been covered in this paper. Likewise, "Conflicts of Interest" is the subject of a separate paper in this seminar and will not be addressed in this paper.

REGULATORY FRAMEWORK

On 1 March 2009, the *Legal Profession Act 2008* came into operation. On that date (or in the case of certain provisions concerning costs disclosure and agreements, on 1 July 2009) the legal profession entered into a new regulatory framework. Although the present framework is expected to be relatively short-lived (a new national regulatory framework is expected to be in place in the next few years) it is still essential to come to a working understanding of its provisions, because contravention of the Act is itself capable of constituting unsatisfactory professional conduct or professional misconduct,[2] as is failing to comply with an order of the LPCC.[3]

The LPCC is a statutory body established by Part 16 Division 2 of the Act. Its functions are identified in section 557 of the Act and include:

- supervision of the conduct of legal practitioners;
- inquiring into complaints received under Part 13 of the Act;
- inquiring into the conduct of legal practitioners or matters relating to practice "whether for cause or not and whether the Complaints Committee has received a complaint or not".

The LPCC has wide ranging investigatory powers, including the power to summons documents and compel the provision of written information by legal practitioners.[4] Practitioners should also note that a range of conduct is capable of constituting unsatisfactory professional conduct or professional misconduct, including conduct which is "otherwise than in connection with the practice of law".[5] In particular, section 421(1) of the Act permits the LPCC to investigate the conduct of legal practitioners without complaint if it has "reasonable cause to suspect the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct." This enables the LPCC to investigate more widely than what is contained within the "four corners" of a complaint.[6] Likewise, where a complaint is withdrawn, the LPCC may nevertheless take further action if it is satisfied that investigation is justified.[7]

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[2] See *Legal Profession Act 2008* ("the Act") section 404(a).
[3] Section 404(f) of the Act.
[4] See Part 15 of the Act.
[5] See section 403 of the Act.
[6] A surprising number of practitioners, when responding to a complaint, argue that the LPCC does not have authority to investigate beyond the specific matters raised by the complainant. To the contrary, not only does the LPCC have the power to do so, the legal officers investigating a complaint are obliged to

The LPCC is required by section 421(2) of the Act to investigate each complaint. Where the LPCC determines that a complete investigation is not required, it is able to summarily dismiss the complaint pursuant to section 415 of the Act. Otherwise, after the investigation is completed, the LPCC has three options:

- dismiss the complaint pursuant to section 425 (or if the investigation was on the initiative of the LPCC, decide to take no further action);[8]
- offer to consider the matter via the LPCC's powers of summary consideration pursuant to section 426;[9] or
- refer the matter to the State Administrative Tribunal for hearing pursuant to section 428.[10]

The LPCC's powers of summary consideration pursuant to section 426 of the Act may only be exercised with the consent of the practitioner. If the practitioner consents to determination of the complaint pursuant to section 426, the LPCC will make a determination as to whether it is satisfied that there is a reasonable likelihood that the practitioner would be found guilty by the SAT of unsatisfactory professional conduct and will impose a penalty as provided for by section 426(2) of the Act. To exercise its summary consideration powers, the LPCC must be satisfied that the practitioner is generally competent and diligent, that the exercise of its powers of summary consideration is justified in the circumstances, and that the allegation is one of unsatisfactory professional conduct rather than unprofessional conduct.[11]

If the practitioner declines to consent to the LPCC's exercise of its powers of summary consideration pursuant to section 426 (or if the LPCC is not satisfied that the practitioner is generally competent and diligent, or if the allegation is one of professional misconduct), it is open to the LPCC to refer the matter to the State Administrative Tribunal instead. The range of penalties available for summary prosecutions by the LPCC is less severe than the powers

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independently review the conduct and place all other matters of concern arising from the practitioner's conduct to the practitioner for comment and then to the LPCC for determination.

[7] See section 416(6).

[8] See section 424(1)(a) of the Act.

[9] See section 424(1)(b) of the Act.

[10] See section 424(1)(c) of the Act.

[11] See section 426(1)(a)(ii), (iii) and (iv) of the Act.

available to the SAT.[12] Both the LPCC and the SAT now have the power to issue compensation orders pursuant to Division 11 of Part 13 of the Act.

The LPCC is required to keep a record of its decisions[13] and notify the practitioner and the complainant of its decision.[14]

Practitioner should note that effective 1 July 2009, the requirements with regard to costs disclosure and assessment are significantly more onerous and prescriptive.[15] The technical requirements are lengthy and detailed, and practitioners need to make certain that they have practices in place to ensure strict compliance. The same is true for trust accounting.[16] I reiterate that contravention of these provisions of the Act is itself capable of constituting unsatisfactory professional conduct or professional misconduct.[17]

A SNAPSHOT OF COMPLAINTS TO THE LPCC IN 2008-2009

The LPCC's annual report for the year ending 30 June 2009, which was tabled in Parliament on 23 February 2010, contains statistics which provide insight into the types of complaints received by the LPCC, from which certain "risk factors" can be gleaned. During 2008-2009, 356 legal practitioners (7.6% of the 4673 certificated or deemed certificated practitioners) were the subject of 455 formal written complaints to the LPCC.[18] Of these 356 practitioners, 263 were the subject of one complaint during 2008-2009; 77 practitioners were the subject of two complaints during 2008-2009; and 16 practitioners were the subject of three or more complaints during 2008-2009.

Most complaints (273 or about 56%) were made by a client or a former client of the legal practitioner. A significant number (114 or about 23%) were brought by the other party to the transaction or proceedings in which the legal practitioner was involved.[19] Whilst most complaints (321 or about 70%) arose from litigious matters, a not insignificant number (75 or about 16%) arose from non-litigious matters such as commercial/company law (about 9% of all

[12] Compare sections 426(2) and 438 of the Act.
[13] See section 427 of the Act.
[14] See section 432 of the Act.
[15] See Part 10 of the Act.
[16] See Part 9 of the Act.
[17] See *Legal Profession Act 2008* ("the Act") section 404(a).
[18] In addition to these complaints, the LPCC initiated a further 31 investigations into the conduct of legal practitioners.
[19] The balance were received from other sources, such as another legal practitioner, the judiciary, the police, the Law Society, the Legal Practice Board or other miscellaneous sources.

complaints), lease/mortgages/franchises (about 2% of all complaints), and conveyancing (about 5% of all complaints).

Of the 257 complaints lodged in 2008-2009 against practitioners practising in unincorporated practice structures,[20] about 74% were made against practitioners in a sole practice or a two partner firm. About 21% were made against practitioners in a practice having between 3 and 10 partners. Only about 3% were made against practitioners in a firm with more than 10 partners.

Whilst it can be dangerous to attempt to draw specific conclusions from statistical data, some potential "risk factors" can be gleaned from this data. Firstly, whilst the client is the most likely source of a complaint, a significant number of complaints are brought by the "other party" to a transaction or litigation. This should remind practitioners that professional obligations may extend beyond the solicitor/client relationship and they should bear this in mind when dealing with other parties (especially those who are unrepresented).

Secondly, whilst litigious matters generate by far the majority of complaints, complaints do arise areas such as company law, conveyancing, and drafting commercial documents. Practitioners practising principally in these areas also need to be vigilant as to the possibility of complaints and implement steps to avoid complaints.

Finally, practitioners in smaller firms seem to generate most of the complaints considered by the LPCC.[21] Whilst this does not necessarily mean that practitioners in smaller firms are at a higher risk of complaint, it raises the possibility that there may be features of the smaller practice which enable or exacerbate dissatisfaction by clients.

The LPCC also keeps statistics as to the types of complaints made against practitioners. In 2008-2009, there were about 845 separate areas of complaint raised in the 455 written complaints made to the LPCC. Most complaints contained more that one area of concern. Excluding regulatory complaints[22] and complaints which arise only from litigation based

[20] During 2008-2009, 128 complaints were received against practitioners in incorporated practices, but statistics were not kept with regard to the size of those incorporated practices.
[21] Although it does not necessarily follow that there is a disproportionate number of complaints against practitioners in smaller firms, as the LPCC does not keep statistics as to the percentage of practitioners practising in smaller firms.
[22] Such a failing to respond to enquiries by the LPCC, practising without a current practising certificate, and non-compliance with trust account regulations.

practices,[23] the complaints made against practitioners (including commercial practitioners) fall into three broad areas:

- Charging issues (including matters such as excessive charging, inadequate costs estimates and/or costs disclosure, failing to account for moneys, failing to provide an itemised invoice, claiming costs in a letter of demand);
- Inadequate service delivery (including incompetence, lack of diligence, neglect, delay, negligence, failure to provide legal advice, failing to communicate, failure to act on instructions); and
- Inappropriate personal conduct (including failure to comply with an undertaking, discourtesy, disclosure of confidential information, conflicts of interest,[24] misleading conduct, improper termination of a retainer, improper exercise of a lien).

Complaints concerning service delivery comprised nearly half of all of the areas of complaint raised against practitioners (403 in 2008-2009). Complaints about personal conduct were the next largest category, comprising more than one quarter (250 in 2008-2009). Complaints about charging matters made up about 20% of the complaints raised (191 in 2008-2009).

SOME COMPLAINTS AGAINST COMMERCIAL PRACTITIONERS

As suggested above in the "snapshot" of complaints during the 2008-2009 financial year, complaints about charging, the quality of legal services provided, and the personal conduct of practitioners arise in all contexts including commercial matters. In this section I will briefly discuss some of the complaints considered by the LPCC arising in the context of commercial practice.

Complaints about service delivery

Complaints concerning service delivery are very common, even in commercial matters. Most frequently, the complaints pertain to delay, neglect, competence and supervision, and failing to act on instructions.

[23] Such as failing to comply with court directions and failing to appear in court.
[24] As conflicts of interest are the subject of a separate paper being presented today, these will not be addressed in this paper.

Conduct of a legal practitioner in the practice of law which falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner may constitute unsatisfactory professional conduct. Where a practitioner substantially or consistently fails to reach or maintain that standard of competence and diligence, this may give rise to professional misconduct. The Professional Conduct Rules, and in due course the Practitioner's Conduct Rules[25] are of some assistance in identifying what level of competence is generally expected in legal practice, and often form the basis of allegations considered by the LPCC.

One competence issue recently drawn to the Committee's attention is legal practitioners providing advice and assistance in preparing patent applications. Section 202 of the *Patents Act 1990 (Cth)* prohibits a legal practitioner from preparing a specification, or a document relating to an amendment of a specification, unless acting under the instructions of a registered patent attorney. The penalty for contravention of this provision is $3,000. There is a fine line between preparing a patent specification and advising on the patent process. Clients don't always realise that solicitors cannot prepare patent specification, and it is up to the practitioner to re-direct the client to a registered patent attorney. This is an area which would ordinarily be outside a legal practitioner's competence.

The issue of competence sometime arises in the context of work performed by junior practitioners and paralegals. In such circumstances, it can raise issues of failure to supervise. The LPCC advised a practitioner, in respect of a complaint concerning a settlement of property handled by the practitioner's articled clerk, that there was evidence of inadequate supervision of the clerk in that the practitioner allowed her to act in a potential conflict of interest situation.

Often, such investigations lead to the identification of other conduct issues by the investigator. In one matter considered by the LPCC several years ago, a junior practitioner was alleged to have failed to achieve the expected standard of competence and/or diligence in acting on instructions to prepare a will. He was found not guilty, but his supervisor was found guilty of unprofessional conduct in having directed him to disclose confidential information concerning the client to a third party without her consent. It transpired that the client had been referred to the firm by her accountants to draft a will. The accountants had an agreement with the firm

[25] The Draft Practitioner's Conduct Rules are available on the Legal Practice Board website. Pursuant to section 404 of the *Legal Profession Act 2008*, contravention of these rules (once adopted by the Legal Practice Board under its new powers to make legal professional rules concerning the standards of conduct expected of the legal profession) is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

regarding the referral of clients. After the client terminated the retainer, the practitioner directed the junior practitioner to write to the accountants notifying them that the retainer had been terminated. The junior practitioner had done so, not realising that it was inappropriate to do so.

This complaint raised not only issues of competence and confidentiality, but the LPCC also considered whether the system of "cross-referrals" breached Professional Conduct Rule 17.2 which prohibits "spotter's fees" for introducing business. As there appeared to be no system of remuneration for the referrals, the matter was taken no further. However, commercial practitioners need to be careful to ensure that any relationships their firms may have to other professionals does not result in disclosure of confidential information or contravene PCR 17.2.

Diligence is another commonly raised complaint in the commercial context. Professional Conduct Rule 5.5 provides that a practitioner "must try to complete any work on behalf of the client as soon as reasonably possible". In addition, where it becomes apparent that the work cannot be done in a reasonable time, the client must be informed. Often complaints arise because there has been delay on the part of the practitioner, and the situation escalates because the practitioner does not communicate with the client about this. In one matter recently before the LPCC, a practitioner was found guilty of undue delay in the course of the practice of the law in respect of instructions to prepare and finalise a transfer of land. The penalty imposed was a fine of $500.

Diligence also includes acting on the client's instructions. In one matter recently before the LPCC, it resolved that it was satisfied that there was a reasonable likelihood that a practitioner would be found guilty of unsatisfactory professional conduct by the State Administrative Tribunal on the grounds that when acting for his clients with respect to the purchase of land and a business, he failed to lodge an application for the transfer of a well licence to the clients and improperly charged the clients $200 as a disbursement for the transfer when he had not lodged the transfer with Landgate. A private reprimand was imposed. In another matter, the LPCC resolved that it was satisfied that there was a reasonable likelihood that a practitioner would be found guilty of unsatisfactory professional conduct by the State Administrative Tribunal on the grounds that she failed to follow the client's instructions to successfully lodge water easements with Landgate. A private reprimand was imposed.

Another practitioner was found guilty of unsatisfactory conduct by neglect in the course of legal practice by failing to act on instructions from another solicitor to stamp and register certain mortgages and return them to the other solicitor, and in failing to inform the solicitor of progress

on the matter. The practitioner was also found guilty of unsatisfactory conduct by unprofessional conduct in failing to respond to correspondence from the LPCC and a summons issued by the LPCC in a timely manner. The practitioner was reprimanded on each matter.

Complaints about the practitioner's personal conduct

One of the more common complaints about the conduct of a practitioner is the improper termination of a retainer, which is often accompanied by the improper exercise of a lien. Whilst a client is entitled to change legal advisers at any time without giving any reason,[26] a legal practitioner is not. Unless the client consents, a practitioner may terminate a retainer only for good cause.

In one matter before the LPCC, a practitioner was found guilty of unprofessional conduct in that without good cause he terminated his firm's retainer to act for a client in a matter. The practitioner was reprimanded. In another matter, two practitioners in a firm who were involved in a client matter were each found guilty of unsatisfactory conduct in ceasing to act for a client without good cause or the client's consent and shortly thereafter improperly rendering an account to the client. The first practitioner was reprimanded and the second practitioner was fined $500.

The practitioner also must take reasonable care to avoid foreseeable harm to the client.[27] Before exercising a lien over the file, practitioners should ensure that they have a right to do so, and that any right to a lien has not been extinguished by professional negligence or misconduct.[28]

Another common area of complaint is gross discourtesy to a client or a fellow practitioner. Professional Conduct Rule 20.1 demands that practitioners treat their professional colleagues with "the utmost courtesy". Sadly, discourtesy seems to be on the rise. Even more sadly, the discourtesy is sometimes directed at clients. In one matter where the complainant retained the practitioner with regard to a transfer of land, the LPCC found the practitioner guilty of unprofessional conduct by engaging in correspondence with the client which was grossly discourteous. The letter written to the complainant (who was an elderly migrant gentleman with poor English literacy skills) informed him that the practitioner "did not keep you informed in advance of every step of the process because it was the writer's assessment at our meeting

[26] Professional Conduct Rule 19.1.
[27] Professional Conduct Rule 19.3.
[28] Professional Conduct Rule Schedule 6.

that you had serious difficulties understanding even the basics of what was involved ...". The practitioner was reprimanded for his conduct and ordered to refund fees to his client.

Another matter of serious concern to the LPCC is practitioners breaching undertakings. Professional Conduct Rule 26 provides that practitioners "must honour any personal undertakings given by the practitioner when acting professionally". In one matter, the LPCC found that a practitioner was guilty of unsatisfactory conduct by unprofessional conduct by breaching an undertaking given to another practitioner and further or in the alternative by failing to notify the recipient of the undertaking of material matters affecting the efficacy of his undertaking. The practitioner was fined $500.

Whilst the issue of conflicts of interest is outside the scope of this paper, one recent prosecution by the LPCC in the State Administration Tribunal dealt with that issue in the context of a practitioner's lending money to a client. Most practitioners would be aware that Professional Conduct Rule 9 provides that practitioners must not borrow from clients except in limited circumstances set out in PCR 9.3. Practitioners should also note that significant conduct issues may also arise from lending money to clients. In *Legal Practitioners Complaints Committee v Archer*, the practitioner admitted to the allegation that he was guilty of unprofessional conduct in that he accepted instructions to act for a client as borrower with respect to a loan of $30,000 in respect of which he was the lender, without providing adequate written advice that there was a conflict of interest, and the consequential effect of such a conflict on his retainer, or obtaining the client's written consent to act notwithstanding the conflict of interest. The practitioner also failed to provide the client with adequate advice in writing to take independent legal advice as to the terms of the loan, the rate of interest applicable thereto or the form and effect of the loan agreement. The practitioner was fined by the State Administrative Tribunal in the amount of $6,000.

Complaints pertaining to charges

As noted above, complaints about charging are common amongst all practice areas, and commercial transactions are no exception.

Many costs complaints in commercial matters arise where the practitioner has not required the client to sign a cost agreement. Sometimes the client presents with a minor matter which is not expected to generate significant fees and the practitioner does not bother with a cost agreement. Often, the client returns to a firm and the practitioner assumes that a cost agreement is already on file but is not. Whatever the reason, costs disputes arising from a

failure to enter into a cost agreement and/or provide cost disclosure is a common source of complaint in commercial matters.

Whilst there is no requirement that a practitioner enter into a cost agreement with a client, without such an agreement, the practitioner is limited to charging costs which do not exceed an amount which is reasonable in the circumstances having regard to the relevant costs determination. Whilst the hourly rates provided for in the *Legal Practitioners (Solicitors Costs) Determination 2009* are generous (being $418 for a practitioner admitted more than 5 years, $297 for a practitioner admitted fewer than 5 years, and $198 for a clerk/paralegal) practitioners must bear in mind there are numerous limitations on charges provided for in the Determination. Practitioners should also note that the hourly rates provided for in the Determination are inclusive of GST. Furthermore, practitioners should always bear in mind that irrespective of a costs agreement, the costs charged must be reasonable.[29]

It is also imperative that practitioners implement steps to accommodate the new requirements concerning cost agreements provided for in Part 10 Division 6 of the Act. Practitioners should note that cost agreements must be in writing. Furthermore, irrespective of whether a cost agreement is entered into, the practitioner is obliged to provide written costs disclosure as set out in sections 260 and 261 of the Act "before, or as soon as practicable after, the law practice is retained".[30] Exceptions are detailed in section 263, and include that "the total legal costs in the matter, exclusive of disbursements, are not likely to exceed $1,500 (exclusive of GST) or the prescribed amount". Practitioners should be aware, however, that frequently matters are not as simple as preliminary instructions might suggest, and many complaints develop in circumstances where it was initially considered that the fees would not excess $1,500.

Another frequent complaint concerning costs arises from the practitioner's failure to comply with his or her ongoing responsibility to provide written updates as to costs as circumstances change.[31] Where practitioners do not agree to provide a service for a fixed fee, they must ensure that this is clearly communicated to the client. Many complaints develop because clients believe they were "quoted" a fixed fee when in fact they were provided with a costs estimate. Keeping clients updated as to complications and the consequent impact upon the practitioner's charges is required by the Act, and is crucial to maintaining a good business relationship with the client.

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[29] See section 301 of the Act.
[30] See section 262 of the Act.
[31] See section 267 of the Act.

Finally, one area of special note which arises predominantly in the commercial area is the issue of third party payers. This issue is now dealt with comprehensively in the new Act, and I draw practitioners' attention to section 270 of the Act, which provides that where disclosure is required to be made to a client, then the firm must also make costs disclosure to any associated third party payers. Such disclosure must be in writing, and the associated third party payer has the same rights to progress reports under section 269 of the Act as do clients. Third party payers are also entitled to seek costs assessment pursuant to Part 10 Division 8 of the Act.

AVOIDING COMPLAINTS

Whilst it is not possible to guarantee a legal career free from complaints, there are certainly ways to minimise the likelihood of complaints against you and your employees. Practitioners who communicate effectively with clients are less likely to be the subject of a complaint, partly because they have given the client the opportunity to be "heard". Frequently, the LPCC is contacted by clients who feel aggrieved because the practitioner has not met their expectations and has not provided them with an opportunity for redress, or has not "listened" to the client's concerns. Practitioners should never underestimate the psychological component to a client's grievance. The client wants to be listened to and understood, and dealing effectively with the client's concerns requires sensitivity and responsiveness on the part of the practitioner.

One suggestion for avoiding complaints by dealing more effectively with client concerns is to allocate to one principal of the firm the task of dealing with client concerns. A practitioner who is trained in very simple communication strategies will facilitate better communication and impart to the client the sense of "being heard". Separating the practitioner whose conduct is of concern from the grievance process can also eliminate some of the defensiveness which can interfere with effective communications and grievance resolution. Furthermore, having one partner in the firm handling all such matters will assist the firm in identifying conduct on the part of employees which may be exposing the firm to risk.

Finally, offering to reduce a bill, or admitting to a client that you are sorry for their experience can often avoid a formal complaint to the LPCC. Frequently, even if you are in the right, it will cost you less in the long run to accept responsibility, apologise and move on. And, whilst this process itself may be time consuming, it is unlikely to be as time consuming as the process of answering a complaint which has been made the LPCC.

Effective communication during the course of the retainer can also avoid complaints. Provide your clients with accurate estimates of when they can expect to receive their draft documents, and keep them updated if this changes. Provide clients with the opportunity to read and comment on drafts. Keeping the client "in the loop" in this way assists the client in understanding the process involved, which in turn will help them understand how long the process takes and the amounts they are eventually charged. A better appreciation of both of these will help minimise misunderstandings. Keeping the client informed of complications which develop in the course of the retainer will assist in adjusting their expectations concerning timing and costs.

Another suggestion for avoiding complaints is to ensure that instructions are confirmed in writing before work is undertaken on behalf of a client. In one recent complaint, a client complained that she went to a commercial practitioner to get a quote on the drafting of certain documents, and several days later was presented with the completed documents and an invoice for several thousand dollars for the practitioner's services. This complaint could have been avoided by the practitioner providing the client with a short letter confirming the instructions, as well as by the signing of a costs agreement. The use of a written cost agreement and a letter confirming the instructions is an excellent way to reinforce what the practitioner has said to the client, and to document precisely what was said in the event of a dispute developing.

As many complaints arise as part of a dispute concerning costs, it is also important to ensure that the expectations concerning costs are clearly set out in a written costs agreement and that costs estimates are made by an experienced practitioner. Furthermore, practitioners need to take great care to ensure that their costs agreements and costs disclosure statements are compliant with the terms of the legislation and that these are kept up to date.

In terms of complaints about service delivery, complaints can be avoided by having formal systems for monitoring and supervising the work of clerks and junior practitioners. Once again, whilst this process may seem to be time consuming, it is unlikely to be as time consuming as the process of answering a complaint which has been made the LPCC.

Practitioners should also note that many complaints arise from aggressive debt collection strategies utilised by firms. Complainants sometimes comment that if the practitioner pursued the object of the retainer with the zeal used to pursue collection of its fees, no complaint would have arisen. Whilst services clearly cannot be provided if clients do not pay the practitioner's fees, the professional nature of the solicitor client relationship should not be compromised by

aggressive debt collection. In most cases, the debt collection process is allocated to a non-lawyer. Practitioners must remember that they are accountable to the LPCC for the adequate supervision and direction of non-legal staff. Staff employed to perform this function must be closely monitored to ensure that the practices utilized are appropriate. In a recent mediation, it came to light that the firm's debt collection practice involved sending a "draft" Magistrates Court claim with the initial letter of demand. Not only was it premature to threaten litigation, but the "draft" claim did not indicate that it was a draft, and the client was under the impression that proceedings had been commenced.

Finally, all practitioners need to have a realistic appreciation of the boundaries of their competence, as well as the amount of work they can reasonably perform. This is especially relevant to those in small or solo practices without professional colleagues who can assist in times of need. All legal practitioners must be prepared to accept that there is some work he or she should not do, either by reason of competence or workload, and to decline to accept instructions in those matters.

At the risk of stating the obvious, my final tip for avoiding complaints is to be a competent and diligent practitioner who knows and is guided by the guidelines set out in the Professional Conduct Rules. Furthermore, if a practitioner is unsure how to deal with a problem which has developed, he or she should seek the guidance of an experienced colleague.