

# **Legal complaints models: a summary of international approaches**

## **A working paper**

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## Summary

This paper focuses on the models used for examining complaints about lawyers. It is a working document and at present summarises the approaches in England and Wales, Scotland, Northern Ireland, Ireland, Ontario, British Columbia, New South Wales and Victoria, Queensland and Australian Capital Territory.

### There are three main types of complaints models

The models for examining complaints about legal professionals can loosely be described as:

1. a profession-led complaints model with independent oversight (New Zealand's model)
2. a single independent complaints body
3. two complaints bodies: a consumer-facing body to deal with complaints about poor service, with the regulator dealing with behaviour that calls into question fitness to practice.

In all of the jurisdictions we have examined the most serious cases of professional misconduct were all prosecuted before an independent tribunal, which in each jurisdiction was the only entity with the power to strike-off or suspend a lawyer.

Type of model	Description	Jurisdictions
A profession-led complaints model	<ul style="list-style-type: none"><li>• complaints are investigated and resolved by the self-regulatory body,</li><li>• some involvement of lay participants (who are in the minority)</li><li>• opportunity to seek an independent review of a decision</li></ul>	New Zealand Northern Ireland Ontario British Columbia Australian Capital Territory
A single independent complaints body	<ul style="list-style-type: none"><li>• a single independent entity is tasked with receiving and investigating all complaints, including poor service and misconduct</li><li>• majority of decision makers are lay participants</li></ul>	Ireland Victoria Western Australia Queensland
Two complaints bodies, with jurisdiction depending on the nature of the complaint	<ul style="list-style-type: none"><li>• an independent consumer-facing entity deals with complaints about poor service, with a majority of lay decision makers (akin to an Ombudsman)</li><li>• the regulator deals with complaints about dishonesty and behaviour that require a regulatory response</li><li>• the regulator may or may not be independent from the profession under this model</li></ul>	England & Wales Scotland New South Wales



# International legal complaints models

## Complaints model in the United Kingdom

### Complaints model in England and Wales

In England and Wales there are two bodies with jurisdiction over complaints about lawyers:

- The Legal Ombudsman (service complaints)
- The Solicitors Regulation Authority (SRA) (serious conduct complaints)

#### **The Legal Ombudsman**

The Legal Ombudsman deals with complaints about the service that consumers have received. It is described as the body to approach if a consumer is not happy with the service they have received and a remedy is required. For example, it typically deals with complaints about costs, delay, poor information, unclear communication, loss of documents etc.

The Legal Ombudsman is administered by the independent Office for Legal Complaints under the Legal Services Act 2007. The statutory objective of the Legal Ombudsman is to resolve disputes quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances.

A complainant may approach the Legal Ombudsman if a complaint has not been able to be resolved by the regulated provider within eight weeks. The Legal Ombudsman has broad powers to compel the regulated provider to make an apology, pay compensation (capped at £50,000), to take any specified action, to pay costs to the complainant, and to reduce fees.

The Legal Ombudsman can advise the SRA if it considers a case involves a breach of the SRA's principles or Code of Conduct.

#### **The Solicitors Regulation Authority**

The SRA deals with complaints about dishonesty and a lawyer's behaviour. For example, it typically deals with complaints about deliberately overcharging, losing a client's money, treating people unfairly (eg, due to age, disability of other characteristic), a lawyer shutting down a firm without advising clients, etc.

The SRA is the independent regulatory body established by the Law Society for the regulation of legal services by law firms and solicitors in England and Wales (while formally an arm of the Law Society it is operationally independent). It considers complaints about behaviour that is alleged to breach its Code of Conduct.

The SRA can investigate the case and either:

- reach a decision itself on the matter and potentially impose sanctions, or
- refer and then prosecute cases before the Solicitors Disciplinary Tribunal, which has the ability to strike-off or suspend a solicitor, prohibit them from practising, and impose larger fines.

The SRA does not focus on receiving and resolving complaints, but is designed to have appropriate mechanisms to enable the reporting of behaviour by the public, lawyers, firms, and the judiciary. The



SRA only focuses on 'serious breaches' of standards where there may be a need for a regulatory response:<sup>1</sup>

"Our role is to regulate in the public interest; to protect clients and consumers of legal services, and to uphold the rule of law and the administration of justice.

This means we focus on issues which present an underlying risk to the public interest, ensuring that any decision to investigate a complaint or report is a proportionate response to that risk."

The SRA will investigate the allegations, compile evidence and then reach a decision, which may involve regulatory or disciplinary action or a referral to the Solicitors Disciplinary Tribunal.

## Complaints model in Scotland

In Scotland there are two bodies with jurisdiction over complaints about lawyers:

- The Scottish Legal Complaints Commission (SLCC) (service complaints)
- The Law Society of Scotland (conduct complaints)

### The Scottish Legal Complaints Commission

The SLCC acts as a single point of contact for all complaints against lawyers in Scotland – solicitors, advocates, commercial attorneys, and licensed conveyancers. The SLCC resolves complaints about service and refers conduct complaints to the Law Society of Scotland.

The SLCC operates independently of the Scottish Government and of the Scottish legal profession. It is funded through a levy paid by legal professionals.

A service complaint is defined as to be one suggesting: '... professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate'. A service complaint can be made by any person who appears to have been directly affected by the suggested inadequate professional services, as well as named entities such as the Scottish Legal Aid Board, any Judge and the Lord Advocate (amongst others).

A complainant may approach the SLCC if a complaint has not been able to be resolved by the service provider after four weeks. Any quorum of the Commission or of any committee of the Commission is required to consist of a greater number of non-lawyer members than lawyer members.

### The Law Society of Scotland

Complaints against solicitors in Scotland are channelled first through the SLCC, which will refer conduct matters to the Law Society of Scotland. The Law Society will refer a complaint to one of its Professional Conduct Sub Committees (PCSC), investigate and prepare a report for the PCSC, and the PCSC will make its own decision. The PCSC must comprise an equal number of solicitors and non-

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<sup>1</sup> SRA Enforcement Strategy, <https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/> (Updated 21 January 2022)



solicitors. The Law Society can decide to prosecute more serious cases before the Scottish Solicitors' Discipline Tribunal.

Conduct complaints concern how the practitioner acted and whether that behaviour breached the published professional standards – essentially allegations of unsatisfactory professional conduct and professional misconduct.

Conduct complaints cannot be made about firms of solicitors or incorporated practices so a named individual must be identified and specifically referred to in the complaint. The most severe sanction available to the Tribunal is to strike an individual off the Roll of Solicitors, which effectively removes the individual's right to practise as a solicitor in Scotland.

## Complaints model in Northern Ireland

There is no independent complaints body to receive complaints about lawyers in Northern Ireland. The **Law Society of Northern Ireland** deals with complaints about solicitors regarding both poor service and professional misconduct.

The Law Society will only investigate, and potentially provide redress when the complainant is making a complaint about their own lawyer. A lawyer should be given four weeks to resolve the complaint before a complaint can be lodged with the Law Society. Complaints about costs are handled through a separate process.

The Society's procedures are open to public scrutiny through the offices of the Lay Observer, an official appointed by the Government to oversee the way in which the Society investigates complaints about solicitors. The Lay Observer can examine individual allegations about the way a complaint has been handled, can comment on the processes used by the Law Society and the service provided, and publishes an annual report.

If the Law Society finds a solicitor has been guilty of professional misconduct it can prosecute the case before the Solicitors' Disciplinary Tribunal for Northern Ireland. The Tribunal can strike off a solicitor, suspend the solicitor, impose fines or order restitution, but it cannot order a payment of compensation.

The **Bar Council of Northern Ireland** investigates and considers complaints about barristers. All complaints are considered and investigated by the Professional Conduct Committee of the Bar Council of Northern Ireland. If the Committee determines a breach of the relevant Code of Conduct has been proven it can order the barrister to make an apology, impose a fine of up to £1,000, issue a censure, provide advice to the barrister, and/or order payment of costs of the proceedings.

The Committee can also decide to refer a complaint to the Disciplinary Committee, which has powers to impose a fine, suspend or expel the barrister from membership of the Bar Library, and can recommend disbarment or suspension.



## Complaints model in Ireland

The Legal Services Regulatory Authority (LSRA) receives and investigates complaints about legal practitioners – solicitors and barristers. The LSRA is the independent statutory regulator for barristers and solicitors.

A complaint about inadequate legal services or excessive costs can be made by a client, while anyone can make a complaint about misconduct. Complaints can also be made on behalf of another person, such as a family member, friend or vulnerable person.

If a complaint relates to inadequate legal services or excessive costs, the LSRA will use a mediator to try to get the solicitor/barrister to resolve the complaint informally. If informal resolution is not possible the LSRA will make a determination on the complaint. If a complaint is upheld then the LSRA may direct the practitioner to take action, direct them to provide a refund, or make payment of up to €3,000 as compensation. A complainant or practitioner can request that any determination be reviewed by a Review Committee, comprising of two lay persons and one legal practitioner.

If a complaint relates to misconduct, the LSRA will generally refer it to the LSRA's Complaints Committee. The Committee is made up of lay members, solicitor members nominated by the Law Society of Ireland and barrister members nominated by the Bar of Ireland (Bar Council). Divisional Committees comprise of three or five members and always have a lay majority and a lay chairperson. The Committee can impose sanctions that include directing the practitioner to waive or refund fees, to participate in professional competence scheme, to take action in the interest of the complainant, to pay compensation to the complainant up to €5,000, to pay costs, and with the consent of the practitioner to impose restrictions/conditions on their practising certificate.

The Complaints Committee can refer more serious matters on to the Legal Practitioners Disciplinary Tribunal (LPDT) for further investigation, where appropriate.

## Complaints models in Australia

### Complaints model in New South Wales

In New South Wales (NSW) there is a single independent body, the Office of the Legal Services Commissioner (OLSC), which has jurisdiction over complaints. It can however, in its discretion, refer complaints to the Law Society of NSW for investigation and resolution. In practice, complaints identified by OLSC as 'disciplinary matters' are referred to the Law Society. A disciplinary matter relates to conduct of a solicitor or law practice that would, if the conduct concerned is established, amount to professional misconduct or unsatisfactory professional conduct.

#### **The Office of the Legal Services Commissioner**

The OLSC is an independent statutory body that deals with complaints about lawyers under the Legal Profession Uniform Law Application Act 2014. The Legal Services Commissioner receives all complaints about solicitors and barristers in NSW and may initiate a complaint about a solicitor or barrister on its own motion.



The OLSC is empowered to assess complaints about the conduct of solicitors and barristers as either:

- 'Consumer matters': complaints about the conduct of a solicitor or a barrister which do not involve issues of "unsatisfactory professional conduct" or "professional misconduct", and are assessed at being capable of resolution. For example, delays, complaints, poor communication/rudeness, release of a client's documents or property.
- 'Disciplinary matters': those matters concerning solicitors or barristers that are capable of amounting to "unsatisfactory professional conduct" (eg, threatening behaviour, poor advice, serious delay, minor breaches of rules) and "professional misconduct" (a substantial or consistent failure to maintain a reasonable standard of competence in connection with the practice of law).

The OLSC will consider consumer matters that are capable of resolution and fall short of being a disciplinary matter. It attempts to resolve these consumer matters through communication with the complainant and negotiation with the lawyer. These informal dispute resolution processes are used to resolve the majority of consumer matters quite quickly, with over half of the OLSC's 2,500 complaints finalised within three months.

For disciplinary matters the OLSC can investigate cases itself or refer the complaint to the Councils of the Law Society of NSW or the Bar Association if it considers it appropriate to do so (there appears to be no public information on the boundary for when a complaint is referred to the Law Society). After the OLSC's investigation is completed the OLSC may make a finding of unsatisfactory professional conduct and make appropriate orders.

The OLSC may also institute proceedings in the Disciplinary Tribunal, in which case it will act as the 'prosecutor' of the complaint. In circumstances where the OLSC is satisfied there is a reasonable likelihood that the solicitor or barrister will be found guilty by the Disciplinary Tribunal of unsatisfactory conduct (but not professional misconduct) it may impose conditions on the relevant practising certificate.

### **The Law Society of New South Wales**

The OLSC may refer a complaint to the Law Society Council for preliminary assessment, investigation and determination. If the OLSC refers the complaint to the Law Society Council, the Law Society's Professional Standards Department will assign an investigator to the case. The investigator will produce a confidential report to the Law Society's Professional Conduct Committee.

If the Law Society's Committee determines the solicitor has engaged in unsatisfactory professional conduct it can order the solicitor to take certain actions. The Law Society may also initiate proceedings in the NSW Civil and Administrative Tribunal (NCAT) against the solicitor for either professional misconduct or unsatisfactory professional conduct.

In most cases, a decision by the Law Society in relation to a complaint is final. The OLSC however may, at its absolute discretion, conduct a review of a decision to close a complaint if it considers it appropriate to do so.



## Complaints model in Victoria

The Victorian Legal Services Board and Commissioner are independent statutory authorities responsible for the regulation of the legal profession in Victoria. The Victorian Legal Services Commissioner is responsible for developing and maintaining an independent, impartial and accessible system for managing complaints against legal practitioners.

The Commissioner can initiate a complaint and commence an investigation into the conduct of a lawyer, even where a complaint has not been made by another person, or if a complaint has been withdrawn ('Commissioner initiated complaints').

For the majority of complaints it receives, the Commission is able to work with the complainant and the lawyer to come to an agreement on the outcome. Other more serious complaints may warrant an investigation. If an investigation uncovers serious wrongdoing the Commissioner can take disciplinary action against the lawyer.

The Commissioner is able to make a determination that a lawyer or law practice associate has engaged in unsatisfactory professional conduct. These determinations may result in the Commissioner ordering the lawyer or law practice to redo the work, apologise or undertake either counselling, supervision or further training. The Commissioner may also issue the lawyer or law practice with a caution or a reprimand or order that compensation is paid (under certain circumstances) or can bring charges against the lawyer before the Victorian Civil and Administrative Tribunal (VCAT).

Where the Commissioner is satisfied that the lawyer would be found guilty of professional misconduct by VCAT, the Commissioner can bring charges against the lawyer before VCAT.

## Complaints model in Western Australia

The Legal Profession Complaints Committee (Committee) in Western Australia is an independent statutory committee of the Legal Practice Board established under the Legal Profession Act 2008. The Committee receives all complaints about solicitors and barristers in Western Australia and enquires into complaints and other conduct concerns in respect of legal practitioners. The Law Complaints Officer (LCO) is also established by the Act which assists the Committee in exercising its functions, and the Committee may delegate many of its powers and duties to the LCO.

Complaints can be made to the Legal Profession Complaints Committee about illegal conduct, unprofessional conduct, neglect and undue delay. If a preliminary assessment finds there is no conduct issue, the Committee can work with complainants to attempt to conciliate. Complainants can ask for their complaint to be formally determined if they are not satisfied with the preliminary review. A formal determination is then usually made by the LCO who exercises the delegated power of the Committee.

A formal investigation takes place if the preliminary assessment sees a likely conduct issue. Upon completion of the formal investigation, the Committee can:

- dismiss a complaint
- with the consent of the practitioner, exercise its summary conclusion powers



- refer the matter to the State Administrative Tribunal (SAT): an independent body in Western Australia that makes and reviews a range of administrative decisions, including disciplinary proceedings.

The Law Society of Western Australia is the main professional association for lawyers in the state. However, it does not have any legal powers to deal with complaints. Complaints made to the Law Society are referred on to the Legal Profession Complaints Committee for investigation.

## Complaints model in the Australian Capital Territory

The Law Society of Australian Capital Territory (ACT) regulates legal services for the benefit of consumers and handles complaints about professional conduct and prosecuting disciplinary matters under the Legal Profession Act 2006.

Complaints made to the Law Society can be about professional misconduct and unsatisfactory professional conduct. Professional misconduct is the more serious allegation, while unsatisfactory professional conduct generally involves a consistent or substantial failure to reach or maintain a reasonable standard of competence and diligence in the practice of law. The complaints the Law Society receives are handled by its Professional Standards Committee.

Post-investigation, the Committee has the options of dismissing a complaint, cautioning the legal practitioner, publicly (or privately in special cases) reprimanding the practitioner, making a compensation order, imposing a fine, and directing the practitioner to take further action regarding education or work arrangements.

The Committee can apply to the ACT Civil and Administrative Tribunal (ACAT) to discipline licensees or registered persons. Some decisions are appealable to ACAT by complainants or practitioners who were on the receiving end of the complaint.

ACAT can make orders if it is satisfied a practitioner is guilty of unsatisfactory professional or conduct or professional misconduct, ranging from recommendations of removal from local and interstate practising rolls, through to suspension and cancellation of practising certificates, payment of fines, and mandatory further legal education and periodic inspection.

## Complaints model in Queensland

The Bar Administration of Queensland (BAQ) and the Queensland Law Society (QLS) are the professional representative bodies of barristers and solicitors in Queensland (ie, a co-regulatory model) and issue and regulate practising certificates, set legal profession rules, and audit trust accounts.

Complaints about lawyers, law practice employees, and unlawful operators in Queensland, however, are solely managed by the Legal Services Commission (LSC), which is independent of BAQ and QLS.

While independent, the LSC has the discretion to refer professional conduct investigations involving barristers to the BAQ, but all other investigations are undertaken by the LSC. Where complaints are referred, the Commissioner still oversees and directs the investigations. The Commissioner also



reviews the findings and recommendations of the referred case before taking a decision. Only the Commissioner can decide what action to take on a complaint after investigation.

If the Commissioner believes the evidence is sufficient to show unsatisfactory professional conduct and/or professional misconduct, or it is within public interest, the Commissioner may initiate disciplinary proceedings in one of two disciplinary bodies: the Legal Practice Committee (LPC), or for more serious matters, the Queensland Civil and Administrative Tribunal (QCAT). Applications for disciplinary proceedings are for the protection of the public and not on behalf of an individual complainant. Appeals can be made to the Court of Appeal if any party is dissatisfied with the disciplinary decision.

## **Complaints models in Canada**

### **Complaints model in Ontario**

The Law Society of Ontario has the power to investigate if it receives information suggesting a lawyer or paralegal may have engaged in professional misconduct.

If the complaint raises issues of a lawyer's or paralegal's professional conduct and cannot be easily resolved, the complaint is passed on to the Professional Regulation Division. This division will determine if there is a reasonable prospect that the individual may have engaged in professional misconduct or lacks the capacity to meet any of their obligations in such a role – if not, the complaint is closed.

In more serious cases regulatory proceedings can be brought by referring the complaint to the Proceedings Authorisation Committee. The Committee may authorise disciplinary, interlocutory proceedings, or a more informal conclusion of the matter. A Hearing Panel then determines whether allegations have been proven and what penalty should be imposed, ranging from formal warning, temporary suspension, payment of a fine, disbarment, or surrender of license.

Complaints closed by the Law Society can be reviewed by the Complaints Review Commissioner in certain cases. The Commissioner provides recommendations on the closure of complaints and whether it believes further action should be taken.

### **Complaints model in British Columbia**

The Law Society of British Columbia regulates the legal profession under the Legal Profession Act and manages and investigates complaints in the interest of the public and administration of justice.

Complaints received by the Law Society are initially reviewed and staff determine whether there is a basis for investigation. If there is deemed to be a basis for investigation then information and documents are gathered by the Law Society from the complainant and practitioner. The three possible outcomes are:

- The complaint is closed if it cannot be supported or proven, or it does not show conduct serious enough to warrant further action, or on the basis that the issues have been resolved.



- If there are competency concerns, the lawyer may be referred to the Practice Standards Committee for remedial measure to improve their practice.
- If there are ethical concerns or breaches of the Law Society Rules, the lawyer may be referred to the Discipline Committee for further action (disciplinary response).

The Discipline Committee is composed of Law Society Benchers (ie, its governors) including elected and appointed Benchers, plus the Attorney General of BC or the Deputy on behalf. The Discipline Committee has authority to impose a range of outcomes that include initiating public hearings that could result in fines, a suspension or being disbarred.