

## Corporate/Firm Internal Complaint Handling

### Introduction

This title provides an outline of the issues professional associations should consider when developing guidelines for their members firms in adopting internal complaint handling procedures. In contrast, external complaints handling systems for reviewing internal firm decisions are dealt with in the associated title on corporate/firm external complaint and discipline systems. It uses examples from the professions/occupations of doctors, lawyers, accountants, engineers and financial planners to illustrate the various issues and draws on the Professional Standards Act's 'Model Code' for complaints and discipline.<sup>1</sup>

This title has the following parts:

- Role of Internal Complaint Handling Procedures;
- Varying Requirements among the Professions;
- Elements of Internal Complaint Handling;
- Stages of an Internal Complaint Handling Process; and
- Summary.

### Role of Internal Complaint Handling Procedures

One of the hallmarks of a profession is its commitment to ensuring high standards of client service and internal complaint handling procedures are an essential part of maintaining high standards. Some professions (and occupations) have internal procedures mandated by government legislation, while others have requirements or guidelines set by their professional association. However, even where there are no requirements, it is still important for firms committed to high standards of client care to implement internal complaint handling procedures. Having such procedures benefits not only the clients, but also the firm as, if clients are unsatisfied, the firm will likely lose them and risk damaging its reputation.<sup>2</sup> Internal complaints handling can 'nip issues in the bud' and often avoid a matter escalating to an external complaints handling system, which will inevitably be more complex, prolonged and expensive for the firm and include the potential for a tribunal or court case. Homburg and Fürst argue that good complaint handling can drive customer loyalty, particularly where procedures are seen as fair and robust.<sup>3</sup> Brenner emphasises the important role internal procedures have in conflict resolution.<sup>4</sup> As the government regulator of financial planners, the Australian Securities and Investments Commission ('ASIC'), notes:

It is better for all parties if a complaint or dispute is dealt with at the earliest possible stage because it (a) prevents complaints or disputes from becoming entrenched; (b) preserves customer

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<sup>1</sup> For NSW, see *Professional Standards Act 1994* (NSW) sch 1 '*Occupational Associations (Complaints and Discipline) Code*' ('*Model Code*').

<sup>2</sup> See, eg, Sara Carvajal et al, 'The Impact of Personalization and Complaint Handling on Customer Loyalty' (2011) *African Journal of Business Management* 13187.

<sup>3</sup> Christian Homburg and Andreas Fürst, 'How Organizational Complaint Handling Drives Customer Loyalty: An Analysis of the Mechanistic and the Organic Approach' (2005) 69 *Journal of Marketing* 95.

<sup>4</sup> Michelle Brenner, 'Not Happy and Letting You Know It' (2009) 20 *Australian Dispute Resolution Journal* 112,113-4.

relationships; (c) is often the most efficient and cost-effective way for an organisation to deal with complaints or disputes; and (d) may improve customer satisfaction.<sup>5</sup>

Chalmers goes further than this, arguing that any complaint handling system should have at its core a sense of ethical fairness which will then support a firm's notion of it as being responsible and accountable.<sup>6</sup> In the wider sense, having such systems also helps maintain the reputation of the profession more generally.

## Varying Requirements among the Professions

As with the title on external complaints handling, this title considers five professions/occupations – doctors, solicitors, accountants, engineers and financial planners – to illustrate the extent and variety of the requirements that government and professional associations have for internally handling complaints. These range from non-existent through to very detailed (see Figure 1).

### Doctors

Doctors throughout Australia are regulated by the Health Practitioner Regulation National Law.<sup>7</sup> However, while the regime has detailed requirements for external complaints handling,<sup>8</sup> it has no requirements for a doctor's practice to have any internal complaints handling procedures. The two peak professional associations for doctors in Australia, the Australian Medical Association and the Royal Australian College of General Practitioners, also do not provide any requirements or guidance on internal complaints handling procedures.<sup>9</sup> Thus, unless a practice has established its own voluntary procedures, a patient's only option is to take a matter directly to the relevant government authority, the Medical Board of Australia.<sup>10</sup>

### Lawyers

Each State and Territory in Australia has its own legislative regime covering lawyers. However, the majority, NSW and Victorian lawyers, are regulated by the Legal Profession Uniform Law.<sup>11</sup> However, as with doctors, while this regime has a comprehensive external complaints regime,<sup>12</sup> it has no requirement that a firm have any internal complaint handling procedures.<sup>13</sup> The primary professional association for NSW solicitors, the Law Society of NSW, also has no requirements or guidelines. An aggrieved client would need to take their complaint directly to the external complaints regime run by the government regulator, the Office of the Legal Services Commissioner, where a firm has not voluntarily developed its own internal procedures.

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<sup>5</sup> ASIC, *Regulatory Guide 165: Licensing: Internal and External Dispute Resolution* (July 2015) 18-9.

<sup>6</sup> Sally Chalmers, 'Ethical Fairness in Financial Services Complaint Handling' (2016) 34 *International Journal of Bank Marketing* 570.

<sup>7</sup> For NSW, see Health Practitioners Regulation National Law (NSW).

<sup>8</sup> See Health Practitioners Regulation National Law (NSW) pt 8 div 3.

<sup>9</sup> See generally Australian Medical Association's website <<https://ama.com.au>>; Royal Australian College of General Practitioners' website <<http://www.racgp.org.au>>.

<sup>10</sup> See Medical Board of Australia, *About* <<http://www.medicalboard.gov.au/About.aspx>>.

<sup>11</sup> In NSW, *Legal Profession Uniform Law 2014* (NSW).

<sup>12</sup> *Legal Profession Uniform Law 2014* (NSW) ch 5 pts 5.2-5.6.

<sup>13</sup> The *Legal Profession Uniform Law* also applies in Victoria, while other States and Territories have their own legislative regimes.

## Accountants

Accountants in Australia are not regulated by any profession-specific legislative regime and, therefore, there are no government requirements for either internal or external complaints handling procedures. To fill this gap, the two, main accountant professional associations, CPA Australia and Chartered Accountants Australia and New Zealand, have produced some joint guidance on internal complaints handling processes, however it is very brief at only a couple of pages.<sup>14</sup> Where a client wants to appeal, Chartered Accountants Australia and New Zealand has established an external complaints handling system for its members in the absence of a government regime.<sup>15</sup>

## Engineers

The only profession-specific legislative regime regulating engineers in Australia is in Queensland, the *Professional Engineers Act*.<sup>16</sup> However, as with doctors and lawyers, while it mandates procedures for external complaints handling,<sup>17</sup> it has no requirements or guidelines for internal complaints handling procedures. Also, as with doctors and lawyers, the main professional association, Engineers Australia, has no requirements or guidance regarding internal complaints handling procedures.<sup>18</sup>

## Financial Planners

Financial planners are regulated by the *Corporations Act*<sup>19</sup> and, unlike the other government regimes detailed above, the Act has very detailed requirements for both internal and external complaint handling. The internal complaint handling requirements are 18 pages in length.<sup>20</sup> These are based on and supplemented by generic industry guidelines developed by Standards Australia, a non-government organisation.<sup>21</sup> The primary professional/occupational association is the Financial Planning Association of Australia ('FPA'). While it is a very active association, often setting requirements for members above those of the legislated regime, it has no requirements or guidelines on internal complaints handling procedures, possibly due to the detailed nature of ASIC's requirements.

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<sup>14</sup> Accounting Professional and Ethical Standards Board, *APES 320: Quality Control for Firms* (2015).

<sup>15</sup> Chartered Accountants of Australia and New Zealand, *Making a Complaint against a Member* <<https://www.charteredaccountantsanz.com/about-us/complaints/complaints-about-a-member>>.

<sup>16</sup> *Professional Engineers Act 2002* (Qld).

<sup>17</sup> *Ibid* pt 3 div 2.

<sup>18</sup> See generally Engineers Australia website <<https://www.engineersaustralia.org.au/>>.

<sup>19</sup> *Corporations Act 2001* (Cth).

<sup>20</sup> ASIC, *Regulatory Guide 165*, above n XX, 15-33.

<sup>21</sup> Standards Australia, *Australian Standard AS ISO 10002 – 2006 Customer Satisfaction – Guidelines for Complaints Handling in Organizations* (2006); now superseded by Standards Australia, *Australian Standard (AS ISO 10002–2014) Australian/New Zealand Standard: Guidelines for Complaint Management in Organizations* (2014).

Figure 1: Variety of Internal Complaint Handling Requirements

Profession/ Occupation	Regulation and Professional Association	General Requirements	Referral for External Complaints Handling
Doctors	Main government regulator is the Medical Board of Australia under the <i>Health Practitioner Regulation National Law</i> .  Main two professional associations are the Australian Medical Association and the Royal College of General Practitioners.	No government requirements or guidelines.  No professional association requirements or guidelines.	Can refer a matter externally to the Medical Board.
Lawyers	Main government regulator for NSW solicitors is the Office of the Legal Services Commissioner (OLSC) under the <i>Legal Profession Uniform Law</i> .  Main professional association is the Law Society of NSW.	No government requirements or guidance.  No professional association requirements or guidance.	Can refer a matter externally to the OLSC.
Accountants	No specific government regulator or legislation.  Main professional associations are CPA and Chartered Accountants.	No government requirements or guidance.  Modest amount of professional association guidance by the CPA/Chartered Accountants in <i>APES 320 Quality Control for Firms</i> .	No government requirements or guidance.  Clients of Chartered Accountant member firms can refer a matter externally to the Chartered Accountant's Professional Conduct Committee and the Disciplinary Tribunal. No CPA requirements or guidance.
Engineers	The Queensland government regulator is the Board of Professional Engineers of Queensland established by the <i>Professional Engineers Act</i> .	No government requirements or guidance.  No professional association requirements or guidance.	In Queensland, can refer a matter externally to the government Board of Professional Engineers.

## Elements of Internal Complaint Handling

There are several elements to ensuring that a firm's internal complaints handling procedures are adequate and that the complaints are dealt with 'genuinely, promptly, fairly and consistently'.<sup>22</sup> These include, among other things, ensuring procedures are suitable and that they are properly documented and available to staff. The firm should also retain records of complaints received, deal with them in a timely manner and ensure potential conflicts of interest are minimised through proper management procedures.

### Suitability of the Procedures

The firm should ensure that their internal complaints handling procedures are suitable to the nature of the firm. Thus, the details may depend on, for example, the size of the firm, the type and range of services, the nature of the clients or customers and the range of potential complaint complexity.<sup>23</sup>

### Procedure Documentation and Availability

A firm should have its internal complaint handling procedures properly documented and available to relevant staff, whether as a hard or electronic copy. For financial planners, ASIC makes this a specific requirement<sup>24</sup> and requires there also be an easy-to-use guide.<sup>25</sup> Ideally, there should also be a procedure for maintaining and updating the documentation.

<sup>22</sup> ASIC, *Regulatory Guide 165*, above n XX, 18.

<sup>23</sup> See, eg, *ibid* 18.

<sup>24</sup> *Ibid* 31.

<sup>25</sup> *Ibid*.

## Keeping a Record of Complaints

It is important that the internal complaints handling system include an effective process for recording complaints, the processes that has occurred and the outcomes. This will ensure that the firm has proper records if the complainant eventually escalates the matter externally, including any court proceedings. Further, it provides the firm with data which they can then use to identify systemic issues within the firm allowing them to address those issues. As ASIC describes it, 'accurate and complete complaints and disputes data can be invaluable to improving products, services and business systems'.<sup>26</sup>

## Timeliness

It is important that the process specifies time limits as much as possible. For example, there should be a time limit for a firm to acknowledge a complaint, such as within two days. There should also be a time limit, for example, between when the firm makes its decision and when it informs the parties of that decision. Financial planners must normally provide a decision on a complaint within 45 days,<sup>27</sup> while the Model Code, notwithstanding that it relates to external complaints handling, which is often more complex, requires this to be within 30 days.<sup>28</sup> Other time limits could also be placed on the various stages in an investigation either as strict deadlines or as general guides.

## Avoiding Conflicts of Interest

It is important that there be mechanisms to ensure that the investigation is not, nor perceived to be, biased or involves a conflict of interest. Accordingly, the investigator should normally be someone in the firm with no connection to the matter. There may be occasions where a firm should outsource the matter to an external investigator. For example, the CPA Australia/Chartered Accountants' guidance recommends that where a smaller firm does not have an independent partner available to supervise an investigation, it 'may use the services of a Suitably Qualified External Person or another Firm to carry out the investigation'.<sup>29</sup>

## Stages of an Internal Complaint Handling Procedure

A firm's internal complaint handling process will normally include receiving the complaint, an initial investigation, obtaining the response of the relevant individuals within the firm, a further investigation, deciding and finally managing any appeal to an external complaint handling system (see Figure 2).

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<sup>26</sup> ASIC, *Regulatory Guide 165*, above n XX, 21.

<sup>27</sup> ASIC, *Regulatory Guide 165*, above n XX, 24.

<sup>28</sup> *Model Code* cl 8.

<sup>29</sup> Accounting Professional and Ethical Standards Board, above n XX, 25.

Figure 2: Stages of an Internal Complaints Handling Procedure



## Receiving the Complaint

A threshold issue is who can make a complaint. This should normally include both existing and previous clients, given some matters can take time to surface. However, it may also be valuable to allow third parties affected by a decision or action of the firm to make a complaint, particularly where they have standing to pursue the matter externally. Some restrictions may, however, be appropriate as to who can complain. For example, while the *Model Code* allows for any person to make a complaint and is not limited to just clients,<sup>30</sup> financial planners are instead only required to accept complaints from retail clients.<sup>31</sup>

The procedures should also set out how to make a complaint including, for example, that the complaint must be in writing, include the complainant's details and set out the nature and facts of the complaint and what the complainant is seeking. The *Model Code* stipulates that a complaint 'must be in writing and contain the particulars of the allegations on which it is founded'.<sup>32</sup>

Where a firm has professional indemnity ('PI') insurance or is part of a compensation scheme, it will usually also need to decide early on whether to inform the insurer or scheme of the complaint, even where it does not decide until later to make a formal claim. For some professions/occupations such as doctors<sup>33</sup> and financial planners,<sup>34</sup> PI insurance<sup>35</sup> is mandatory. For NSW solicitors, the legislative regime requires them to contribute to a Legal Practitioners Fidelity Fund compensation scheme.<sup>36</sup>

## Initial Investigation

Upon receiving a formal complaint, it is usually prudent for a firm to do an initial investigation to understand the details and context of the complaint before informing any staff. For example, it may want to confirm the identity of any relevant staff involved and what evidence it may have that relates to the matter (such as firm documentation or emails) over and above what the complainant has provided.

## Defendant's Response

The next step, where the complaint accuses specific staff (that is, defendants), is to give them the opportunity to respond both in the interests of natural justice and to understand their version of events. This should include providing any defendants with a copy of the written complaint. In more serious or complex matters, the procedures should allow the defendant time to prepare a formal written response.

<sup>30</sup> *Model Code* cl 4.

<sup>31</sup> *Corporations Act 2001* (Cth) s 912A(1)(g).

<sup>32</sup> *Ibid* cl 5.

<sup>33</sup> *Health Practitioner Regulation National Law* (NSW) s 129.

<sup>34</sup> ASIC, *Regulatory Guide 126: Compensation and Insurance Arrangements for AFS Licensees* (December 2010).

<sup>35</sup> See generally John Morgan and Pamela Hanrahan, 'Professional Indemnity Insurance: Protecting Clients and Regulating Professionals' (2017) 40 *University of New South Wales Law Journal* 140.

<sup>36</sup> See Law Society of NSW, *Legal Practitioners Fidelity Fund*

<<https://www.lawsociety.com.au/ForSolicitors/professionalstandards/FidelityFund/index.htm>>.

## Further Investigation

Next, the firm needs to investigate the matter fully to uncover all the available evidence, including discussing with all other relevant staff or third parties. Unlike external complaint handling procedures, it is unlikely a formal hearing would be needed, but it is essential that the firm takes a balanced view on all the available evidence. If accused parties wish to seek legal advice, it would be prudent for the internal procedures to expressly allow this given the parties already have this right. As part of this process, the firm may want also to investigate whether the complainant might be open to some form of settlement or to engage in mediation or conciliation. The *Model Code* sets out several possible actions following a complaint including requesting further particulars, carrying out the investigation, attempting to resolve the complaint through conciliation or declining to entertain the complaint because, for example, it is frivolous or vexatious.<sup>37</sup>

## Decision

Following the investigation process, the firm will need to make a formal decision responding to the complaint. The complaint handling procedures should set out the various decision options available to the firm and the pros and cons of each. Possible decisions fall into two categories: recompense for the complainant and/or discipline of the defendant. Recompense for the complainant can range from a simple apology through to monetary compensation or other benefits such as a replacement service or product. Discipline can include a warning, a rebuke, suspension or termination of employment, or referral of the matter to the professional association or the government regulator. The firm should provide the complainant with a formal, written decision letter and, where appropriate, also provide any defendants with a copy. Where there is a right to appeal either under government legislation or a professional association's rules, best practice is for the decision letter to advise the complainant of this. This may sometimes be a legislative requirement, such as for financial planners, who must advise a complainant of their right to appeal and how to appeal.<sup>38</sup> Indeed, the regulator, ASIC, sees this as one of its three key requirements for internal complaints handling procedures.<sup>39</sup>

## External Appeal

As noted above, many legislative regimes and professional associations have established external complaints handling processes that a complainant unsatisfied with the internal process can then turn to. This usually allows for a formal appeal to a government tribunal, for example, the NSW Civil and Administrative Tribunal for matters relating to NSW lawyers<sup>40</sup> or the Commonwealth Administrative Appeals Tribunal for matters relating to financial planners,<sup>41</sup> with such appeals generally being a full review of the matter based on the merits. Alternatively, or in addition, a complainant can also appeal to the courts, though this is generally only allowed on limited grounds such as bias or unreasonableness in making the earlier decision.<sup>42</sup>

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<sup>37</sup> *Model Code* cl 6.

<sup>38</sup> ASIC, *Regulatory Guide 165*, above n XX, 32.

<sup>39</sup> *Ibid.*

<sup>40</sup> Law Society of NSW, Professional Standards, 'Complaints Process Information' <<https://www.lawsociety.com.au/cs/groups/public/documents/internetcostguidebook/026150.pdf>>; see generally Gino Dal Pont, *Lawyers' Professional Responsibility* (Law Book, 5th ed, 2012) pt 5 'Discipline of Lawyers'.

<sup>41</sup> *Corporations Act 2001* (Cth) s 1317B.

<sup>42</sup> *Administrative Decisions (Judicial Review) Act 1977* (Cth).

## Summary

This title explains some of the key issues a professional association should consider when developing best practice guidance for its member firms in establishing their internal complaint processes. The title considers the role of the internal complaint handling and emphasises why it is in the interests of not only the client but also the firm to have well developed and implemented procedures. It uses the examples of five professions/occupations, namely, doctors, lawyers, accountants, engineers and financial planners, to show just how varied government regimes and professional associations can be in their requirements. It then identifies and discusses briefly some of the key issues to consider for each step in the complaint handling process.

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