

## THE SOCIETY OF WILL WRITERS

### COMPLAINTS PROCEDURES

#### 1. Introduction

- 1.1 In this document 'Society' and 'member' shall have the same meanings as attributed in the Society's Code of Practice
- 1.2 The primary objective of these procedures is to enable the Society to deal effectively with breaches of the Code of Practice by members.
- 1.3 Breaches include instances where members have failed to maintain the high standards of professionalism, quality of work and ethics that is required within the profession and by the Society to ensure consumer confidence in the provision of Will writing and other associated services is maintained.
- 1.4 The Society expects its members to embrace and adhere to the notion of "treating customers fairly". A member who does not treat customers fairly will be in breach of the Code of Practice.
- 1.5 In affirming compliance with the Code of Practice each member of the Society affirms that he will be bound by the Society's disciplinary procedures in the event of a breach of Code provisions.
- 1.6 Complaints take time, which costs money, to resolve. The Society has a responsibility to be fair to the member being investigated as well as dealing with the complainants concerns. The time taken can be disproportionate and involve senior personnel including the Society's Director General.
- 1.7 It is true that a large number of complaints can generally be resolved by the member without any need to involve the Society. Once the Society becomes involved many hours can be spent on resolving complaints caused by a few members and not on otherwise productive activities for the benefit all members.
- 1.8 When a complaint is first brought to the attention of the Society the member who is the subject of the complaint will be notified and given 7 (working) days to resolve the matter to the satisfaction of the complainant. Should the member fail to resolve the matter within this time the complaint will be passed to the Society's complaint's procedure when the member will be required to pay a non-refundable Investigation Charge of £150.00 (£250.00 where either estate administration or a trust is involved) to the Society for each recorded complaint. The DG has an absolute discretion to waive the Investigation Charge if in his sole opinion the circumstances merit.
- 1.9 The Society has since its inception handled complaints to the satisfaction of the majority of its members and the public alike. It is imperative that this standard of satisfaction is maintained and the following procedures will ensure that objective is achieved.
- 1.10 The purpose of this document is to place the Society's complaints procedure on record for the benefit of members.

## **2. What is a complaint?**

- 2.1 The Society defines a complaint against a member as: 'any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an eligible complainant about the member's provision of, or failure to provide, will writing services'.
- 2.2 The bottom line is that if a customer expresses dissatisfaction verbally or in writing then the member needs to put things right.
- 2.3 If the member can do this by the end of the next business day, the member – and his customers - has everything to gain.
- 2.4 Resolving complaints by the end of the next business day – the benefits:  
a happier customer, leading to improved customer loyalty  
offers the member the chance to examine and put right weaknesses in their in-house services early on, reducing future similar complaints reduces the need to embark on any follow up correspondence requirements under the Society complaints rules  
no need to report complaints resolved within one business day to the Society – reducing administration
- 2.5 'Putting things right' could be simple as:  
carrying out a simple fact check into what happened and  
verbal acknowledgment of poor service and an apology (and, if relevant providing clear details of the actions to be taken)  
verbal feedback offering clarification if it appears that the customer may have misunderstood  
verbal confirmation that action has been taken to correct an error  
confirmation by the member of what has been done to prevent the error from happening again

## **3. Receiving and monitoring the complaint**

- 3.1 The Society will not investigate a complaint whether made by a member of the public or any other party unless it is in writing.
- 3.2 On receipt of the complaint the Society will require the member to produce evidence confirming that the member's own complaint procedures have been fully exhausted together with full reasons why the complaint has not been successfully resolved.
- 3.3 The complaint will be acknowledged and the complainant will be advised that a copy of his complaint will be supplied to the Member complained against as will copies of any further evidence supplied by the complainant.
- 3.4 The Society will advise the member that a complaint has been received and invite the member's response.
- 3.5 The complainant consumer must exhaust the complaints procedures of the relevant member and / or their company before the Society may investigate the complaint fully. If the member's procedures have been exhausted the consumer must receive an SWW Complaints Form and complete this in full. The member must receive a copy of this.

- 3.6 Upon receipt of the copy Complaints Form, the member must arrange for the consumer to confirm in writing that the complaint has been withdrawn or resolved by the end of business 7 working days.
- 3.7 If within 7 working days this confirmation has not been received, the SWW investigation commences automatically. The member is required to pay by return the £150 Investigation Charge (no VAT) if the complaint is about will writing services, including the provision of powers of attorney or £250.00 (no VAT) where the complaint is about Estate Administration Services or the provision of a trust.
- 3.8 The Investigation Charge is non-refundable except where the Director-General in the exercise of his absolute discretion is satisfied that there is either no evidence of the member being at fault or it is proved that the complaint has been made mischievously or maliciously. In which case the Investigation Charge will be refunded in full to the member. In all other cases the Investigation Charge will be held by the Society for its general purposes.
- 3.9 The Society may require of the member or the complainant such evidence as it considers necessary to investigate the complaint and same shall be supplied to the Society within 14 days of the request.
- 3.10 In order to investigate complaints fairly time is of the essence. Unless any extension(s) to the time(s) laid down by these procedures is agreed in writing with the Society; should either the member or the complainant fail to adhere to the set timescales, or the member fails to pay the Investigation Charge as required, the Director General may determine the complaint as he sees fit.
- 3.11 All correspondence sent to a member shall be sent to his last known address as advised to the Society

#### **4. The handling of the complaint:**

- 4.1 In the first instance the complaint shall be determined by the Society's Complaints Administrator. The Administrator is responsible for investigating the complaint thoroughly and fairly.
- 4.2 If the nature of the complaint requires the intervention of the independent SWW Complaints Administrator to investigate, the file should be sent to the administrator for action. For all other complaints SWW staff will liaise with the member to negotiate an appropriate fair outcome to the complaint for the benefit of the consumer.
- 4.3 The Administrator must exonerate the member if the member is found not to be in breach of the Society's Code of Practice
- 4.4 If the Administrator finds that the member is in breach of the Society's Code of Practice the Administrator shall:  
order that the member refunds to the complainant either the whole or a part of the cost for the services that have been provided; and/or  
warn the member about his future conduct and/or  
order the member to undergo further training or  
order a full disciplinary hearing;

- 4.5 the Administrator will keep the Director General fully advised of the progress of individual complaints
- 4.6 A letter advising the member of SWW's formal complaint decision and the time period for compliance, must be sent to the member using "Signed For" delivery. Receipt must be confirmed using "track and trace" facility.
- 4.7 Following a decision by the Administrator that there has been a breach of the Code of Practice by the member the member may appeal against the decision and such appeal shall be heard before a Society Disciplinary Hearing held for that purpose; see below.
- 4.8 In cases where the Administrator finds that there has been no breach of the Code of Practice by the member, the decision will be passed to the complainant who has the right to appeal the Administrator's decision also before a Society Disciplinary Hearing.
- 4.9 A member may also be directed to attend a Society Disciplinary Hearing as ordered by the Director General at his discretion following the Administrator's decision.

## **5. Failure of a member to implement a decision of the SWW**

- 5.1 Failure to implement a decision after the full investigation procedure (and if appropriate, after any appropriate appeal has been exhausted) has recommended a specific course of action is a highly serious matter which could invalidate the membership agreement between the member and SWW. As such the following procedure must be followed in such circumstances.
- 5.2 If i) the member fails to provide written evidence that the SWW complaint decision has been fully implemented and ii) the consumer has not provided written confirmation that the complaint has been satisfied, both within the prescribed time period, the SWW member is automatically deemed to have terminated his SWW membership. The member is immediately suspended for a period of 21 working days subject to the discretion of the Director-General, which period must be used by the member to reconsider his approach to the consumer's complaint and to give the member a final opportunity to settle the complaint. Settlement is to be confirmed by the consumer providing written evidence to SWW that the complaint has been withdrawn.
- 5.3 As permitted by section 4.7 above, the member may appeal the formal SWW complaint decision within the 21 working days period. If the member's appeal is unsuccessful the following provision shall apply.
- 5.4 If the consumer does not provide the required confirmation that the complaint is withdrawn within the strict period of 21 working days, the member's suspension (subject to the discretion of the Director-General) is made final and the member is formally expelled from the Society by order of the SWW Director-General.
- 5.5 If during the period of 21 working days the member agrees to implement the formal SWW complaint decision to the satisfaction of the complainant consumer, the member may apply to the SWW Director-General for reinstatement of membership. Reinstatement is at the sole discretion of the SWW Director-General and may carry conditions dependent upon the nature of the complaint and the content of SWW's formal decision.

## **Complaints: how should your business deal with them?**

### **The starting point:**

Complaints are disruptive, dispiriting, full of negative energy, time consuming, indicative of structural problems, and to be avoided.

If you experience a complaint – something has gone wrong with any one or more of the following: your sales processes, your management, your training, or your consumer offering.

If you/your firm receive a complaint use the experience to examine your practices, look for a training need, question whether your internal processes adequately support your business activities, what could/should have been done differently?

### **The current legislation and complaints handling:**

When the Lord Chancellor (LdC) decided not to impose statutory legislation on the independent (non-solicitor) will writing industry in the Decision Notice published by the Ministry of Justice in May 2013 in answer to the Legal Services Board's (LSB) recommendation for reservation he confirmed that:

*“Instead of imposing the costs/burdens of increased regulation unnecessarily, further efforts should be made to see if such measures can be made more effective before resorting to the reservation of will writing activities as recommended by the Legal Services Board.”*

*“For example: strengthening of existing regulation combined with voluntary regulation schemes and codes of practice for non-authorized provider, and...”*

*“...Greater efforts could be made to educate consumers as well as greater use of existing consumer protections.”*

SWW supports the LdC's views. Since these comments were made (on 14 May 2013) the LdC has announced an all-embracing review of the legal services regulatory landscape, which will as part of its remit consider whether to bring will writing within the scope of legal services regulation.

The timescales within which the decision to review the regulation of will writing, could extend to a number of years. SWW believes that following the recent General Election the new Government may not consider a review to be a priority and as a consequence may not be undertaken and published before the next General Election in May 2020. A number of years could pass before the question of regulating non-authorized will writers becomes a priority once again.

Whereas SWW may from time to time offer guidance to members about their responsibility and compliance with statutory legislation that affects the supply of will writing services, members as business-owners remain entirely responsible for the legal compliance of their individual businesses such that ignorance of their legal obligations cannot be advanced as an excuse for the reason why a complaint has arisen.

SWW embraces these developments and works so as to strengthen the provision of self-regulation of SWW members for the benefit of consumers.

### **What is a complaint?**

The Society considers that a complaint is a complaint whether it is received from a client informally

or formally; for example in writing. A complaint can be any expression of dissatisfaction about you and/or your firm, the advice that has been provided, about the specific performance of a will or any other product or service that has been supplied, either made verbally or by email or in writing.

A complaint can include, but not exhaustively, instances where you are alleged to have failed in providing high standards of professionalism, quality of work and ethics that is required within the profession and demanded by the Society to ensure consumer confidence in the provision of Will writing and other associated services is maintained.

The bottom line is that if a customer expresses any dissatisfaction either verbally or in writing then the member needs to put things right. The SWW Complaints Procedure is the crucial document to which members must refer in these circumstances, and as it is incorporated into the Code of Practice it is considered an important condition to membership.

### **How should the member respond initially?**

Members are required by SWW to treat each and every complaint by a consumer as a serious matter requiring immediate attention and investigation. The member should establish by some writing the exact nature of the complaint. SWW considers that the member's immediate responsibility upon receiving a confirmed complaint is to put things right with the consumer. The complaint should be addressed and if possible resolved within 24 hours of its receipt.

### **How should a member deal with a complaint?**

Whereas each complaint should be treated according to its merits, SWW takes the view that complaints arise because of a failing in the member's business protocols. That failing may not be immediately apparent. SWW adopts the general view that consumers will resort to making formal complaints only when a member has failed to satisfy their expectations.

The immediate response by a member to a complaint must be to communicate with the complainant. Members should communicate without letting emotions cloud the matter. All communication should be carried out using the member's complaints protocol.

### **What is the member's responsibility when dealing with a complaint?**

By definition complainants do not enjoy complaining and members are required to manage the complainant to a satisfactory outcome using their own complaints protocol and without involving SWW. Members must consider how their business processes provide consumer protection, should a matter give rise to a complaint.

In all matters members are required to operate business models that manage the consumer's expectations. The reason for most complaints is as a result of the failure to manage the client, in terms of advice, timescales, and cost. The use of language is important as many of the services offered by the member are couched in legal terms and jargon and it is the member's responsibility to ensure that the consumer has a full understanding of the product/services provided.

### **What is the cost to your business and your reputation?**

Complaints cost money! The time and effort required to settle a complaint can be huge – for the consumer, the member, the SWW and very often other persons dragged into the argument. No one wins when a complaint is made. Even a full refund of fees is not a victory for the consumer. It is certainly not a victory for the member. Nor is a victory scored when SWW has to intervene and settle the argument.

SWW will investigate any complaint independently. However members should be aware that every complaint that is brought to the attention of the SWW is considered to be a failure by the member to fulfil the obligations owed to consumers.

If a member receives a complaint the member is expected to resolve the complaint immediately to the satisfaction of the consumer.

Complaints will devalue the reputation of the member and can reflect on the SWW especially when the consumer has turned to SWW because the member refuses to address and then resolve the complaint.

Complaint handling is about capping cost not creating extra costs either for the member or for the SWW.

### **SWW initial complaint handling and complaint tariff:**

The cost of the complaint to SWW is the time it takes to investigate. This invariably takes several hours, and can be upwards of 10 hours – time which should otherwise be spent on positive member activities.

If a complaint reaches SWW, by whatever means, the SWW will act as follows. Note that the full procedure is laid out clearly in the Complaints Procedure.

The SWW will acknowledge receipt of the complaint to the complainant by return. The member complained of will receive a copy of the acknowledgement to the complainant and a copy of the complaint details received.

The member will receive notice of the complaint made to the SWW by email and a hard copy forwarded by post.

The member is given a further seven working days from day that notice of complaint is sent to the member, to confirm to SWW that the complaint has been resolved to the complainant's satisfaction. Upon receipt from the member confirming that the complaint has been satisfactorily resolved SWW will write to the complainant confirming that the matter is resolved.

If after the further 7 working days have elapsed the member has not reported that the complaint is resolved, SWW Complaints Administration will automatically take over management of the complaint and write to the member and the complainant for further details to investigate and resolve the complaint.

In this event the member will receive an invoice for the complaints investigation charge (the tariff) of either £150.00 (no VAT) if the complaint is about will writing services, including the provision of powers of attorney or £250.00 (no VAT) where the complaint is about Estate Administration Services or the provision of a trust. This tariff is levied automatically on the member. The SWW Director General has the absolute discretion to refund any portion or all of the imposed tariff if the complaint is subsequently considered by the DG to be either malicious or vexatious.

The tariff is payable immediately upon receipt by the member and is to cover the cost of the subsequent complaint investigation by SWW.

### **How SWW treats a complainant:**

If the complainant continues to uphold the complaint against the member AFTER the 7 working days

period has expired and the member has confirmed that their own internal complaints procedures have been completed the SWW complaints administration will investigate the complaint by writing to the complainant and the member for full details. Both parties will be given the opportunity to explain their position.

When the SWW becomes involved in an individual complaint SWW will check that the member has provided the consumer i) with full details agreeing the details and origin of the complaint ii) the action that has been taken by the member to settle the complaint and iii) confirmation by the member that the member's complaints procedures have been completed. The Complaints Procedure provides full details of the processes which must be undertaken.

The members' actions in dealing with the complaint and the events leading up to the complaint will be examined against:

- i) their adherence to the members' own complaints protocol, and
- ii) the members' obligations under the SWW Code of Practice.

If the member has not fulfilled their obligations in respect of these requirements, the complaint is likely to be found in favour of the consumer and the SWW could require that all or part of the fees charged are to be refunded.

Members should understand that SWW does not tolerate members who pay lip service to consumer protection. SWW knows that members are involved on a daily basis dealing with legal matters that are by definition often difficult matters for consumers to understand fully. It is for this reason that SWW expects high standards from its members.

Complaints arise when members do not properly manage consumer expectations. SWW generally considers that complaints against members reported to SWW are due to the failure of the members' internal business processes.

Once SWW has become involved in a complaint that has not been properly settled by a member, the member acknowledges from the outset of SWW's involvement that the consumer's rights must be protected and the member further acknowledges that the complaint is now for SWW to settle. The member is bound by SWW's decision.

If the SWW finds that member has breached the SWW Code so that either suspension of membership or expulsion from the SWW is called for the member is automatically entitled to have the matter heard by a SWW appeals hearing.

SWW will if requested by the consumer arrange for an ADR mediation service to be provided at the expense of the member subject to the complaint.

### **The Role of CPD:**

Members are required to keep abreast of all technical developments in their areas of expertise as marketed by them to consumers. The use of the SWW online CPD facilities will assist members to fulfil their obligations in this respect.

### **The importance of the SWW Code:**

The SWW Code is the public document which is the cornerstone of the SWW self-regulatory regime that members are obliged to embrace. Each member pledges adherence to the Code and the principles espoused within the Code when the annual membership Declaration is completed.



Adherence to the Code is itself a voluntary act but while the member is in receipt of SWW membership benefits, adherence to the Code is mandatory. The Code is communicated to consumers and other will writing stakeholders as the basis on which members operate their businesses and their dealings with consumers. The SWW Complaints Procedure is incorporated into the Code of Practice and as such is an important condition to membership.

In the event of a complaint SWW will always check that the member's dealings with the consumer have been carried out according to the requirements of the Code.

### **Confirmation by the member that the complaint has been thoroughly investigated:**

In the event of a complaint the member is expected to find out the reason for the complaint and address any shortcomings in the dealings that the member has had with the consumer. The member is expected to address and if possible settle the complaint within 24 hours of receiving notice of the consumer's dissatisfaction.

SWW expects a member to complete his own complaints procedures and in the process to establish the reason for the complaint and to rectify the matter to the satisfaction of the consumer. This is the standard of protection that all SWW members are expected to provide for consumers.

The Code is the arbiter of SWW practice and each member is bound by its provisions. If a member cannot be bound by the obligations contained within the Code then that member immediately relinquishes membership and is obliged to resign.

### **The benefits of avoiding complaints:**

To the Consumer: the consumer must be confident that all dealings with an SWW member in providing prescribed legal services are subject to scrutiny by SWW in accordance with the Code and the consumer's legitimate expectations of a quality service and have been properly fulfilled by the member.

To your Firm: the existence of properly constructed complaints protocols are essential to the carrying out of proper dealings with consumers providing them with adequate protection for the supply of legal services including will writing and estate administration.

To the SWW: one of SWW's primary objectives is to provide consumers with protection in all their dealings with SWW members. This protection is achieved by ensuring that SWW members comply with the SWW Code of Practice when supplying legal services to consumers. The SWW brand is protected by robust complaint investigation procedures.

To the Wider Industry: SWW has pledged to the wider industry, including the Legal Services Board, that it will oversee the activities and actions of SWW members so that consumers who choose to apply to SWW members for the provision of legal services, can do so safe in the knowledge that the services provided by SWW members are of an acceptable standard and that their dealings with SWW members will always be fairly conducted – protecting consumers.

SWW Complaints Administration  
August 2015

## **Have you provided your client with the following?**

In order for the formation of a valid contract a number of requirements must be in place (offer, acceptance and consideration).

Also you must take account of and adhere to all relevant and specific legislation (required by the SWW Code of Practice (SWW-Cop)) and provide consumers with all of the information detailed in Section 4 of the SWW-CoP. if you have not fulfilled your obligations under Section 4 fully you may find a complaint by a consumer is upheld when investigated by SWW Complaints Administration.

In particular, have you provided the consumer (your client) with the following?

A copy of their agreed instructions, which they have confirmed by reading and signing?

Written confirmation of the consumer's instructions together with details of the service that you have recommended and contracted to complete, sent to the consumer by the member within 5 working days of the instruction meeting?

A copy of your Terms and Conditions or Business?

A copy of their cancellation rights?

Information about document storage?

For the avoidance of doubt, please note that in the event of a valid complaint made against a member by a consumer, an SWW Complaints Administration investigation will always assess whether the member has complied in full with the requirements of Section 4 of the SWW-CoP.