



FORMAL MEMORANDUM
APPLICANTS' REPRESENTATIVES:
INAPPROPRIATE CONDUCT

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Background

1. Effective representation, whether legal or otherwise, undoubtedly assists the Commission and the applicant. Whilst non-assisted applications will be thoroughly and effectively reviewed, it remains Commission policy to encourage constructive and effective representation in order that applicants may be assisted to put forward their best case.
2. Occasionally, the attitude of applicants' representatives causes delay or other issues in the review. This document sets out the Commission's approach to such matters, and prescribes a course of action when facing the question of whether continuing representation is in the applicant's best interests.

Delays by solicitors

3. Principle **12.10** of the Guide to the Professional Conduct of Solicitors (8 Ed., Law Society, 1999) states:

A solicitor should deal promptly with communications relating to the matter of a client or a former client.

1. A solicitor who fails to answer and deal with the issues raised in communications from a client or former client on that client's business may be subject to disciplinary action.
2. Where a solicitor received letters from third parties, or from solicitors acting on their behalf, relating to the business of a client or a former client, instructions should be sought from the client. Unless instructed to provide a substantive reply, failure to do so would not normally amount to professional misconduct. As a matter of courtesy, however, the solicitor should normally acknowledge such letters and may add that he or she will not entertain any further correspondence.
4. Solicitors will either have current instructions or will have seen an authority from a former client. Accordingly, they will usually be under a duty to deal promptly with correspondence from the Commission.
5. Case reviewers are expected to agree a timescale for obtaining information from solicitors. The case reviewer will aim to be as specific and helpful as possible, confirming precisely what is required. As a general rule, the Commission will regard 12 working days as a reasonable period of time for a solicitor to provide a response to the Commission.
6. If no response is received within 12 working days, the case reviewer will contact the solicitor again. Where there is no response within 5 working days, or the proposed timescale for a response is so long that it will inhibit the process of the review, the matter will be referred to the Director of Casework.
7. The Director of Casework may decide to contact the senior partner, pointing out that failure to respond could amount to professional misconduct. If the response to this approach fails to resolve the matter, a formal complaint may be made to the Consumer Complaints Service of the Law Society.
8. In some cases, the lack of solicitor co-operation may result in the need for a decision to be made in the absence of material or information requested. For further information see [Non-cooperation, absconsion and withdrawal](#).

Delays by counsel

9. Counsel can be expected to respond promptly to correspondence from the Commission. The case reviewer will be as specific and helpful as possible in identifying what is sought. Case reviewers will request a response or acknowledgement from counsel within 12 working days of the date of dispatch of the Commission's correspondence.
10. If no response is received the case reviewer will contact counsel's clerk. The case reviewer will seek to agree a timescale for a substantive reply, and will ask for a response within 5 days. If this contact fails to generate a response the matter will be referred to the Director of Casework.
11. The Director of Casework may decide to contact the head of chambers in order to request his/her assistance in resolving the matter.
12. If the response to this contact is unsatisfactory, the matter will be passed to the Legal Adviser. A formal complaint may be made to the General Council of the Bar.

Grounds for declining to deal with a representative

13. The Commission reserves the right to refuse to have dealings with an applicant's representative on any one or more of the following grounds:
 - (i) Offensive and/or abusive conduct towards any member of the Commission's staff.
 - (ii) Any deliberate or apparently deliberate dishonesty in connection with any application.
 - (iii) Any deliberate or apparently deliberate breach of confidentiality by disclosure of information to third parties in circumstances which appear not to serve the interests of the applicant or the progress of the review.
 - (iv) Any dishonest claim in relation to professional qualifications made by a representative whether such claim is made to an applicant or to a member of the Commission staff.
 - (v) Any other conduct, which in the view of the Commission is intended to impede or obstruct the progress of an application or is likely to act against the interests of the applicant concerned.

Procedure

Stage 2

14. The case reviewer will advise the Assigned Commissioner (AC) and/or Group Leader (GL) in the first instance. The case reviewer will ensure that

a record of the incident is made. If further action is considered to be appropriate the matter will be referred to the Director of Casework.

Stage 1

15. A similar approach will be adopted, involving the Casework Support Manager and/or a Stage 1 Commissioner.

Role of Director of Casework

16. If any such incident requires further action, details will be provided to the Director of Casework, who may decide that restricting contact with the Commission is appropriate. If so, both the representative and the applicant will be notified and will be given an opportunity to make representations before such action is taken.
17. Cases where it will be necessary to take formal action in respect of a representative will be rare. Every attempt will be made to resolve difficulties informally.
18. The Commission's objective will be that the best interests of the applicant should prevail. Nonetheless, the wish of an applicant to have a particular representative cannot be allowed to override considerations such as the integrity of the review process or the welfare of Commission staff.