

Delays: Common issues in legal practice

This fact sheet covers the importance of acting on client instructions promptly.

INFORMATION FOR LAWYERS

A common cause of client stress and frustration with lawyers comes from perceived or actual delays in the progress of their legal matters. These concerns often translate into complaints to the Victorian Legal Services Commissioner.

The *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* require lawyers to deliver legal services competently, diligently and as promptly as reasonably possible¹. Where lawyers fail to appropriately progress client matters the Commissioner may bring disciplinary action. Below are some of the more common issues seen in complaints about delay.

Delayed non-urgent work

Lawyers are expected to use their best endeavours to complete legal work as soon as reasonably possible. While delays of a few weeks may be unavoidable in every day practise, delays extending into months without any work being completed to progress files can constitute a breach of professional standards.

Although some matters may not seem urgent or are not the subject of formal deadlines, they should not be overlooked or postponed indefinitely in favour of other files. Where delays begin to extend beyond a reasonable timeframe lawyers should re-prioritise their work so as not to neglect otherwise less urgent files. As explained in the decision of *LSC v Galatas*² at a certain point non-urgent matters must be accorded a more urgent status simply because of the passage of time.

¹ Rule 4.1.3, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

² [Legal Services Commissioner v Galatas](#) [2013] VCAT 214 at 16

Release or transfer of client files

Upon the completion or termination of the law practices engagement, the ownership of the client's file rests with the client themselves. Lawyers are reminded that in the absence of a lien over the file, all documents (including those maintained electronically) to which the client is entitled must be given to the client as soon as possible after a request for them is made³.

Similarly where the client has transferred their matter to the care of a new lawyer, client documents should be forwarded to the new lawyer promptly. Serious delays in providing the file to the client such as those seen in *LSC v Horsley*⁴ can result in disciplinary action.

Payment of trust monies

Trust monies owed to a client must be forwarded on to the client promptly when they become payable. Lawyers who fail to deliver trust monies without a reasonable excuse may be guilty of an offence⁵.

There are several cases (for example *LSC v Mingos*⁶ and *LSC v Chadwick*⁷) where lawyers have held on to their clients' trust monies for an extended period with no reasonable explanation for the delay. In these examples the lawyers have been found guilty of professional misconduct and have been reprimanded.

³ Rule 14.1, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

⁴ [Legal Services Commissioner v Horsley](#) [2011] VCAT 875

⁵ See Sections 138 and 148(b) of the *Legal Profession Uniform Law (the Uniform Law)*

⁶ [Legal Services Commissioner v Mingos](#) [2013] VCAT 173

⁷ [Legal Services Commissioner v Chadwick](#) [2013] VCAT 1296

Inadequate communication with the client

The Commissioner regularly receives complaints about lawyers who fail to respond to phone calls and emails, or who cancel meetings with little or no notice. Often such situations are unavoidable, especially for lawyers in a busy practice; however the impact on clients of communication delays and abrupt changes of plans should be acknowledged by the lawyer. Even if the lawyer is not at fault delays and cancellations can cause clients significant distress and do not help foster a positive client-lawyer relationship.

It is incumbent on lawyers to manage their clients' expectations. Clear communication at the outset is essential to helping the client to understand a lawyer's capacity to respond to client demands. With some clients this information may need to be reiterated throughout the duration of the matter.

All due care should be taken to ensure clients remain well informed as to the progress of their matters. Regular updates by email or telephone can offer the client reassurance without consuming too much of the lawyer's time. This in turn can help reduce the possibility of complaints.

Lawyers have an obligation to provide clear and timely advice to their clients⁸. Repeated and extended communication delays fall short of the standard of competence and diligence expected of lawyers. Such conduct can bring the profession into disrepute. Disciplinary sanctions may apply in cases of significantly delayed communication, as in *LSC v Battiato*⁹ and *LSC v Morgan*¹⁰.

As seen in *Burgess v McGarvie*¹¹ the courts view excessive communication failings as constituting a serious breach of a lawyer's obligation to act with reasonable skill, care, promptness and professionalism.

Responding to requests for information from the Commissioner

It is not uncommon for a lawyer facing a client's complaint about delayed communication to also delay communication with the Commissioner.

The Commissioner has the power to require lawyers to provide a full written explanation of their conduct or any other information or documents that may be required to assist in the investigation of a complaint¹². A failure to comply within a reasonable timeframe is a serious breach of a lawyer's professional obligations and disciplinary action can result, as was the case in *LSC v McAuley*¹³.

Reasonable opportunities will be given to provide the information required before the Commissioner will consider initiating disciplinary action. If the lawyer continues to fail to meet requests (see *LSC v Shaba*¹⁴), or provides only part of the information or material requested, disciplinary action will usually be taken¹⁵.

The Legal Profession Uniform Law also allows the Commissioner to recommend to the Victorian Legal Services Board that a practitioner's practising certificate be suspended while a failure to comply with a request continues¹⁶.

Lawyers are encouraged to seek immediate assistance if there are factors either personally or professionally which affect their ability to comply with their professional obligations.

Further information

Contact the Victorian Legal Services Commissioner

Tel: 1300 796 344 (cost of a local call)

Email: admin@lsbc.vic.gov.au

⁸ Rule 7.1, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

⁹ [Legal Services Commissioner v Battiato \[2012\] VCAT 1279](#)

¹⁰ [Legal Services Commissioner v Morgan \[2010\] VCAT 1814](#)

¹¹ [Burgess v McGarvie \[2013\] VSCA 142](#) at 72

¹² Section 371 of the Uniform Law

¹³ [Legal Services Commissioner v McAuley \(Legal Practice\) \[2012\] VCAT 159](#) at 27

¹⁴ [Legal Services Commissioner v Shaba \[2014\] VCAT 256](#)

¹⁵ [Stirling v Legal Services Commissioner \[2013\] VSCA 374](#)

¹⁶ Section 466(7) of the Uniform Law