Complaints against
Members of
The Guernsey Bar

Guidance Notes

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**Introduction**

This booklet is designed to give information and guidance on the complaints process for people who have a complaint about their Guernsey qualified advocate and Guernsey qualified advocates who have a complaint made against them.

The booklet is in three sections:

**Section 1** gives information and guidance for people who want to make a complaint about an advocate. It explains how to make a complaint and the types of complaints that can be considered.

**Section 2** gives information and guidance for advocates who have a complaint made against them, including how to respond.

**Section 3** gives information for complainants and for advocates. It includes more detailed information about the disciplinary process.

**Important Note and Caveat**

**These notes are for guidance only.**

**They do not replace the law, have no binding force and do not affect any person's right of appeal.**

**Section 1 - Information on how to make a complaint about an advocate**

Most firms of Guernsey lawyers have their own complaints procedure which should be explained in the engagement letter you will have received from your lawyer after asking him or her to act for you. **Any complaint you may have concerning a Guernsey qualified advocate should, in the first instance, be referred to the person in the firm who is responsible for dealing with complaints. If that person is the advocate or solicitor you wish to complain about or if he or she is a sole practitioner then you should still raise your complaint with them first. If you cannot resolve your complaint in this way you should follow the guidance notes set out in this booklet.**

If you have complained directly to the Bâtonnier/President of the Chambre du Discipline ("the Chambre", the Advocates' disciplinary body) before complaining to the advocate they may refer your complaint to the lawyer’s firm before considering it͘.

**How do I make the complaint?**

All complaints must be in the standard complaint form which can be found at the end of this leaflet. You can also download the complaint form from the Guernsey Bar website [www.guernseybar.com](http://www.guernseybar.com).

**Does it cost anything to make a complaint?**

There is no charge for making a complaint.

**Who can I complain about?**

The disciplinary process can only deal with complaints about advocates who are qualified to practise in Guernsey (This includes Alderney and Sark).

Complaints against English Solicitors practising in Guernsey cannot be considered. Please refer to the Solicitors Regulation Authority ([www.sra.org.uk](http://www.sra.org.uk)) or the Legal Ombudsman ([www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)) if your complaint relates to an English Solicitor.

**What kind of complaint can I make?**

There are two types of complaint that can be dealt with namely

* Professional misconduct, and
* Inadequate or poor professional service

Some complaints come under both types. You do not have to decide which type your complaint is.

**Professional misconduct**

The Guernsey Bar Council has rules which govern how lawyers should practise and conduct themselves. A copy of these rules, known as the Code of Conduct, can be found on the Guernsey Bar website. Professional misconduct is when an advocate has breached the Code of Conduct.

In the absence of professional misconduct, you cannot make a complaint about a lawyer who is acting for someone else as he or she is only doing their job i.e. advising what is best for his or her client. Complaints cannot be made against that lawyer just because you do not agree with the advice being given to his or her client.

Examples of professional misconduct on the part of a lawyer are:-

o failing to keep your business confidential;

o failing to pay money which is due to you or not preparing accounts showing what is owed to you;

o acting for you and for someone else when you and the other person have different interests which conflict with each other;

o not handing over your papers and files;

o using your money without your permission;

o acting dishonestly or in a way that damages the profession’s reputation;

o misleading the court;

o acting against your instructions or best interests;

o dropping out of a case at short notice without good reason;

o inappropriate language and/or behaviour whether in Court or in public.

**Poor service**

Your complaint may be about the quality of the service you have received from your lawyer. Poor or inadequate service covers problems such as your lawyer:

o not doing what you have asked them to do;

o involving you in unreasonable delays;

o giving you inaccurate or incomplete information;

o consistently failing to reply to your phone calls and letters;

o not giving enough information about costs before beginning to act for you or prior to giving you the final bill;

o failing to advise you of any increase in the hourly rates which you have been advised would be charged;

o failing to keep you fully informed about what is going on with your case.

Complaints of this type can only be made by the lawyer’s client. Not all complaints will amount to misconduct. Once your complaint has been lodged the Bâtonnier will contact you to discuss the complaint and the way forward.

Only complaints relating to misconduct are dealt with under the Guernsey Bar Council's disciplinary process. The Guernsey Bar Council will endeavour to establish a way forward or resolution of complaints relating to service which are not deemed as misconduct through liaison with the lawyer concerned and, where appropriate, through formal or informal mediation.

**Are there complaints that cannot be dealt with?**

**Professional Negligence**

Professional negligence is a complicated legal concept that must be decided by the Royal Court. It is the duty of a lawyer to act properly and in the best interests of his or her client. Negligence happens where a lawyer has failed to do this. If your lawyer has been negligent, you may be able to take Court proceedings against him if the negligence has meant that you:

o have lost money; or

o have spent money trying to sort out the problems caused.

If you believe that your lawyer has acted negligently you should seek advice from another lawyer on whether you have grounds for a claim of professional negligence as soon as possible as there will be time limits after which it will be too late to make a claim.

If you are advised by another lawyer that, in his opinion, your previous lawyer has not acted negligently and that your claim would be unlikely to succeed, you may still feel that the service provided to you was poor͘ (See “Poor service” above).

You will be advised whether or not your complaint can be dealt with or whether it would be more appropriate for you to seek legal advice.

**Theft and dishonesty**

If you believe that your lawyer has acted dishonestly you should contact the police and the senior partner of the firm concerned. If the lawyer complained about is the senior partner or is in business on his or her own then you should contact the States of Guernsey Police and the Bâtonnier.

**Problems the Guernsey Bar Council cannot Help with**

The Law Society does not have the power to:-

o give you legal advice;

o comment on any advice given to you by your lawyer or on your complaint against your lawyer;

o comment on the outcome of any court case in which you have been involved;

o order a lawyer to pay compensation or reduce fees.

**What information should I send with the complaint form?**

A complaint must be submitted within six months of the last of the act(s) complained of.

There are guidance notes with the form explaining how to fill it in and what information is needed for each question.

When filling in the form, you should describe your complaint as clearly and concisely as possible and provide the evidence to support your complaint. Please attach copies of any documents that are relevant which may include:

o Court judgments;

o Transcripts of relevant hearings;

o Instructions given to your lawyer;

o Copies of relevant correspondence;

o Advice received from your lawyer.

Please send all the papers in together at the start rather than a little at a time. If you are not sure which documents are relevant, please send a list of the ones you have and you will then be asked to provide copies of the documents which seem to be relevant. Do not send original documents with your complaint unless you are asked to do so.

**What happens after I submit my complaint form?**

Your complaint will be reviewed by the Bâtonnier (the chairman of the Guernsey Bar) and the President of the Chambre .The Bâtonnier is a senior Guernsey advocate. The President is not a lawyer and is unconnected with the legal profession.

If you are, for some reason, unable to submit the complaint in writing then ask someone to assist you. The Bâtonnier and President can also ask you to provide further information so that they can make sure that they understand the main aspects of your complaint. If the Bâtonnier and President are satisfied that there are sufficient grounds for considering the complaint they will refer the matter to a disciplinary committee. If, having considered the details of the complaint, the Bâtonnier and President are satisfied that the complaint does not represent misconduct or that it is vexatious or frivolous, then he may decline to convene a disciplinary committee. You will find more information in section 3 below about the way in which complaints are investigated.

If the President and Bâtonnier dismiss the complaint the Bâtonnier will inform the complainant of the fact and reasons for that refusal.

**Section 2 - Information and guidance for advocates who have had a complaint made against them**

This guidance aims to answer some of the more common questions that advocates or solicitors have when a complaint is being investigated. The full process for dealing with complaints is explained in Section 3 of this leaflet and in The Guernsey Bar (Bailiwick of Guernsey) Law 2007.

**Why is a complaint against me being investigated?**

When a complaint of misconduct is received against an advocate or a firm or member of staff, the complaint is considered by the Bâtonnier and President, who can decide to dismiss it or to refer it to a disciplinary committee. You will then be told about the complaint and provided with any supporting documentation. You may be asked for comment or a response prior to a formal decision being taken by the Bâtonnier and the President. They act as a primary "filter" of unmeritorious complaints or ones falling outside of the scope of the Bar Law. The disciplinary committee may advise you of the date of a directions hearing, if one is necessary, at which a schedule for filing material will be decided and any other appropriate directions made.

**What if I want to provide confidential or privileged information with my response?**

You should provide a response that can be sent to the complainant so it should not include confidential or privileged information. However, if there is material that you do not want the complainant to see, you should provide this separately and clearly mark at the top that it is not for disclosure. You should also provide reasons why it should not be disclosed. Depending on the nature of the documents you provide, and the reasons for not disclosing them, the documents may be returned to you. This will mean that the disciplinary committee does not take them into account when considering the complaint.

**How should I respond to the complaint?**

There is no prescribed format for your response but it would be helpful to include:

o A chronological summary of the main facts and the principal issues related to the case and/or the complaint;

o Your response on each aspect of the complaint;

o Any supporting documents that you think are relevant to the complaint.

**Section 3 – The disciplinary process**

This section gives information for complainants and lawyers and explains the process in more detail. Full details of the process can be found in The Guernsey Bar (Bailiwick of Guernsey) Law 2007, sections 17 to 32.

If the Bâtonnier and President consider that a complaint merits an investigation they must ensure that the complaint is in writing and that there is sufficient information, including documentation, to establish exactly what the complaint is. Each and every allegation of professional misconduct must be set out so that the issues are clear and can properly be addressed and the facts in support of the allegations must be set out with references being made to any relevant documents. Once the Bâtonnier and President are satisfied that the complaint has passed the initial consideration stage and merits referral, the Registrar of the Chambre takes ownership of the progress of the case including further investigation of facts if needed. After the process of investigation and requirements for initial disclosure has been completed, the Registrar decides, upon consideration of the evidence, whether a *prima facie* complaint is made out which should be referred to the Chambre.

If a referral is made the President will then select members to constitute the Chambre and give directions to ensure that the complaint is considered fairly and expeditiously. This disciplinary committee will be made up of three members, one senior Guernsey Advocate, one senior lawyer who is not a Guernsey Advocate and an independent lay member. The Bâtonnier and President will ensure that none of the members of the disciplinary committee has a conflict of interest.

At the hearing the disciplinary committee can hear evidence from the complainant, the practitioner and agreed witnesses. Evidence can also be given by a statement in writing but there are strict rules which must be followed if either the complainant or the practitioner wants to rely on evidence in writing.

*The Registrar or an advocate nominated on his behalf will present the complaint. However, the complainant can also ask his own advocate to represent him at the hearing, although this will be at the complainant’s expense, the costs of which are not recoverable͘*.

Both the respondent lawyer and the Registrar will usually be directed to provide details of the people who will be attending the hearing, including those people who will be called as witnesses (if any) at least seven days before the date of the hearing.

The hearing is held in private and witnesses are only allowed to attend the hearing when they are giving evidence.

The complainant does not have a right but may be invited to be present for the whole of the hearing. The practitioner does have a right to be present. In any event if either or both parties choose not to attend, then the hearing can continue in their absence.

**It is important that all parties realise that the disciplinary committee does not sit as a court and does not follow and therefore is not bound by any rules which relate to courts in Guernsey. It should however be noted that any witness required by the Chambre itself to give evidence has the same privileges and immunities as if he were giving evidence before, or producing a document to, the Royal Court.**

**What happens after the hearing?**

After the hearing, the disciplinary committee will meet on its own to consider what it has heard and make a decision as to whether or not some or all of the allegations against the practitioner have been substantiated. You may be advised of this on the day of the hearing but it is more likely that you will be sent a letter setting out the decision which has been reached.

**What can the disciplinary committee do?**

At the conclusion of the proceedings, the Chambre shall give a reasoned decision in writing as to its findings in respect of the complaint and shall deal with it in one of the following ways –

(a) by dismissing it, or

(b) if it is satisfied the complaint is proved and that it constitutes professional misconduct by the respondent, by disposing of it –

(i) by privately reprimanding him,

(ii) by publicly rebuking him,

(iii) by fining him in a sum not exceeding level 3 on the uniform scale,

(iv) by ordering that he completes such training of such nature and duration as the Chambre shall direct and to provide satisfactory proof of compliance with this order to the Chambre,

(v) by suspending him from practice as an Advocate for a period not exceeding 3 months, or

(vi) by referring the complaint to the Royal Court for consideration of –

(A) fining him in a sum exceeding level 3 on the uniform scale,

(B) suspending him for a period of 3 months or more, or

(C) disbarring him.

The Chambre may, in addition to these disposals make an order that the respondent pay the reasonable costs, or a proportion of the reasonable costs, of the proceedings.

The Chambre shall send a copy of its reasoned decision to the complainant, the Registrar, the respondent, and Her Majesty’s Procureur.

Where the Chambre refers a complaint to the Royal Court it shall send a copy of its reasoned decision to the Court.

 However, before deciding on any sanction, the practitioner will usually be asked to make submissions to the disciplinary committee by way of mitigation. The complainant may be invited to attend to hear these submissions. However, if the mitigation is of such an exceptional nature that it should not be made public, the disciplinary committee shall, at the request of the practitioner, have the discretion to exclude the complainant from hearing the submissions in mitigation. Having heard the practitioner the disciplinary committee will make its decision. Although the sanction might be announced after hearing the mitigation, it is more likely that the decision will be set out in writing.

The disciplinary committee does not have the power to award any compensation, financial or otherwise, to the person making the complaint.

If the Registrar or the practitioner is not satisfied with the decision of the disciplinary committee then they have the right to appeal to the Royal Court. An appeal must be lodged within 28 days of the date upon which the decision of the disciplinary committee is sent.

**What can the Royal Court do if there is an appeal?**

The Royal Court shall give a reasoned decision in writing and also shall afford an opportunity to an Advocate instructed by the Registrar to present the facts as found by the Chambre, and the respondent to be heard.

The Royal Court shall have the powers of the Chambre as set out above and make any order as to the costs of the proceedings before the Court as it thinks fit.

**Appeal to the Court of Appeal**

The Registrar and the respondent can appeal on a point of law from the decision of the Royal Court upon lodging a notice of appeal within 28 days of the latter's reasoned decision.

**Additional information**

The Guernsey Bar (Bailiwick of Guernsey) Law 2007.

Copies of this Law can be found on the Guernsey Legal Resources website at [www.**guernseylegalresources**.gg/](http://www.guernseylegalresources.gg/).

**Contacts**

All correspondence should be sent to:

The Bâtonnier, Advocate Simon Davies, Ogier (Guernsey) LLP, Redwood House, St Peter Port, GY1 1WA For email to batonnier@ogier.com

**Guidance on filling in the complaint form**

Please read the information leaflet **“Complaints against members of The Guernsey Bar”** before filling in the complaint form. Also, please read the whole form before you begin filling it in.

Please fill in the form in **dark ink** and in clear writing, or *you can download it from our website* www.**guernseybar**.com/*and type your answers into the form*. If you need more space to answer any of the questions, please continue on extra sheets of paper.

Please answer all of the questions to enable the Bâtonnier and President to have a full picture relating to your complaint.

If you are complaining on behalf of someone else, you must get that person to sign the declaration on the form or, if that person is not able to sign the form (for example, if they are in prison or abroad), you must get a letter of authorisation from that person similar to the declaration on the form and attach the letter to the completed form.

Please tell us as soon as possible if any of your contact information changes while we are considering or investigating your complaint.

It is important that you describe the background of the complaint as clearly and concisely as you can, by explaining what happened. Please try to list your individual complaints about what the lawyer did or did not do as clearly as you can. This will help us understand your complaint.

Please tell us what you would like to happen to put things right. You should be aware that the disciplinary committee is not able to overturn the decision of a court or order a retrial. It is only able to provide the 'remedies' listed in the leaflet **“Complaints against members of The Guernsey Bar”.**

If your complaint is about a lawyer’s work in a court case, we need as much information as possible about the name of the court case, the court name, the date(s) of the relevant hearings, and the court reference number (if you know it). Please also give a brief description of what the case was about (for example, who brought the case against whom and why).

We also need to know if the court case is still continuing, whether the lawyer is still instructed, and the details of any appeal. If you are appealing the decision, we will usually delay considering your complaint until the appeal has ended. It is therefore important that you give as much information as possible about the stage the appeal is at.

We need to know when the behaviour that you are complaining about took place. If you are complaining about a lawyer’s actions at a court hearing, please provide the date(s) as accurately as you can.

If the behaviour was more than six months ago, we need to know why there has been a delay. Your complaint may be dismissed if there is not a good reason for the delay.

You should first complain direct to the lawyer’s firm. If you do not, we may refer your complaint to the firm to be investigated internally first. If there is a particular reason why you think we should not do this, please say why and we will consider your reasons.

When you have completed the complaint form, please read, sign and date the declaration. Please take a copy of the complaint form for your own records. Please send the form, with any documents which support your complaint, to the Bâtonnier, Advocate Simon Davies, Ogier (Guernsey) LLP, Redwood House, St Peter Port, GY1 1WA For email to batonnier@ogier.com.