

# Guidance on professional standards and reporting obligations

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*Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2021*

**November 2021**



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# Foreword

## Upholding our social contract

As lawyers, we have enjoyed for many decades the public's trust and confidence. Where we err, that confidence is eroded and trust diminishes. We all know what happened in 2018, when alarming issues emerged in the profession around bullying, discrimination, sexual harassment and violence. The resulting Cartwright report (2018) prompted a painful self-inspection by the profession, of the profession.

That journey prompted changes to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ("the rules") which came into effect 1 July 2021. These are the most substantial, regulatory changes on behaviour in the profession ever undertaken by the Law Society.

The good news is: they have been welcomed by most of our members, because they share the view of what we want to be, and certainly how we want to be perceived. Most lawyers understand that these rules reflect the moral attitudes and outlooks of Aotearoa New Zealand in 2021.

The new rules come with new obligations. They place an onus on law practices and lawyers in-house to identify and act upon unacceptable behaviour in relation to bullying, discrimination, harassment, racial harassment, sexual harassment, violence and theft. While this sort of behaviour has always been prohibited, it is now more explicitly defined in the rules.

The rules require that law practices and in-house lawyers report this behaviour to the Law Society where they have reasonable grounds to suspect that another lawyer may have engaged in misconduct. This will ensure that an appropriate response is forthcoming. Those affected by unacceptable behaviour are protected from victimisation. Support is available.

The rules also reflect the changing shape of our profession. Law graduates are now predominantly female, with increasing numbers of Pasifika, Māori and Asian lawyers - the very groups who, in the [Legal Workplace Environment Survey](#), reported the highest prevalence of bullying and harassment.

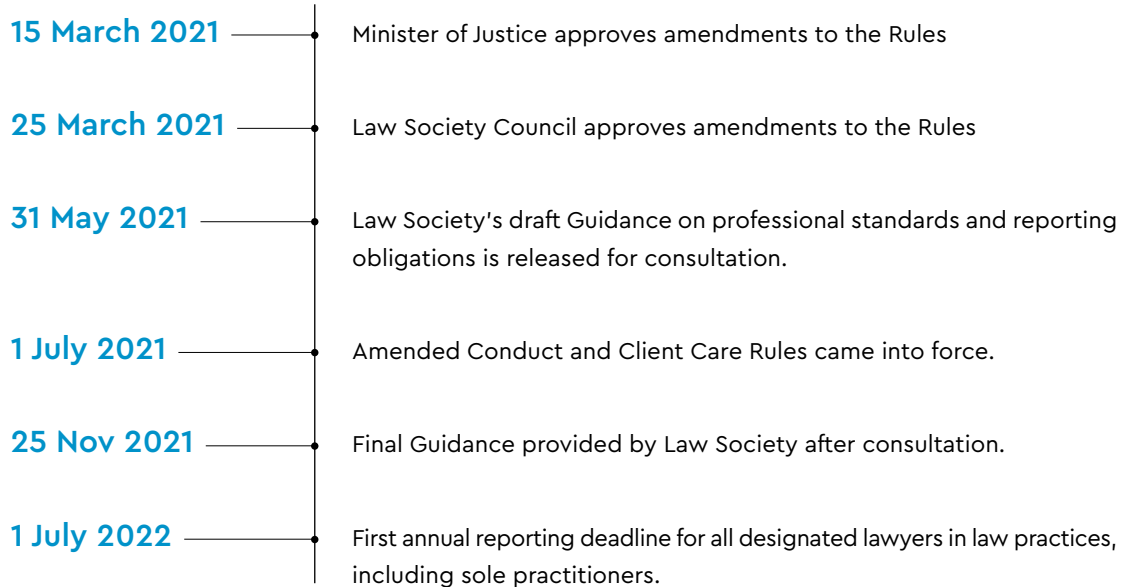
It is appropriate, therefore, to continue to shape our professional rules with the needs and outlook of our emerging profession in our sights.

This updated guidance is a refinement (in which you have been involved) along a continuum of improvements we are making. I ask that you take note, and act (if you have not already) to implement these changes.

Ngā manaakitanga

Tiana Epati

# Key dates



<b>15 March 2021</b>	Minister of Justice approves amendments to the Rules
<b>25 March 2021</b>	Law Society Council approves amendments to the Rules
<b>31 May 2021</b>	Law Society's draft Guidance on professional standards and reporting obligations is released for consultation.
<b>1 July 2021</b>	Amended Conduct and Client Care Rules came into force.
<b>25 Nov 2021</b>	Final Guidance provided by Law Society after consultation.
<b>1 July 2022</b>	First annual reporting deadline for all designated lawyers in law practices, including sole practitioners.

# Overview

## Purpose of this guidance

Rules governing the behaviour of lawyers, with an emphasis on tackling bullying, discrimination and harassment came into force from 1 July 2021. This guidance is intended to help you understand your obligations under the rules, and the changes to the reporting obligations that have been introduced for prohibited behaviour, and to help protect and support those affected by this type of conduct.

## Chapter 1: Reporting misconduct and unsatisfactory conduct

- If you have reasonable grounds to suspect that misconduct may have occurred, you must report it to the Law Society.
- Misconduct and unsatisfactory conduct in relation to lawyers are defined in sections 7 and 12 of the Lawyers and Conveyancers Act 2006 (LCA).
- There are limited exceptions, such as when the information has been received while providing confidential advice or support to another lawyer, or acting as a member of a Friends Panel. This exception does not apply if there is a serious risk to the physical or mental health or safety of another person, or if disclosure is needed to prevent a crime or a fraud.
- You can also report concerns for the welfare of another lawyer or legal employee to the Law Society.

## Chapter 2: Rules to protect employees and others

- There are clear expectations on law practices to protect all employees.
- Law practices must have policies and systems to prevent and protect employees, and other people the law practice engages with from prohibited behaviour, including procedures to investigate complaints.
- Law practices must have a designated lawyer who will report to the Law Society about conduct amounting to bullying, discrimination, harassment, theft, or violence.

## Chapter 3: Support for people affected

- If you or someone else have been affected by bullying, discrimination, harassment or other forms of prohibited behaviour, there is support and help available.
- Law Society options for support include:
  - Vitae Legal Community Counselling Service: 0508 664 981
  - Law Care free phone line: 0800 0800 28
  - National Friends Panel members who deal with sensitive matters.

## Chapter 4: What to do if you receive a complaint or a report

- All lawyers must have procedures for handling client complaints, and they must tell their clients about those procedures before they commence work for the client.
- All law practices must have effective policies and systems in place to prevent and protect employees, and people they engage with from the effects of prohibited behaviour.
- If you receive a notice of a complaint or a report from the Lawyers Complaints Service, you will be invited to respond.
- Lawyers are required to respond to enquiries from the Law Society respectfully and in a timely manner.
- You must not victimise the person who made the report or complaint.
- If you are subject to a complaint, you can contact a member of the Complaints Advisory Panel for free and confidential advice.

## Chapter 5: Terminating instructions: prohibited behaviour by a client

- A retainer can be terminated if the client's conduct towards a lawyer or person associated with the law practice amounts to bullying, discrimination, harassment, racial or sexual harassment, threatening behaviour or violence.
- Terminating a retainer in the circumstances above is consistent with a law firm's existing employer obligations under the Health and Safety at Work Act 2015, the Employment Relations Act 2000, and the Human Rights Act 1993.
- A law practice may take steps to protect its staff, but must ensure that any steps taken, such as reassigning the client to another lawyer at the law practice, does not unfairly disadvantage the staff concerned.
- Refusing instructions or terminating a retainer without genuine grounds for good cause may amount to unsatisfactory conduct or misconduct.

## The Law Society's regulatory role

The Law Society is responsible for regulating the legal profession in New Zealand and operates the Lawyers Complaints Service. This includes anyone who holds a New Zealand practising certificate regardless of whether they practise in New Zealand or overseas. The Lawyers Complaints Service handles all complaints about:

- a lawyer or a former lawyer
- an incorporated law firm or a former incorporated law firm
- someone who is not a lawyer but who is or was an employee of a lawyer or an incorporated law firm.

All law practices must have procedures for handling complaints and must tell clients and employees about those procedures.

## Standards and the legal profession

New Zealand lawyers are required to act at all times in accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC). The Rules are based on the fundamental obligations of lawyers. These are:

- to uphold the rule of law and to facilitate the administration of justice in New Zealand
- to be independent in providing regulated services to clients
- to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients
- to protect, subject to overriding duties as officers of the High Court and to duties under any enactment, the interests of clients.

## Lawyers Complaints Service

The Law Society administers the Lawyers Complaints Service. This provides a national system for handling all levels of complaints and reports about current or former lawyers, incorporated law firms and their employees. Independent standards committees are established to consider complaints or commence own motion investigations.

The Lawyers Complaints Service has a statutory duty under s 123(b) the LCA to deal with all complaints fairly, efficiently and in an effective manner. While the RCCC is primarily focussed on the conduct of lawyers, under s 132(1)(iii) of the LCA, the Law Society has jurisdiction to consider complaints about, and investigate, the conduct of employees of law practices. The thresholds for disciplinary action in relation to employees is set out at ss 11 and 14 of the LCA.

## Standards committees

A standards committee is a group of senior experienced lawyers and lay members who meet to consider complaints. There are 22 standards committees around the country. The standards committees also have power to intervene in legal practices and to commence own motion investigations. A standards committee has a range of responses depending on its findings. If it considers the matter very serious and strike off or suspension are potential outcomes, it can refer the complaint to the Lawyers and Conveyancers Disciplinary Tribunal. Decisions of standards committees can be reviewed by the Legal Complaints Review Officer.

# The Ministry of Justice's role

## Lawyers and Conveyancers Disciplinary Tribunal

The Lawyers and Conveyancers Disciplinary Tribunal hears and determines complaints referred to it by standards committees and the Legal Complaints Review Officer. Usually these will be the most serious complaints which can involve a public hearing. The Disciplinary Tribunal is administered by the Tribunals Division of the Ministry of Justice.

## Legal Complaints Review Officer

The Legal Complaints Review Officer (LCRO) independently reviews decisions made by the New Zealand Law Society and the New Zealand Society of Conveyancers standards committees on complaints against lawyers and conveyancers. The LCRO is employed by the Ministry of Justice. If a party to the complaint is dissatisfied with the standards committee's decision, they can ask the LCRO to review the decision.



# 1

## Reporting misconduct or unsatisfactory conduct

### Summary

- If you have reasonable grounds to suspect that misconduct may have occurred, you must report it to the Law Society.
- Misconduct and unsatisfactory conduct in relation to lawyers are defined in sections 7 and 12 of the LCA.
- There are limited exceptions, such as when the information has been received while providing confidential advice or support to another lawyer, or acting as a member of a Friends Panel. This exception does not apply if there is a serious risk to the physical or mental health or safety of another person, or if disclosure is needed to prevent a crime or a fraud.
- You can also report concerns for the welfare of another lawyer or legal employee to the Law Society.

### 1.1 What is misconduct and unsatisfactory conduct?

#### Misconduct

[SECTION 7 OF THE LCA](#) 

Misconduct includes conduct which would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable.

**Misconduct** [...] means conduct of the lawyer or incorporated law firm that occurs at a time when he she or it is providing regulated services and is conduct—

- (i) that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable;  
or
- (ii) that consists of a wilful or reckless contravention of any provision of this Act [...]

Misconduct can also include personal conduct that indicates that a lawyer is not fit to practise. This could include, but is not limited to, criminal convictions or addictive or prohibited behaviour that impairs a lawyer's ability to provide legal services.

## Unsatisfactory conduct

### SECTION 12 OF THE LCA [↗](#)

Unsatisfactory conduct is less serious than misconduct, and includes conduct that falls short of the standard of competence and diligence expected of a reasonably competent lawyer or conduct that lawyers of good standing would regard as unbecoming or unprofessional.

[...] **Unsatisfactory conduct**, in relation to a lawyer or an incorporated law firm, means—

- (a) conduct of the lawyer or incorporated law firm that occurs at a time when he she or it is providing regulated services and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer; or
- (b) conduct of the lawyer or incorporated law firm that occurs at a time when he she or it is providing regulated services and is conduct that would be regarded by lawyers of good standing as being unacceptable, including—
  - (i) conduct unbecoming a lawyer or an incorporated law firm; or
  - (ii) unprofessional conduct; [...]

Unsatisfactory conduct also includes any contravention of the LCA, any regulation or practice rule made under the LCA or any other rule relating to the provision of regulated services, or any breach of a practising condition or restriction.

## 1.2 When should I make a report?

Under Rules 2.8 and 2.9:

- you must report misconduct, and
- you have a discretion to report unsatisfactory conduct.

As a lawyer, you are required to submit a confidential report to the Law Society under rule 2.8 if you have reasonable grounds to suspect another lawyer may have engaged in misconduct.

As a lawyer, you have a discretion under rule 2.9 to make a confidential report to the Law Society if you have reasonable grounds to suspect another lawyer may have engaged in unsatisfactory conduct.

You can make a report or a complaint by:

- using the forms on the Law Society website, or
- emailing the Lawyers Complaints Service at: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz), or
- phoning 0800 261 801.

## Threshold for reporting

Rule 2.8 requires lawyers to make a confidential report to the Law Society, at the earliest opportunity, if they have reasonable grounds to suspect that another lawyer may have engaged in misconduct. Prior to 1 July 2021, rule 2.8 required that the lawyer must have reasonable grounds to suspect that another lawyer *has been guilty of misconduct*.

The Law Society’s experience was that some lawyers were uncertain about whether the rule required a lawyer to have evidence that is sufficient to prove the other lawyer’s guilt before the threshold for mandatory reporting was met. This uncertainty meant that some conduct issues that should have been reported were not.

The change to the threshold puts beyond doubt that proof of guilt is not part of the threshold test. At the same time, the key requirement that there must be “reasonable grounds to suspect” remains in the rule. This means that the obligation to report is not triggered by rumour or speculation; there must be evidence that provides “reasonable grounds to suspect” before the mandatory requirement to provide a report to the Lawyers Complaints Service is engaged.

So, for example, the fact that a lawyer hears an office rumour about a senior lawyer in the firm acting in a sexually inappropriate way towards a more junior lawyer does not in itself trigger the mandatory reporting obligation. But if the lawyer observed the behaviour or it was disclosed to the lawyer by the victim of the behaviour, then the obligation is triggered (subject to any applicable exception to mandatory reporting).

## Reasonable grounds

While you may choose to make a report, you are not required to do so based on rumour or speculation alone. You should consider how an objective, independent decision maker would view the information you have.

“Reasonable grounds to suspect” means that you have information that you can provide as part of or with your report that provides evidence of misconduct or unsatisfactory conduct.

At the same time, a reporting lawyer is not responsible for making a definitive decision on whether the evidence shows misconduct or unsatisfactory conduct. The reporting lawyer is not required to make a decision about guilt. The test is whether there are reasonable grounds to suspect another lawyer may have engaged in misconduct or unsatisfactory conduct.

## Case study: No direct knowledge

*Aroha is a barrister who receives instructions from time to time from the incorporated firm XYZ Lawyers Limited. Aroha hears a story from another barrister who says that XYZ does not provide its clients with written terms of engagement, in contravention of rules 3.4 and 3.5 of the RCCC. A wilful or reckless contravention of a rule in the RCCC is misconduct and a contravention that is not wilful or reckless is unsatisfactory conduct (subject to whether there may be a good excuse for the contravention in the circumstances of a particular case).*

*The story Aroha hears does not marry up with her own experience of XYZ – the firm has always provided written terms of engagement to its client in any case in which Aroha has been involved.*

*Does Aroha have a reporting obligation?*

**No.** The information Aroha has received is second hand from another barrister (who may have a reporting obligation if he has direct knowledge). Aroha has no direct knowledge or information herself about any rule breach by XYZ and her own experience is to the opposite effect. Aroha may make a report but is not obliged to.

### Case study: Reasonable grounds to suspect a breach of the rules

*Aroha is being instructed by XYZ for the first time. She notices that XYZ has not provided the client with written terms of engagement. Aroha raises this with the Principal of XYZ. The Principal says that the firm never provides written terms of engagement because he says it "locks us into unwelcome obligations – better to keep things flexible so that we can charge even more down the line if we win."*

*Does Aroha have a reporting obligation?*

**Yes.** Aroha has obtained direct knowledge, not a mere rumour or story, of a breach of rules 3.4 and 3.5 by XYZ. Further, the statement made to her by the firm's Principal indicates a wilful breach of the rules, which amounts to misconduct. It is not Aroha's role to have to decide whether the evidence is sufficient to prove misconduct before making a report. The information she has meets the threshold of reasonable grounds to suspect that XYZ may have engaged in misconduct.

### Case study: Discretion for inadvertent error

*Aroha is instructed by XYZ for the first time and notices that they have not provided written terms of engagement to the client. Aroha raises this with the Principal of XYZ, who apologises, and says that they have been so busy in recent weeks that their normal practice has slipped in this case. XYZ immediately rectifies their failure.*

*Does Aroha have a reporting obligation?*

**No.** Even assuming a rule breach (rule 3.5 requires written terms to be provided before carrying out significant work under a retainer) the information Aroha has is that this was an inadvertent error which at most would amount to unsatisfactory conduct. Aroha may make a report but is not obliged to.

## 1.3 Are there any exceptions to mandatory reporting?

### RULE 2.8.4

**Mandatory reporting** will not apply to—

- (a) a lawyer who has received information of the misconduct in the course of providing confidential advice, guidance or support to another lawyer, including as a member of a panel under a "friend" system, unless disclosure of the information is necessary to—
  - (i) prevent the anticipated or proposed commission of a crime or fraud; or
  - (ii) prevent a serious risk to the health or safety of any person.
- (b) a lawyer who is a victim of the suspected misconduct; or
- (c) circumstances where a lawyer reasonably believes the disclosure would pose a serious risk to the health (including mental health) or safety of a victim.

The exemption under rule 2.8.4(a) will only apply where the lawyer has reasonable grounds to suspect that another lawyer may have engaged in misconduct based on information received while providing confidential advice, guidance, or support to another lawyer.

The exception to this is where making a report to the Law Society is necessary to prevent a serious risk to the health and safety of any person. In those circumstances a lawyer would be obliged to make a report regardless of whether the information was received in the course of providing confidential advice.

The exemption under rule 2.8.4(c) only applies where the lawyer has a **genuine concern** that reporting the misconduct would cause the victim harm. A general concern that the victim may find the process challenging does not come within the exception.

## Mandatory reporting does not apply to victims

### [RULE 2.8.4\(B\)](#)

While the Law Society encourages people affected by prohibited behaviour to get in contact, the mandatory reporting obligation found in rule 2.8 of the RCCC does not apply to victims of suspected misconduct.

## Why should I make a report?

If none of the exceptions above apply and you are aware of behaviour that may constitute misconduct and do not comply with your mandatory obligation as a lawyer to report, then you are in breach of Rule 2.8 of the RCCC. Breaching the RCCC means that you may be subject to disciplinary action.

There is good reason to report misconduct, as it is important for the reputation of the profession that prohibited behaviour is treated as a professional disciplinary matter. Reporting requirements are one way of maintaining confidence in the legal profession and go towards achieving a safer environment for everyone in the legal community. All lawyers have an interest in ensuring other lawyers meet the expectations held of them.

You should not fear the consequences of making a report. The RCCC expressly prohibit victimising a person who makes a report in good faith (rule 2.10.1). This safeguard extends to any other person who is connected with the report.

## 1.4 How does the process work after I make a report?

After the Law Society receives your report, we will contact you to discuss how it will be progressed. This will include the circumstances in which the report may be disclosed and/or investigated, and any support that you or anybody affected by the reported conduct may need.

If you do not provide your details (i.e. you make the report anonymously), you may be unable to subsequently rely on the report as having discharged your obligation under rule 2.8 of the RCCC. You are requested to provide your contact details with your report.

You can discharge your obligations under rules 2.8 and 2.9 of the RCCC by reporting the conduct to the Law Society or by making a formal complaint. How a matter is referred to the Law Society will determine how it progresses through the Lawyers Complaints Service and your level of involvement.

There is an obligation to report misconduct, but no obligation to make a complaint.

## 1.5 Confidentiality

Once a report has been received, the Lawyers Complaints Service will contact you to discuss the process for handling the report. At this time, the Lawyers Complaints Service will also advise of any support available to anyone affected by the alleged prohibited behaviour, and any issues regarding confidentiality.

Subject to a few exceptions (referred to below), a report under rules 2.8 or 2.9 of the RCCC is confidential in nature. This means that the identity of the reporting individual will not be disclosed without the consent of the reporter or unless an exception applies.

If the reporting lawyer does not wish their identity to be disclosed, this may impact a standards committee's ability to investigate the matter. If it is anticipated that this may be the case, this will be raised with the reporting lawyer at the outset. If the conduct cannot be investigated without the identity of the reporting lawyer being revealed and the reporting lawyer does not consent to their identity being disclosed, then the conduct may not be investigated further.

While it is generally necessary for the report and the identity of the person making the report to be disclosed to the subject lawyer if an inquiry is to proceed, confidentiality is otherwise maintained to the following extent:

- standards committees, their delegates (typically Lawyers Complaints Service employees), and investigators (whether employees of the Law Society or not) are subject to strict confidentiality requirements subject only to limited exceptions
- standards committee decisions are published in anonymised form (subject to possible publication of the identity of a lawyer who is guilty of unsatisfactory conduct)
- if a charge has been filed with the LCDT by a standards committee, the LCDT may make non-publication orders.

If a reporting lawyer is a witness to the alleged conduct, that lawyer may be asked to provide witness evidence in the course of an investigation. Subject to this, a lawyer who reports conduct to the Lawyers Complaints Service will take no further part in any inquiry or investigation and will not be provided with the final decision/determination.

A lawyer who wishes to participate in and be heard as part of the standards committee process is advised to make a formal complaint to the Lawyers Complaints Service.

### Exceptions to confidential reporting

Confidentiality provisions in the LCA allow disclosure to be made to a Police employee or member of the Serious Fraud Office acting in the performance of their duty. A confidential report that provides evidence of the commission of a crime may be disclosed to the Police or the Serious Fraud Office.

Relevant exceptions to confidentiality in the Protected Disclosures Act 2000 also apply. Confidential information may be disclosed under the Protected Disclosures Act if the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information is essential for the following reasons:

- to the effective investigation of the allegations in the protected disclosure, or
- to prevent serious risk to public health or public safety or the environment, or
- having regard to the principles of natural justice.

These exceptions only apply to confidential reports about lawyers' conduct that meet the level of "serious wrongdoing" as defined in the Protected Disclosures Act. The definitions of serious wrongdoing most likely to be relevant to lawyers are those of "an act, omission, or course of conduct that constitutes a serious risk to public health or public safety" or "an act, omission, or course of conduct that constitutes an offence".

A serious risk to public health or public safety is unlikely to cover the interpersonal relational behaviour that forms the basis of many instances of bullying, discrimination, harassment, racial or sexual harassment and other prohibited behaviour within the legal workplace. However, disclosures of wider, organisational

level behaviour, such as an organisational culture of tolerating misconduct by senior lawyers, could fall into the category of public health or public safety.

### Effect of records of settlement

Rule 2.8 of the Rules requires a lawyer who has reasonable grounds to suspect that another lawyer may have engaged in misconduct to make a confidential report to the Law Society at the earliest opportunity. Rule 2.8 applies to all lawyers and is subject to limited exceptions only. One of these exceptions is that a lawyer who is a victim of the suspected misconduct is not required to make a mandatory report. The Law Society is aware that parties can enter into records of settlement per section 149 of the Employment Relations Act 2000 and agree to terms including confidentiality, non-disparagement of each other and full and final settlement. A lawyer must use their best endeavours to make a report to the Law Society before they enter into a final and binding record of settlement. If a lawyer intends to make a mandatory report after signing a record of settlement, they should make this clear to the other party when negotiating the record of settlement, and include as an exception to any agreement on confidentiality “so far as the law allows”. To avoid a breach of good faith requirements, the possibility of making a report after signing a record of settlement, mandatory or not, should also be noted in the record of settlement itself.

### Publication of decisions

A standards committee may order the anonymised publication of any of its decisions where it considers that it is in the public interest to do so.

The identity of a lawyer found to have engaged in prohibited behaviour can only be published following a standards committee order censuring that lawyer and after the lawyer has had the opportunity to seek review to the LCRO. Any such publication must be approved by the Board of the Law Society.

If a matter is referred to the Lawyers and Conveyancers Disciplinary Tribunal, as is required before a finding of misconduct can be made, it will be up to the Tribunal to make any orders preventing disclosure of a lawyer’s identity. The default position is that Tribunal matters are public.

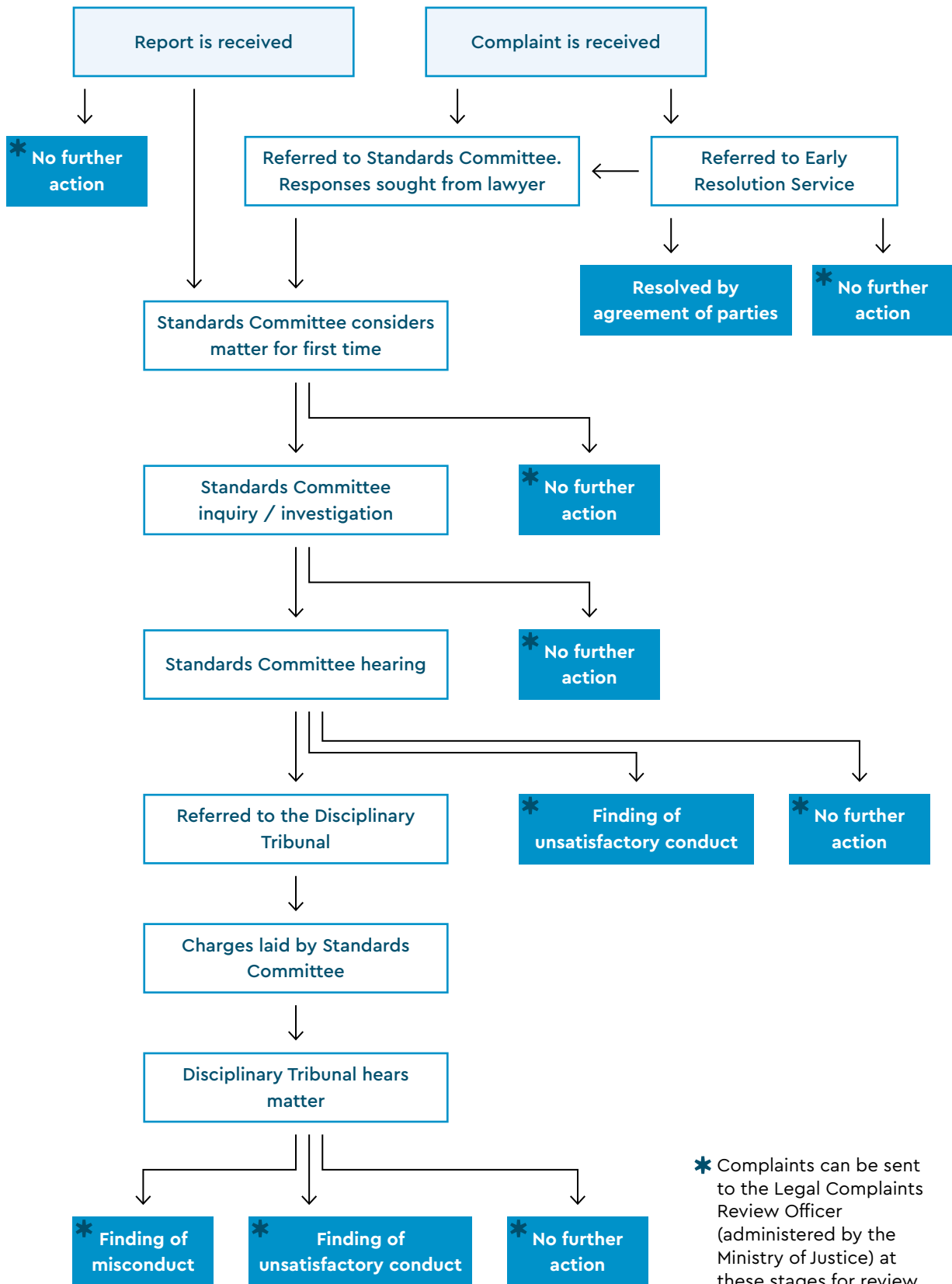
## 1.6 What is the difference between a report and a complaint?

Report	Complaint
Your report may be referred to a standards committee *	Your complaint will be considered by a standards committee
You have no automatic right to participate in the process, but it's possible that you may be asked to provide evidence or information to assist an investigation	You have the right to be heard and to participate in the process if you wish
You will not be informed of the outcome	You will be notified of the outcome

\* The Law Society may decide not to refer a report where it would be inappropriate to do so. For example, where the conduct is already under investigation, outside the jurisdiction of a standards committee, or where confidentiality may not be able to be maintained.

If you want to make sure your report is considered by a standards committee, you should pursue the report as a complaint. More information about the complaints process is available on the Law Society website.

### Overview of the process for handling reports and complaints





## Support and assistance

If you or someone else has been affected by bullying, discrimination, harassment or prohibited behaviour, the Law Society provides support and guidance through the:

- Legal Community Counselling Service: 0508 664 981
- Law Care free phone line: 0800 0800 28
- National Friends Panel members who deal with sensitive matters.

More information about each option is in [Chapter three](#).

## 1.7 Reporting concerns for the welfare of another lawyer or legal employee

You can choose to report any other concerns you have regarding the conduct of another lawyer to the Law Society. This could include concerns regarding a lawyer's health or welfare that may be impacting their ability to practise or any other concerns regarding the operation of a law firm and its employees.

# 2

## Rules to protect employees and others

### Summary

- There are clear expectations on law practices to protect all employees.
- Law practices must have policies and systems to prevent and protect employees, and other people the law practice engages with from prohibited behaviour, including procedures to investigate complaints.
- Law practices must have a designated lawyer who will report to the Law Society about conduct amounting to bullying, discrimination, harassment, theft, or violence.

### 2.1 Definitions and clear expectations

#### [RULE 1.2](#)

There are specific definitions for prohibited behaviour such as bullying, harassment, and discrimination in Rule 1.2. This clarifies exactly what sort of conduct is prohibited.

Lawyers have always been prohibited from engaging in behaviour that tends to bring the profession into disrepute, but from 1 July 2021 this behaviour is better defined and includes, bullying, discrimination, harassment, racial harassment, sexual harassment, and violence.

**bullying** means repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm

**discrimination** means discrimination that is unlawful under the Human Rights Act 1993 or any other enactment

**harassment**—

- (a) means intimidating, threatening or degrading behaviour directed towards a person or group that is likely to have a harmful effect on the recipient; and
- (b) includes repeated behaviour but may be a serious single incident.

**racial harassment** means behaviour that—

- (a) expresses hostility against, or contempt or ridicule towards, another person on the ground of race, ethnicity, or national origin; and
- (b) is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person).

**sexual harassment** means—

- (a) subjecting another person to unreasonable behaviour of a sexual nature that is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person);  
or
- (b) a request made by a person of any other person for sexual intercourse, sexual contact, or any other form of sexual activity, that contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.

### What does “likely” mean in this context?

The definitions of bullying, harassment, and racial and sexual harassment do not require that there must have been actual harm caused, or that the lawyer’s behaviour must have been unwelcome or offensive to the affected person as a matter of fact, but rather that the relevant consequence was “likely”. This is consistent with the focus of disciplinary proceedings being on the conduct of the lawyer rather than on proof of actual harm or loss.

It is generally accepted that “likely” does not mean “more likely than not” and instead imposes a test of “real and substantial risk”. The test is ultimately objective, but the standard would be necessarily adjusted where there is knowledge about the particular vulnerability of an individual.

## 2.2 Policies and systems to prevent and protect from prohibited behaviour

### [RULE 11.2](#)

A lawyer practising on their own account must ensure their law practice has effective policies and systems in place to prevent and protect all persons engaged or employed by the law practice from the effects of unacceptable conduct, including conduct that amounts to one or more of the following:

- (a) bullying
- (b) discrimination
- (c) harassment
- (d) racial harassment
- (e) sexual harassment
- (f) violence

Lawyers who are responsible for law practices must provide a safe environment for all clients, employees and people the law practice engages with. A definition of law practice includes an individual lawyer practising on their own account. This means that sole practitioners and barristers are included.

Policies and systems to prevent and protect all persons from prohibited behaviour should include:

1. A clear statement that bullying, discrimination, harassment, racial harassment, sexual harassment or violence is not accepted by the practice at any level; and that all clients, employees, and other people the law practice engages with can expect to be treated with respect.

This is something that could be included in your Terms of Engagement/Information for Clients brochure, on your website, included in internal policies or induction material for new staff. Worksafe have template policies on their website that you may wish to consider adapting for the needs of your law practice.

2. A clear and simple reporting process (consultation with employees on this aspect will help to make an effective policy for your practice).
3. Avenues of support for people affected by prohibited behaviour.

These could be internal, for example a case manager or external, such as access to counselling, employee assistance programmes or provision of information about other sources of support.

4. Investigation of complaints.

Under rule 11.5.1, the client complaints procedure for a sole practitioner or barrister may include referring the complaint to an independent lawyer for consideration.

5. Confidentiality and privacy (which cannot operate to exclude reporting requirements to the Law Society).

Your reporting process should respect everyone's rights to privacy and confidentiality, but this does not override the law practice's obligation to report to the Law Society about written warnings or dismissals due to prohibited behaviour.

6. Ensuring the active support of senior lawyers and managers, including modelling respectful behaviours themselves.

Communicate your policy clearly with staff and provide reminders. Ensure your staff are aware of the various avenues for help if they are feeling stressed or under pressure, so that they can continue to bring their best selves to work.

### Case study: Prohibited behaviour

*Alex is a senior partner at a law firm, and has a reputation around the office for inappropriate behaviour after he has been drinking. Alex regularly asks Sam to work late in the office with him, comments on her physical appearance and suggests that he is in a position to help her career. Sam finds this uncomfortable and although she has mentioned it to the office manager, she is reluctant to push the issue as she doesn't want to be seen as a troublemaker. Other people have noticed, and tell her to laugh it off, saying "don't let him catch you alone in the stationery cupboard!" but she finds it upsetting and unwelcome. The office manager suggests that she may want to consider other opportunities if she's unable to get along with Alex.*

*At the firm's annual Christmas party, Alex makes inappropriate comments to Sam, and tries to give her a shoulder massage. Afterwards he sends her text messages inviting her to dinner at his place. When she turns down his invitations, he removes her from most of her client files and excludes her from meetings.*

*What are the obligations on the law practice?*

**Answer:** The law practice is required to have effective policies in place to protect staff and clients, and to have a process for investigating allegations of prohibited behaviour. These policies should be communicated to all staff. As soon as Sam complained to the office manager, the complaint should have been investigated.

As a senior lawyer in the practice, Alex should be modelling respectful behaviour. Alex's behaviour may constitute misconduct, or unsatisfactory conduct.

Sam's complaint should be taken seriously and investigated, and there should be support available. By removing Sam from her client files and excluding her from meetings, Alex has victimised Sam. This may have contravened rules 2.10.1 and 2.10.2.

Under rules 2.8 and 2.9, other lawyers in the firm will need to consider whether they also have an obligation to report prohibited behaviour to the Law Society.

## 2.3 Designated lawyer to report to the Law Society

### [RULE 11.3](#) AND [RULE 11.4](#)

Rule 11.3 requires each law practice to have a lawyer who is the “designated lawyer” for that practice. The designated lawyer is required under rule 11.4 to:

- fulfil the law practice's annual reporting obligations; and
- notify the Law Society on behalf of the law practice, within 14 days:
  - if there is a written warning or dismissal due to prohibited behaviour such as bullying, discrimination, harassment, theft, or violence; or
  - a person leaves the practice within 12 months of them being advised that they were being investigated in relation to this conduct.

This requirement was introduced to ensure that prohibited behaviour by lawyers is reported to the Law Society. This is designed to avoid situations where misconduct may trigger internal disciplinary processes, but is not reported to the Law Society.

The designated lawyer must be in practice on their own account, such as a partner, director or sole practitioner.

In the case of a partnership, or incorporated law firm, each partner or director is individually responsible for ensuring that their practice has a designated lawyer. If a law practice does not have a designated lawyer, each partner or director will have contravened rule 11.3.

### Sole practitioners

Sole practitioners will be required to complete the “designated lawyer” reporting requirements for their own practice.

### In-house lawyers

In-house lawyers are not affected by the requirement under Chapter 11 of the RCCC for a law practice to have a designated lawyer. This amendment only applies to ‘law practices’, which are defined as an individual in practice on their own account or an entity that provides regulated services to the public.

While health and safety obligations nonetheless apply to non-law practices, the responsible supervisors/managers with those obligations will not necessarily be lawyers. Non-lawyers are not regulated by the Law Society.

However, as an in-house lawyer, you must be aware of the requirement that when acting in a professional capacity you must conduct yourself in a manner consistent with membership of the legal profession (rule 10.2).

Under rule 2.8 in-house lawyers are required to make a report to the Law Society if they have reasonable grounds to suspect that another lawyer may have engaged in misconduct.

### Case study: In-house lawyer

*Joe is a lawyer for a government agency. He is involved in an acrimonious negotiation with a customer's lawyer in a dispute about contract. The opposing counsel complains to Joe's manager, Lucy, that Joe has bullied and harassed him, and says that he intends to complain to the Law Society about Joe's unsatisfactory conduct.*

*Lucy, who is also a lawyer, decides to investigate the complaint. Joe considers that the complaint is unfounded, and says that he won't back down from energetically representing his department's interests. While the investigation is ongoing Joe is offered another job and resigns.*

*Does Lucy have to provide details of this complaint in an annual report to the Law Society?*

**No.** A government agency is not a law practice and so rule 11.3 does not apply. Employers of in-house lawyers do not have an obligation to make annual reports to the Law Society.

However, as a lawyer Lucy may still have an obligation to report Joe's conduct to the Law Society under rule 2.8 of the RCCC if she had reasonable grounds to suspect Joe may have engaged in misconduct (see guidance "Reporting misconduct or unsatisfactory conduct")

*What if Joe was employed by a law firm and Lucy was the firm's designated lawyer?*

Yes. Bullying is one of the types of conduct listed under rule 11.4 of the RCCC. Although no finding has been made in relation to the allegation, Joe has left the firm before the investigation has been completed and therefore Lucy is required to report the matter to the Law Society within 14 days of his leaving the firm.

### Case study: Sole practitioner and reporting obligations

*Nirmala is a sole practitioner. She shares office space and secretarial support with a couple of other lawyers. One of her clients complains that she has overcharged on some estate work that she has done. Nirmala refers the complaint to one of the other lawyers to investigate. The lawyer determines that Nirmala has charged an excessive fee for her level of expertise and the amount of time that the complexities of the estate required. Nirmala apologises and adjusts the bill to the client.*

*Does Nirmala have to provide details of this complaint in her annual reporting to the Law Society?*

**No.** Rule 11.4 only applies in circumstances where a person has been issued a written warning or dismissed for the types of behaviour listed at 11.4 (a) to (g).

### Reporting written warnings or dismissal

[RULES 11.4 AND 11.4.1](#), [RULE 2.8](#)

The designated lawyer must notify the Law Society within 14 days under Rule 11.4 if any person engaged or employed by the law practice is given a written warning or is dismissed by the law practice for conduct that amounts to bullying, discrimination, harassment, racial harassment, sexual harassment, theft or violence.

The obligation to report is on the designated lawyer. A failure by the designated lawyer to notify the Law

Society within 14 days of the issuing of a written warning or dismissal will amount to a contravention of rule 11.4.

The designated lawyer must also notify the Law Society within 14 days under Rule 11.4.1 if any person leaves the law practice having been advised within the previous 12 months that the law practice was dissatisfied with, or intended to investigate their conduct in relation to prohibited behaviour.

A failure by the designated lawyer to notify the Law Society within 14 days of a person leaving their law practice in the circumstances above will amount to a contravention of rule 11.4.1.

If an investigation into the alleged behaviour has concluded and there are no reasonable grounds to suspect that the lawyer engaged in misconduct, then no report to the Law Society is required.

Even if there has not been a written warning or a dismissal, under Rule 2.8 all lawyers must report to the Law Society if they have reasonable grounds to suspect that another lawyer may have engaged in misconduct.

### Case study: Staff member leaves while an investigation is ongoing

*Tom is a lawyer who works at a law practice and is accused of sexually harassing a staff member. The law practice advises Tom that it intends to investigate the allegation that has been made against him. Tom leaves the law practice 6 months later while the investigation into the allegation is ongoing. The law practice's designated lawyer must notify the Law Society within 14 days of Tom leaving the law practice. It is not relevant whether Tom's decision to leave was unconnected to the allegation or investigation.*

**Answer:** Designated lawyer must report to the Law Society within 14 days

### Case study: Allegation against staff member is unsubstantiated

*Tom is a lawyer who works at a law practice and is accused of sexually harassing a staff member. The law practice concludes its investigation and finds that the allegation is unsubstantiated or does not rise to the level of suspected misconduct. Tom leaves the law practice after the investigation has concluded, but within 12 months of the law practice originally advising him that it intended to investigate.*

**Answer:** No requirement for the designated lawyer to report to the Law Society

### Form of the report

#### [RULE 11.4.3](#)

Rule 11.4.3 requires that a report made by the designated lawyer to the Law Society must be:

- made in writing,
- identify the person making the report and the person or persons to whom the report relates, and
- specify details of the alleged conduct.

The report must also be supported by any appropriate documentation held by or available to the designated lawyer. This may include any correspondence and/or documents relied on by the law practice for the purposes of its investigation into the allegation, including any internal or external investigation reports produced by the law practice.

The designated lawyer should send the report to: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz) or use the form on the complaints page of the Law Society’s website.

## **Certifying compliance of the law practice**

### **RULE 11.4.4**

Rule 11.4.4 requires the designated lawyer to certify annually the law practice’s compliance with:

- the mandatory reporting obligations imposed under the LCA;
- that the law practice has policies and systems in place to prevent and protect persons employed or engaged by the law practice from prohibited behaviour and to comply with its obligations under the Health and Safety at Work Act 2015.

The designated lawyer must also certify annually that they have complied with the rule 11.4 reporting obligations referred to above.

Certification will be completed online, and is likely to be part of the annual practising certificate renewals process.

Further information will be provided closer to 1 July 2022 when the first annual certification is due.

## **Auditing and Monitoring compliance**

Failure to make the required report under rules 11.4 and 11.4.1 will be treated as a breach of the rules. This means that a designated lawyer may be referred to a standards committee and potentially face a disciplinary response.

## **Further help**

For more information please email our Regulatory team [regulatory@lawsociety.org.nz](mailto:regulatory@lawsociety.org.nz).



# 3

## Support for those affected by prohibited behaviour

### Summary

- If you or someone else have been affected by bullying, discrimination, harassment or other forms of prohibited behaviour, there is support and help available.
- Law Society options for support include:
  - Legal Community Counselling Service: phone 0508 664 981
  - Law Care free phone line: phone 0800 0800 28
  - National Friends Panel members who deal with sensitive matters.
- If you require further assistance our complaints staff are available to talk you through the complaints process, phone 0800 261 801 or email [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz). The Law Society is unable to provide legal advice.

### 3.1 Legal Community Counselling Service

The Law Society has engaged Vitae to provide short-term, solution-focussed counselling by trained and accredited clinicians (counsellors, psychologists or psychotherapists).

The service is available to anyone in a legal workplace – lawyers and non-lawyers can contact Vitae if they wish to access the Legal Community Counselling Service.

The service is available every day of the year and every hour of the day and there are three ways in which you can access this service:

- Free phone Vitae on 0508 664 981
- Complete Vitae's online referral form
- Download the Vitae New Zealand app from the App store or Google Play.

When contacting Vitae please mention that you are accessing the Legal Community Counselling Service.

You are eligible for up to six free confidential sessions with a counsellor of your choice. The first three sessions are on a self-referral basis. Vitae can recommend on an anonymous basis that the Law Society funds an additional three sessions if this is needed.

Any discussion with the service providers above is on a confidential basis and will not be disclosed to the Law Society or anyone else without your consent.

Only statistical information will be collected by Vitae and passed onto the Law Society in an anonymous, aggregated form.

## 3.2 Law Care: 0800 0800 28

The Law Society has a dedicated 0800 phone line (0800 0800 28) where members of the legal community can discuss sensitive matters with a Law Society staff member.

Law Care is a confidential point of contact for lawyers and law firm employees who have experienced, witnessed, or been affected by sexual assault, sexual harassment, or other prohibited behaviour.

The Law Society staff who operate the phone line can offer callers a range of options and support services to assist in dealing with their concerns. They have received training focused on the needs of those who may use this service.

## 3.3 National Friends Panel

The National Friends Panel is a New Zealand Law Society service. The Panel is made up of lawyers willing to be contacted on a confidential basis by other lawyers with questions or concerns relating to practice issues. The [National Friends Panel Sensitive List](#) is a list of lawyers who are available to discuss sensitive matters such as workplace bullying and harassment.

Contact details for the individual Friends are available on the Law Society website, and you can reach out to them directly.

If you would like to discuss utilising the Friends Panel or would like assistance with selecting a “friend” you can contact the Law Care free phone on 0800 0800 28.

## 3.4 Other options for support

WorkSafe provides information on what you can expect from your employer once you bring your concerns to their attention.

The Human Rights Commission has a specific guide on dealing with sexual harassment. The Commission also offers a free, confidential service for anyone enquiring or complaining about discrimination, racial or sexual harassment – 0800 496 7877.

There are also other resources and organisations that can assist in relation to sexual harassment and assault:

- Safe to Talk: Send a text to 4334 and they will text you back
- Police: 111
- HELP: 09 623 1700
- Counselling Services Centre: 09 277 9324

- National rape crisis: 0800 883 300
- ACC (for assistance with funding support): ACC Sensitive Claims 0800 735 566
- Lifeline: 0800 543 354 (0800 LIFELINE)
- Sexual assault support centres near you: [www.sexualabuse.org.nz](http://www.sexualabuse.org.nz)

You may also have access to free confidential services or support schemes through your employer, such as an Employee Assistance Programme (EAP).

If you are a union member you may wish to contact your union and see what support they are able to offer you.

## 3.5 Protection for those affected by prohibited behaviour

### [RULE 2.10.1](#)

Those affected by prohibited behaviour should not fear the consequences of making a report or a complaint. Rule 2.10.1 of the RCCC expressly prohibits victimising a person who makes a complaint or report in good faith. This safeguard extends to any other person who is connected with the complaint or report.

Victimising a person who has made a complaint or report in good faith may amount to unsatisfactory conduct or misconduct.

# 4

## What to do if you receive a complaint or a report

### Summary

- All lawyers must have procedures for handling client complaints, and they must tell their clients about those procedures before they commence work for the client.
- All law practices must have effective policies and systems in place to prevent and protect employees, and people they engage with from the effects of prohibited behaviour.
- If you receive a notice of a complaint or a report from the Lawyers Complaints Service, you will be invited to respond.
- Lawyers are required to respond to enquiries from the Law Society respectfully and in a timely manner.
- You must not victimise the person who made the report or complaint.
- If you are subject to a complaint, you can contact a member of the Complaints Advisory Panel for free and confidential advice.

### 4.1 Complaints and discipline

All law practices must have procedures for handling client complaints, and they must tell their clients about those procedures before they commence work for the client. Law practices must also have effective policies and systems in place to prevent and protect persons engaged or employed by their law practice from the effects of prohibited behaviour.

It's important to know that your internal complaints processes are working. For example:

- Do your clients and employees know about the internal complaints process?
- Is your complaints procedure readily and easily accessible to employees and the public?
- Are complaints dealt with swiftly and fairly?

- Are clients or employees advised of their right to make a complaint to the Lawyers Complaints Service?

The Law Society encourages potential complainants to raise their concerns with the law practice in the first instance. However, once a letter of complaint is received by the Lawyers Complaints Service, it becomes a formal complaint and the complaints process is initiated.

## Client Complaints

Rule 11.5 requires law practices to have appropriate procedures for handling complaints by clients. Where appropriate, the Law Society recommends that law practices attempt to resolve any complaints received from a client prior to a complaint being made to the Lawyers Complaints Service. For sole practitioners that may include the reference of complaints to an independent lawyer for consideration. Further information about running an effective internal complaints process is [available on the Law Society website](#).

A large number of complaints made to the Lawyers Complaints Service have not been through the law practice's internal complaints procedure first. While some complainants state they did not want to do that, others say that their complaint to the law practice was "dismissed" or not treated satisfactorily. Many lawyers who have been through the formal complaints process have said that they wished they had dealt with the complaint directly with the client when it was first raised.

## 4.2 Effective policies and systems to prevent and protect

Rule 11.2 requires law practices to have effective policies and systems in place to prevent and protect all persons engaged or employed by the law practice from the effects of prohibited behaviour, including conduct that amounts to bullying, discrimination, harassment, racial and sexual harassment, and violence.

Such policies and systems will require a mechanism for receiving and investigating complaints of that nature. This is consistent with employers' existing obligations under the Health and Safety at Work Act 2015.

Where an internal investigation results in a written warning or dismissal, a report will have to be made to the Law Society within 14 days. For information about the reporting regime see [Chapter two](#).

## 4.3 What can you expect of the complaints process?

### Confidentiality of the complaint

[SECTION 188 OF THE LCA](#)

Section 188 of the LCA imposes strict confidentiality provisions on the Lawyers Complaints Service. Details of the complaint will be available to members of the standards committee assigned your complaint and some staff at the Law Society. If a name publication order is contemplated by a standards committee you will be given the opportunity to present submissions.

## 4.4 What is expected of you through this process?

### How should I respond?

[RULE 10.14](#)

A lawyer who is subject to a complaint will be given the opportunity to respond to the complaint and make written submissions. The Lawyers Complaints Service is required to deal with matters expeditiously and will set timeframes. Lawyers are required to respond to inquiries from the Law Society respectfully and in a timely manner. Extensions will only be provided for good reason.

Lawyers are also required to act in a way that does not obstruct or hinder the regulatory functions of the Law Society.

There is no set format for a response to a complaint. However, the points below may be a useful guide:

- Ensure that you cover all matters raised by the complaint, but do not make your explanation too long. There is no need to include your file unless this is requested. Only provide documentation if it is relevant.
- If you do not want to answer a particular point (if a matter is currently before the Court, for example), explain why.
- If a number of different allegations are made, list and deal with each one separately.
- If a complaint is justified, acknowledge this, if appropriate, and apologise.
- Answer any follow-up questions promptly.
- If you are finding it difficult to respond, ask someone else in your law practice to review the file and prepare the response on your behalf. If you are a sole practitioner, you could ask another lawyer, your attorney, or a member of the Complaints Advisory Panel (see below) for assistance.
- Do **not** do nothing. A failure to respond can become a disciplinary matter itself. If you cannot face responding seek assistance as soon as possible. If there is nobody within your firm to talk to you could discuss the matter with a trusted colleague, your s 30 attorney if you are a sole practitioner, or with a member of the Friends Panel. If you need to ask for an extension of time, do so, but provide reasons why this is sought and a date by when you will respond.

If you wish, you can engage a lawyer to assist you with the standards committee process.

You should be aware that your response will be sent to the complainant in accordance with the principles of natural justice.

You must not victimise the person who made the complaint or report or anyone who is otherwise connected with a complaint or report.

### Protection against victimisation

#### [RULES 2.10.1 AND 2.10.2](#) [↗](#)

Under rule 2.10.1 lawyers must not victimise the people connected with a complaint.

Examples of victimisation include (but are not limited to)—

- (a) unwarranted adverse employment-related actions:
- (b) unwarranted withdrawal of instructions:
- (c) conduct that amounts to 1 or more of the following:
  - (i) bullying:
  - (ii) harassment:
  - (iii) lack of professional co-operation:
  - (iv) racial harassment:
  - (v) professional disparagement:
  - (vi) sexual harassment.

## Complaints Advisory Panel

A lawyer who is subject to a complaint can contact a member of the Complaints Advisory Panel, which is a free and confidential advice service. A list of panel members is [available on the Law Society website](#).

## Participation in the standards committee process

A standards committee is a group of experienced lawyers (all of whom have more than five years' post qualification experience) and lay members who meet to consider complaints. The standards committees also have the power to intervene in legal practices and to commence own motion inquiries.

A standards committee may take no further action on a complaint at any time during the complaints process.

Standards committee hearings are conducted by written submissions “on the papers”. Attendance in person is not normally required, unless decided otherwise. Prior to any hearing a notice of the hearing will be sent to the parties. This will set out the issues on which any adverse finding could be made.

## Queries or concerns about the process

A lawyer who is subject to a complaint will have a Professional Standards Officer (PSO) in the Lawyers Complaints Service as their point of contact. An PSO is not a member of the standards committee but assists the standards committee and communicates with the parties about the progress of the complaint. They will be the main contact throughout the complaints process and should be the first port of call for any queries or concerns about the process.

## If the complaint is referred to the Lawyers and Conveyancers Disciplinary Tribunal

If the standards committee determines to refer a complaint to the Lawyers and Conveyancers Disciplinary Tribunal, the lawyer who is the subject of the complaint will be entitled to appear and be heard at the hearing and to be represented by counsel if they wish.

If the complaint progresses to this stage, the Law Society will provide further information to the lawyer on their rights and the details of the process.

## 4.5 What if I'm not happy with the outcome?

If the complainant or a lawyer who is the subject of a complaint does not agree with a standards committee decision, they may ask the LCRO at the Ministry of Justice to review that decision.

This application must be made within 30 working days of the written decision being received by the parties. The application must be accompanied by the prescribed fee.

The LCRO is appointed by the Ministry of Justice to provide an independent review of standards committee decisions and the Ministry of Justice administers the LCRO service. The LCRO can make any order a standards committee can make, including confirming or changing the standards committee's decision. The LCRO can also refer a matter to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, or back to the standards committee.

Further information about the LCRO process is [available on the Ministry of Justice website](#).

## 4.6 Further support and guidance

The Law Society recognises that being subject to a disciplinary process can be stressful.

There are a variety of different support and guidance services which are available to support lawyers through the process. Options for help include:

- Legal Community Counselling Service: phone 0508 664 981
- Law Care free phone line: phone 0800 0800 28
- National Friends Panel members who deal with sensitive matters.

More information about each option is in [Chapter three](#).

### Other support

Larger organisations often have confidential support schemes (such as Employee Assistance Programmes) which you may be able to access.



# 5

## Terminating instructions: prohibited behaviour by a client

### Summary

- A retainer can be terminated if the client's conduct towards a lawyer or person associated with the law practice amounts to bullying, discrimination, harassment, racial or sexual harassment, threatening behaviour or violence.
- Terminating a retainer in the circumstances above is consistent with a law firm's existing employer obligations under the Health and Safety at Work Act 2015, the Employment Relations Act 2000, and the Human Rights Act 1993.
- A law practice may take steps to protect its staff, but must ensure that any steps taken, such as reassigning the client to another lawyer at the law practice, does not unfairly disadvantage the staff concerned.
- Refusing instructions or terminating a retainer without genuine grounds for good cause may amount to unsatisfactory conduct or misconduct.

### 5.1 The duty to accept instructions: the "cab rank rule"

#### RULE 4 [🔗](#)

One of the most fundamental duties of a lawyer is the duty to accept instructions from members of the public within the lawyer's areas of practice. This is colloquially referred to as the "cab rank rule". The rule recognises that lawyers have an essential role in facilitating access to justice. Lawyers are not free to turn away people who seek their assistance without good cause.

A lawyer as a professional person must be available to the public and must not, without good cause, refuse to accept instructions from any client or prospective client for services within the reserved areas of work that are within the lawyer's fields of practice.

## 5.2 Exceptions to the “cab rank rule”: good cause to refuse to accept instructions, or terminate

### [RULE 4.1](#)

Good cause to refuse to accept instructions under rule 4.1 of the RCCC include:

- a lack of available time
- the instructions falling outside the lawyer’s normal field of practice
- instructions that could require the lawyer to breach any professional obligation, or
- the unwillingness or inability of the prospective client to pay the lawyer’s normal fee.

A lawyer must be able to show that genuine grounds exist in order to rely on these exceptions to the cab rank rule.

## 5.3 Termination of a retainer

### [RULE 4.2](#)

Likewise, under rule 4.2 a lawyer who has accepted instructions cannot terminate the retainer without good cause. The various grounds which may constitute good cause to terminate a retainer can be found at rule 4.2 of the RCCC.

A lawyer who terminates a retainer for good cause must give reasonable notice to the client specifying the grounds for termination.

### Termination of a retainer due to client behaviour

#### [RULE 4.2.1\(F\)](#)

Client behaviour that amounts to either bullying, discrimination, harassment, racial or sexual harassment, threatening behaviour or violence is good cause to terminate the retainer under rule 4.2.1(f) of the RCCC.

The client behaviour doesn’t have to be directed at the lawyer seeking to terminate the retainer. Client behaviour directed to any person associated with the law practice, such as a barrister instructed or support staff employed by the law practice can also amount to good cause to terminate the retainer.

Rule 4.2.1(f) of the RCCC is consistent with existing employer obligations under the Health and Safety at Work Act 2015, the Employment Relations Act 2000, and the Human Rights Act 1993.

Law practices must ensure they are acting to protect persons employed or engaged by the law practice from harm. This includes terminating a retainer, if necessary, when a client is engaging in prohibited behaviour towards a person employed or engaged by the law practice.

### Good cause must be genuine, not just an unfavourable personal opinion

A lawyer’s personal opinion of their client, or the goals their client is pursuing, is not good cause to terminate a retainer. The cab rank rule is designed to facilitate access to justice and requires lawyers to provide their services in their clients’ best interests, without letting moral judgements interfere with them doing so. This includes, for example, representing persons who may have committed serious crimes.

## Protect staff and others, but don't disadvantage them in the process

It may be possible for a lawyer to take steps to protect a person employed or engaged by the law practice from prohibited behaviour by a client without terminating the retainer. Lawyers should therefore consider any protective steps that may be reasonably available before terminating a retainer on this particular ground.

However, available protective steps do not include steps that would breach a lawyer's (or the law practice's) wider legal obligations. For example, by unjustifiably disadvantaging a person or otherwise discriminating against a person engaged or employed by the law practice.

## Case study: Bad client behaviour and remedies for the law firm

*ABC Limited is the major client of the law practice Mahi Law. The legal work that Mahi Law does for ABC provides excellent commercial law experience and opportunities for advancement for the junior and intermediate lawyers employed by Mahi Law.*

*Jack Smith is a manager at ABC and is the sole point of contact between ABC and the lawyers who work at Mahi Law. Jack has engaged in behaviour that amounts to sexual harassment of two female lawyers at Mahi Law. ABC does not consider that Jack's conduct is a problem and refuses to allow Mahi Law to take its instructions from anyone else at ABC.*

**Does Mahi Law need to act?** Yes, Mahi Law has employment obligations to make sure its employees are safe. It must therefore take practicable steps to stop a repeat of Jack's conduct. Good cause plainly exists for Mahi Law to terminate the retainer.

**What protective steps could Mahi Law take?** Potential options that Mahi Law could explore are diverting phone calls from Mr Smith to the supervising partner and ensuring that the supervising partner also attends client meetings with Mr Smith.

**Can Mahi Law remove the female lawyers who are presently working on ABC matters, and only use male lawyers on ABC matters in the future?** No, Mahi Law would be discriminating against and unjustifiably disadvantaging its female lawyers relative to their male colleagues if it removed the female lawyers.

**Is there good cause to terminate the retainer?** Yes, under rule 4.2.1(f). Further, if there are no steps reasonably available to protect its staff, Mahi Law's wider employment obligations might require the retainer to be terminated.

Refusing instructions or terminating a retainer without genuine grounds for good cause may amount to unsatisfactory conduct or misconduct.

# Glossary

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<b>Bullying</b>	Means repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm.
<b>Complaint</b>	A formal account of an incident (or series of incidents) of either misconduct or unsatisfactory conduct which is submitted to the Law Society. A complaint will be considered by a standards committee. The person making the complaint has the right to be heard and to participate in the process, and will be notified of the outcome.
<b>Designated lawyer</b>	A lawyer practising on their own account who has been nominated by their law firm to fulfil the reporting and certification obligations of that firm.
<b>Disciplinary Tribunal</b>	The Lawyers and Conveyancers Disciplinary Tribunal hears and determines complaints referred to it by standards committees and the Legal Complaints Review Officer. Usually these will be the most serious complaints which can involve a public hearing. The Disciplinary Tribunal is administered by the Tribunals Division of the Ministry of Justice.
<b>Discrimination</b>	Means discrimination that is unlawful under the Human Rights Act 1993 or any other enactment.
<b>Harassment</b>	Means intimidating, threatening, or degrading behaviour directed towards a person or group that is likely to have a harmful effect on the recipient; and includes repeated behaviour but may be a single incident.
<b>Law practice</b>	An individual lawyer practising on that lawyer's own account; or an entity that provides regulated service to the public.
<b>LCA</b>	Lawyers and Conveyancers Act 2006, which is the primary piece of legislation that states the fundamental obligations with which all lawyers and all conveyancing practitioners must comply in providing regulated services, in order to protect the public.
<b>LCRO or Legal Complaints Review Officer</b>	Independently reviews decisions made by the New Zealand Law Society and New Zealand Society of Conveyancers standards committees on complaints against lawyers and conveyancers. The LCRO is employed by the Ministry of Justice.

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<b>Misconduct</b>	As defined in sections 7 and 9 of the LCA.
<b>National Friends Panel</b>	Is a New Zealand Law Society service. The Panel is made up of lawyers willing to be contacted on a confidential basis by other lawyers with questions or concerns relating to practice issues. The National Friends Panel Sensitive List is a list of lawyers who are available to discuss sensitive matters such as workplace bullying and harassment.
<b>Prohibited behaviour</b>	An umbrella term that includes both misconduct and unsatisfactory conduct, which are prohibited under the RCCC.
<b>Racial harassment</b>	Means behaviour that expresses hostility against, or contempt or ridicule towards, another person on the ground of race, ethnicity, or national origin; and is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person).
<b>RCCC</b>	Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. The Rules set the minimum standards that lawyers must observe and are a reference point for discipline.
<b>Report</b>	An account of an incident (or series of incidents) of either unsatisfactory conduct or misconduct which is submitted to the Law Society. The Law Society may decide to refer the report to a standards committee, but it's not guaranteed. The person making the report has no automatic right to participate in the process, but it's possible that they may be asked to be a source of information. The person making the report will not be informed of the outcome.
<b>Sexual harassment</b>	Means subjecting another person to unreasonable behaviour of a sexual nature that is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person); or a request made by a person of any other person for sexual intercourse, sexual contact, or any other form of sexual activity, that contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.
<b>Standards committee</b>	A group of lawyers and lay members who meet to consider complaints. There are 22 standards committees around the country. The standards committees also have power to intervene in legal practices and to commence own motion inquiries.
<b>Unsatisfactory conduct</b>	As defined in sections 12 and 14 of the LCA.
<b>Violence</b>	Includes the following: physical violence, psychological violence, sexual abuse, sexual assault.

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