Managing complaints: some common mistakes

General Features | Professional standards



23 October 2024

Many tax advisers will face occasional complaints about their work from clients and their professional body. We consider some common mistakes and how to avoid them.

Sadly, complaints against professionals brought by clients or the regulator are an increasing fact of professional life.

Clients have high expectations of their professional advisors. They may also see complaints as a way to avoid paying fees, or use them to gain information to support a professional negligence claim. An increased awareness among taxpayers of the right to bring a complaint means that client complaints seem to be on the increase.

Meanwhile, professional bodies and regulators are under pressure to demonstrate that they are managing and supervising their professional membership, ensuring that members are behaving in accordance with statutory and regulatory guidelines

and obligations. This means that complaints and investigations may be more likely to occur, while at the same time the professional bodies seek to support members with guidance in relation to those rules.

So, what does this mean for the tax adviser in practice when a complaint is received from either a client or their regulator? All too often, we see that such complaints are badly handled by the firm, due to a lack of understanding of the issues, poor processes or even just because the individual receiving the complaint is ‘frozen with fear’ and doesn’t know what to do – and so ends by doing nothing.

In this article, we review common mistakes made in relation to complaints and how to avoid them. We also consider how to manage the complaints process successfully and, importantly, how to get value out of any complaints received.

Complaints by clients

Registering complaints

Complaints by clients are often initially made informally, perhaps to a junior member of staff who may not identify the comment as a complaint and so fails to deal with it in accordance with the firm’s complaint’s process. Staff should be given advice on how to identify a complaint and a claim, and what to do if one arises.

If the junior feels anxious about informing their manager about the adverse comment, the issue can be ‘lost’. The increasingly unhappy client may complain to the regulator that not only did they have a complaint about the firm’s service, but also that the complaint itself was ignored. It is critical that staff are not afraid to pass on complaints, however informal, as soon as they are made.

All too often, we see firms with complaints policies (if they have them) that do not match the requirements of their regulators. Conversely, there may be very high bars for compliance, which the firm then fails to meet. For example, complaints policies often say that the complaint will be investigated and a response provided within two weeks. This is unrealistic, as the complaint might cover a significant time period and require substantial investigation. When the two week time period is not met, the client is unhappy that the firm hasn’t complied with its own obligations, leading to a further complaint.

Stay objective

Too often, firms do not apply an objective mindset when investigating complaints, instead relying upon the partner responsible to provide a response, and so do not provide a clear and comprehensive response. The investigation should instead be handled by an independent senior member of the management team or outsourced to a risk or compliance professional.

The person handling the complaint must be sufficiently skilled to review the issues objectively, and have sufficient capacity to deal with the complaints, which can be time consuming. They must have sufficient seniority within the firm to review the complaint and evidence, obtaining information and cooperation from others as needed. The response should then be drafted in a way that the clients will understand.

Whoever handles the complaint must also consider whether it could also give rise to a claim for professional negligence. If so, the professional indemnity insurers must be notified, and if necessary the firm must obtain their consent before responding to the complaint.

These mistakes could be avoided by conducting a review of the firm’s processes, correcting any errors and training tax advisers on the improved processes. Logging all complaints in a central location will assist firms in monitoring the progress and outcomes of complaints. This also enables the firm to review the root causes of complaints in order to ascertain any improvements that are needed to prevent repeat occurrences.

Complaints and investigations by regulators

Don’t delay…

A common mistake we see is a reaction of ‘frozen by fear’, as the professional is so shocked by the initial letter from the regulator that they put it on the ‘too difficult to deal with’ pile. It can fester there until the chaser comes in, and perhaps even the follow up. But the manner in which the investigation is handled is a factor when fines and sanctions are considered. Any delay will not help the professional’s case, particularly if the complaint relates to delay in dealing with a client’s affairs.

However, the regulator should understand that the professional will be dealing with the request for information alongside managing their busy practice. There is no harm in asking for additional time to respond if it is reasonably needed to consider the request, investigate the matter, take advice and respond. However, if the professional has delayed and ignored correspondence at the outset, the validity and credibility of that request is undermined. Don’t damage your own position and seek advice early.

Seeking resolution

We often see professionals denying the complaint brought by their regulator when the complaint is valid but there is good mitigation. In this case, the complaint can continue until shortly before the tribunal, when the professional might belatedly obtain legal advice and then admit the mistake but argue mitigation.

If the true position had been considered at the outset, the matter could probably have been resolved far sooner and at less cost, often with a Consent Order. However, these usually involve an admission of fault. It is a mistake to enter into a Consent Order thinking that that will bring an end to the matter, without:

- taking legal advice on the terms of the order, and considering whether itis appropriate; and
- considering whether agreement of the professional indemnity insurer is required before the order is entered into – otherwise there might be wide reaching implications for any subsequent claim.

Managing investigations

Don’t panic if you get a letter from the regulator. Acknowledge the letter but take early legal advice from a specialist before proceeding.

A mistake we often see is the failure to challenge the factual matrix and assumptions put forward by the regulator. Ensure that the files are not archived. Although time consuming, it is worth reviewing the full report and challenging any errors. Compiling a chronology can be hugely helpful in clarifying the facts, both for the regulator and for any tribunal.

Investigations can take a long time (often years) to resolve and you should record the recollections of staff members as soon as possible. If any staff are about to leave or retire, obtain their statement in good time.

In terms of the questions being asked by the regulator, consider the following questions. What breaches are they considering and why? Are you confident that no breaches occurred? Do you have explanations and evidence to explain what happened? Remember to be objective in your responses.

Present your case professionally, objectively and on the basis of the available evidence. If you become aware of a breach of your professional rules within your firm, consider whether you are under a duty to self-report. And document your thought processes if you decide that a report is not required, to avoid a subsequent challenge.

Professional indemnity

Many complaints and investigations have a professional negligence aspect and a failure to consider this can later cause problems with professional indemnity insurers. Brokers must be notified at the outset so that insurers can be advised and involved at an early stage if required.

You should review your professional indemnity insurance policy to see if there is a provision to assist with the costs of defending complaints by regulators, which might assist with the provision of early legal advice.

Lessons to learn from complaints

1. **Learn from your own experience:** Complaints will happen. Keep a log of all complaints (whether from clients or the regulator) and analyse the root cause of each complaint. Why did it arise, and what can be done to prevent that issue arising in the future?
2. **Learn from others:** Most regulators and insurers send out regular reports on complaints they have seen. Consider reviewing reports to see if you recognise any issues that are relevant to your firm. If you have a retained risk adviser, they may update you on these issues.

3. **Review your processes and systems:** Are they as robust as they could be to prevent complaints arising in the future? Would an independent risk review be helpful?
4. **Consider your culture:** Who do your staff report to when things go wrong or they feel uncomfortable about a file? Do you have a culture of people reporting issues early or do they hide matters and delay reports? Many complaints can be prevented or resolved if they are picked up early.
5. **Training:** Train the staff so that everyone in the firm is able to identify complaints and claims and knows what to do when one arises. Also discuss issues you have had (without identifying who in the firm has had the issue!). It can be the best training!

© Getty images/iStockphoto