



Can we help?



ADVOCATES DISCIPLINARY TRIBUNAL
ISLE OF MAN LAW SOCIETY
OFFICE OF FAIR TRADING

Can we help?

This booklet is designed to assist if you have a complaint about your advocate. Depending on what your complaint is about, there are different options open to you. This booklet explains what you can do if, for example, you feel that your advocate has given you poor service or is guilty of misconduct. It also tells you how you can get your bill checked if you think that your advocate's charges are unreasonable.

The **Isle of Man Law Society** has put this leaflet together with the assistance of the Advocates' Disciplinary Tribunal and the Office of Fair Trading. The Law Society is the body responsible for setting professional standards for Manx advocates. It can also investigate complaints and offers a conciliation service. Conciliation involves the Law Society working with the advocate and the client to try and resolve any misunderstanding or dispute between them.

The **Advocates' Disciplinary Tribunal** is a separate and independent body which also has powers to investigate complaints about advocates and registered legal practitioners. Making a complaint to the Tribunal is a more formal step than complaining to the Law Society. The Advocates' Disciplinary Tribunal normally becomes involved if someone complains about the conduct of an advocate or registered legal practitioner or when other methods of resolving a dispute have failed. The Tribunal has powers to discipline the lawyer concerned where it finds that a complaint is justified.

In this booklet, the term "advocate" has been used to refer to both advocates and registered legal practitioners. A registered legal practitioner is someone who practices law in the Isle of Man but calls himself or herself something other than an advocate - for example an English solicitor.

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Can we help?

Complaints can often be sorted out by discussing your concerns with your advocate or by talking to the person in their firm who is responsible for handling complaints. Advocates' firms must have their own internal complaints handling procedures and you can usually talk to a partner/senior advocate in the firm if you are dissatisfied with the service you have received.

If you cannot resolve your complaint this way, the Isle of Man Law Society (the "Law Society"), or possibly the Advocates' Disciplinary Tribunal (the "ADT"), may be able to help. Below, we look at the reasons which might cause you to complain and tell you how you can get the problem resolved.

Poor service

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

- not doing what you have asked them to do;
- involving you in unreasonable delays;
- giving you inaccurate or incomplete information;
- failing to reply to your phone calls and letters;
- not giving you enough information about costs before beginning your case or prior to giving you the final bill;

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

The Law Society can look into complaints about poor service through its Conciliation Scheme. You will find more information about this on page 13. The ADT will also investigate complaints about poor service. You can apply to the ADT directly but complaints about poor service are usually referred to it where conciliation has been unsuccessful.

Negligence

Negligence has a special meaning in law. Basically, the law says that negligence happens where there has been a breach (breakdown) of a duty of care owed to you. For example, negligence may occur where your advocate has failed to act in your best interests. If your advocate has been negligent, you may be able to sue them if that negligence has meant that you:-

- lost money, or
- spent money trying to put the matter right.

Similar circumstances may involve both negligence and poor service. Sometimes, the Law Society or the ADT will be able to deal with the complaint. However, neither body can actually decide whether an advocate has been negligent - only the courts can decide whether an advocate has been negligent in the legal sense.

If you think your advocate has been negligent you should get independent legal advice, as there are time limits for making a claim.

A number of law firms in the Isle of Man are members of the Negligence Panel Scheme. Under the scheme, certain firms (listed at the back of this booklet) will give one hour of free advice to you if you believe that your previous advocate was negligent. Alternatively, you can consult another advocate of your

choice who is not a member of the Panel, but you will not be entitled to get the first hour of advice free.

If you are advised by another advocate that your previous advocate was not negligent, you may still feel that the service they gave was poor. In this case, the Law Society or the ADT may be able to help you. (See 'Poor service' above).

Professional misconduct

There are rules which govern how advocates should practice and conduct themselves. If your complaint is about an advocate's misconduct, you should complain directly to the ADT who will investigate. Even if the ADT decides that there was misconduct in your case, it cannot award you compensation, but it can discipline the advocate involved.

Professional misconduct includes such problems as an advocate:-

- not keeping your business confidential;
- failing to pay money due to you or not preparing accounts which show what is owed to you;
- acting for you and for someone else on related matters (this is called a conflict of interests);
- not handing over your papers and files (please note that your advocate is entitled to keep any of your papers until you have paid the bill and only a court can overrule this); or
- stealing your money, or using it without your permission.

Advocates' charges can vary as there is no uniform way of calculating them. They are based on a number of factors including the type of work carried out, the level of expertise of the advocate, the urgency with which the job has to be done and the overheads of the firm. However, the bill you receive from your advocate should still represent a fair charge for the work done.

Your advocate should give you a written estimate in advance as to the cost of the work you are asking them to do. If he or she has not provided you with an estimate, you should ask for one.

If you think that your advocate's bill is too high and you have not been able to reach an agreement about it, you can ask him or her to apply to the Law Society for a **Remuneration Certificate**.

A Remuneration Certificate is a method of having the bill checked and involves a review which is carried out by someone appointed by the Law Society (an "assessor").

Assessment is a different way of having a bill checked. A Court officer will check the bill to decide whether it is fair and reasonable. This method can only be used where the work carried out by an advocate involved court proceedings.

If you wish to complain about your advocate's fees, you should read section 5 of this booklet carefully. You should be aware that strict time limits apply for both methods of getting a bill checked and that you may have to pay certain costs or fees.

Theft and dishonesty

If you have suffered a loss or hardship as a result of your advocate's dishonesty, you should contact the police and the advocate's firm, or the Law Society if he or she practises on their own. All advocates' firms are obliged to take out insurance against the dishonesty of an individual member of staff. You may be able to get your money back from the firm's insurers.

If your complaint is about your advocate's dishonesty, you can contact the Law Society and they will tell you what to do.

Complaints about someone else's advocate

Generally speaking, if your complaint is about someone else's advocate, it can only be investigated if it involves professional misconduct. It is not possible to investigate a complaint about the poor service given by someone else's advocate. You should complain directly to the ADT about the misconduct of an advocate who is not acting for you.

If you complain about the way someone else's advocate has behaved, the ADT can only help you if the advocate has broken the rules of professional conduct which all advocates must follow. Often, an advocate will just be doing what is best for their client - this may not be what is best for other people that may be involved.

If you complain about the conduct of someone else's advocate, the ADT has no power to pay you any compensation even if it decides your complaint is justified.

Unfortunately, it is not possible to investigate many of the complaints people make about other people's advocates. Before you write to the ADT you should discuss your concerns with your own advocate.

If your complaint is about the way an advocate has dealt with the estate of someone who has died, it can be investigated if you fall into *both* of the following categories:

- the advocate is an executor (a person named in the will to deal with the deceased's affairs); *and*
- you have been left a share of the estate after the bills and expenses have been paid. For example, this will not be a fixed sum (for example £1,000) or a particular gift (for example a gold watch). In law, being left a share of the estate means you are a "residuary beneficiary".

If you fall into these categories, it is also possible to complain about the fees that an advocate has charged for acting as an executor - see 'Advocates' bills' above.

In certain circumstances, you may be responsible for paying the bill of an advocate who is not acting for you. For example, you may be ordered to pay your opponent's costs if you are unsuccessful in a court case. It may still be possible to get the bill checked by the Law Society via the Remuneration Certificate procedure or by the Court under the Assessment procedure.

Problems we cannot help with

Neither the Law Society nor the ADT has any power to do the following:-

- deal with complaints about any lawyer who is not acting as an advocate or registered legal practitioner and who has advised on your case, or about legal executives (unless they are employed within an advocates' firm to provide legal services). You should contact the Office for the Supervision of Solicitors if your complaint involves a solicitor or the General Council of the Bar if your complaint concerns a barrister. Where your complaint is about a legal executive who has been involved in your case you should contact the Institute of Legal Executives. Please see section 6 for their contact details;

- give you legal advice or a 'second opinion' on legal advice that you have received (but please see the box below for further information);
- tell your advocate how they should handle your case;
- decide that your advocate has been negligent;
- look into the outcome of court cases. You should talk to an advocate in these circumstances. The Law Society can provide you with a list of advocates who you may consult;
- review a decision of the Legal Aid Officer as to whether you are granted Legal Aid or not. You should ask your advocate how to appeal.

If you are still not sure what to do after reading this booklet, you can call the Law Society or the ADT. Their numbers are:

Isle of Man Law Society: 662910

Advocate's Disciplinary Tribunal: 685211

Over the phone, either of these bodies can give you further information on how to proceed with your complaint or details of who to contact if they cannot help.

A list of advocates who you can consult for legal advice is available from the Law Society's website at www.iomlawsociety.co.im

How to complain

This section tells you what to do if your complaint involves poor service that you have received from an advocate or if you have suffered because of an advocate's misconduct. Other types of complaint are dealt with elsewhere in this booklet.

Where should you start?

If your complaint is about the **service** you have received from your advocate, you must first discuss it with either your advocate or the partner in the firm who deals with complaints. All firms of advocates must have their own procedures for handling complaints.

If your complaint is about an advocate's **conduct** (for example, they may have acted for you and someone else where there has been a conflict of interests), you should complain directly to the ADT. (Please see below for more information).

The Law Society also operates a **Conciliation Scheme** for complaints about the service provided by an advocate. It is a less formal procedure than making a complaint to the ADT. During conciliation, the Law Society will work with you and your advocate to try and resolve the differences between you. If you are not happy with the outcome of a complaint you have referred to the Conciliation Scheme, you can ask the ADT to review your complaint afterwards. For more information, please see below.

How to complain to your advocate

It is best to complain in writing because your advocate will have to keep a record of the details of your complaint. You should keep a copy of any letters that you send to your advocate.

The Law Society has produced a special Complaint Resolution Form that you may wish to use instead of writing a letter to your advocate. You can get this form from:

- your advocate, or
- the Isle of Man Law Society.

(Contact addresses and telephone numbers are printed at the back of this booklet).

Please note that you should not use this form if:-

- you are complaining about the amount of your advocate's bill, as there are strict time limits (see section 5 which explains how to get your bill checked);
- you are complaining about someone else's advocate; or
- your advocate has said that he or she will not act for you any more.

You can also telephone or make an appointment to visit your advocate's firm in order to discuss your complaint. If you do this you should:-

- ask to speak to the person who deals with complaints;
- tell them that you have a complaint and say what it is about;
- tell them what you want them to do about it;

- take notes of your conversation;
- ask the advocate to confirm in writing:
 - the name of the person at the firm who will be dealing with your complaint;
 - the action they will be taking;
 - the date by which they will do this.

Many complaints can be resolved at this stage if the firm knows that you are dissatisfied.

The Law Society Conciliation Scheme

If you have complained to your advocate's firm following the above steps and are unhappy with their response, you can use the Law Society's Conciliation Scheme. The Law Society produces a Complaint Resolution Form which you can fill out for this purpose. Alternatively, you can send them a letter telling them:-

- your name and address;
- the name and address of the advocate and firm that you are complaining about;
- what your complaint is about; and
- what you would like them to do to resolve the problem.

The Law Society will send a copy of your complaint to the advocate or firm involved and ask for their comments and reply. The advocate will then send a copy of your file to the Law Society. Any comments or reply from the advocate

or firm will be sent to you. The Law Society will work with you and your advocate and try to help you resolve the problem. The Law Society has no power to award you damages or compensation in relation to your complaint.

If you are still not happy at this stage then the ADT may be able to help.

When should you refer a complaint to the ADT?

You should get in touch with the ADT in the following circumstances:-

- you haven't received a detailed reply to your initial complaint from your advocate within a reasonable time, say 28 days;
- you haven't been able to sort out the problem with your advocate or (if you have used it) through the Law Society Conciliation Scheme;
- your complaint is about an advocate's conduct and it has not been satisfactorily resolved by other means.

Making a complaint to the ADT

If you want to make a formal complaint to the ADT, you should obtain a copy of the Guidance Notes and Rules. These forms can be obtained from the Clerk to the ADT at Government Offices or from the Law Society.

You can phone, write or call in to either of these offices to get the Guidance Notes and Rules.

If you are making a complaint on behalf of a friend or relative, please make sure you include a letter from them authorising you to deal with their complaint.

Telephone numbers

Advocates' Disciplinary Tribunal 685211

Isle of Man Law Society 662910

Referring a complaint to the Advocates' Disciplinary Tribunal

Referring a complaint to the ADT is a more formal step than taking part in the Law Society's Conciliation Scheme (please see page 13 which tells you about this). Before making an application, you should read the previous sections of this leaflet to check that your complaint is one that should be referred to the ADT.

How will the ADT handle your complaint?

- When the ADT receives your complaint, its first step will be to check that it is something that it can deal with. The ADT will then decide whether or not to investigate your complaint further.
- Sometimes, the ADT might decide not to take any further action. If this is the case, the ADT will write to you and the advocate you are complaining about, explaining the reasons for its decision.
- If the ADT decides to investigate further, it will then pass a copy of your complaint to the advocate involved and ask him or her to respond to the complaint. You are entitled to receive a copy of the advocate's answer.
- A date will be set for the hearing of the complaint. At the hearing, you will be able to put your case to the ADT and the advocate you are complaining about will be able to present his or her case. You can either speak on your own behalf or you can get another advocate to represent you. You may be allowed Legal Aid for representation before the ADT. The advocate you choose to represent you will be able to tell you whether or not you are likely to qualify for Legal Aid.

- The ADT will then make its decision. You will be able to get a written copy of this.
- If you are not happy with the ADT's decision, it is possible to appeal to the Lieutenant Governor. You can get more information about this from the Law Society or from the ADT itself.

What action can the ADT take?

- If the ADT finds that your advocate gave poor service or is guilty of misconduct, it can:-
 - reprimand the advocate;
 - fine him or her; or
 - refer the complaint to the Governor who can give stiffer penalties.
- In addition to reprimands or fines, the Governor can:-
 - suspend an advocate from practising for a period, or
 - cancel an advocate's commission. This means that the advocate will not be able to practice in the Isle of Man any more.
- Both the ADT and the Governor can order the advocate to pay part or all of your costs in making the complaint.

- You should bear in mind that the ADT *cannot*:
 - order an advocate to pay you compensation;
 - reduce an advocate's bill;
 - order an advocate to correct a mistake at his or her own expense;
 - require an advocate to stop acting for a particular client;
 - give legal advice about the complaint or appoint an advocate for you;
 - (generally speaking) investigate complaints about professional negligence. (If your complaint involves negligence, please read the next section).

How long will it take?

Typically, it can take 6-10 weeks for the ADT to consider and investigate your complaint before a date is set for a hearing.

How to follow up a negligence claim

Negligence has a special meaning, as explained on page 5. You should get independent legal advice before you follow up a claim for negligence.

If you are told that you may have a claim, you should contact your advocate and tell them that you plan to make a claim against them. They will then tell their insurers.

The insurers will carry out an investigation and then decide whether it is appropriate to settle your claim. If they decide not to settle, you will probably have to go to court in order to follow up your claim. You may have to pay court costs.

You are strongly recommended to seek independent legal advice before making a claim in negligence. Please bear in mind that there are time limits for making a claim.

If you wish, you can seek advice from a law firm who is a member of the Negligence Panel. (Please see the back of this booklet). Under the scheme, certain firms will give one hour of free advice if you believe that your previous advocate was negligent. Alternatively, you can consult another advocate of your choice who is not a member of the Panel. However, you will not be entitled to get the first hour of advice free.

How to get your bill checked

If you think your advocate's bill is unreasonable, you should contact them as soon as possible. It is important to note that strict time limits apply for challenging a bill.

Remuneration Certificates

If you cannot come to an agreement with your advocate about their fees, you can ask him or her to apply to the Law Society for a Remuneration Certificate. This does not mean that you will actually receive a paper certificate but is instead a method of getting your bill checked.

A review of your bill will be carried out by an assessor appointed by the Law Society.

<h4>Who can apply?</h4>

- You can apply if you are complaining about your own advocate's bill.
- You can also apply if the advocate's fees are for their work in connection with a will and you are what is called a "residuary beneficiary". This is a person who has been left a share of the estate of the person who has died, after all other payments have been made. If you are a residuary beneficiary, you can only apply where the advocate or their firm is also the executor. An executor is someone who is responsible for carrying out the wishes of the person who has died, according to their will.
- If you are responsible for paying the bill of an advocate who is not acting for you (because, for example, the Court has ordered you to pay someone else's costs), you can ask the client of the advocate you are paying (i.e. your

opponent) to apply for a Remuneration Certificate. If they do not agree to apply, you may have to have that advocate's bill checked by 'Assessment' (see below).

- You should be aware that:
 - there are strict time limits for applying for a Remuneration Certificate (see below);
 - you can only ask for a Remuneration Certificate if you have not paid your bill or if your advocate has taken his costs from money that he or she already holds for you;
 - if the bill has not been paid, you will generally have to pay half of it plus all the VAT and any expenses that your advocate has paid for you (for example, land search fees) before the review. The advocate is entitled to charge you interest on the money that you owe (but see the section on interest below);
 - you will have to pay a fee of £50 when you apply for a Remuneration Certificate. If your final bill is not reduced or is reduced by 25% or less, you will have to pay up to 10% of the assessor's costs of reviewing the bill. Your initial £50 fee is counted as part of any costs that you have to pay;
 - you cannot apply for a Remuneration Certificate and then ask for your bill to be assessed by the Court and vice versa.

Time Limits

- You have only **6 months** to apply for a Remuneration Certificate from when you receive your bill or when your advocate informs you of your right to ask for a Remuneration Certificate (whichever happens later). Please note that your advocate may advise you of this right by printing information on the back of your bill.

- If you do not apply for a Remuneration Certificate within the 6 months allowed, you can ask the Law Society if they will carry out late checking of your bill. They may be prepared to do this but you will have to give reasons for your late application.

How to apply

- In the first place, you should write to your advocate and ask them to apply for a Remuneration Certificate on your behalf. If they do not do this, you can write to the Law Society directly. A special form is available for this. You can get this by contacting the Law Society on 662910 (see section 6 containing contact details for more information).
- Your application must be sent to the Law Society with a fee of £50. You will get this back if your advocate's fees are reduced to less than 75% of what they originally charged you.
- If the bill has not been paid, you will generally have to pay half of it plus all the VAT and any expenses that your advocate has paid for you (for example, land search fees) at this stage. If you are not happy to do this, you can ask the Law Society to waive this requirement. However, they will only do so in exceptional circumstances.
- The Law Society will appoint an assessor and send them a copy of your form. Your advocate will be told about your application (if they did not make the application for you) and they will then send their file to the assessor for checking.
- The assessor will review the file and decide what level of costs are reasonable for the work done.

How will the assessor decide what costs are reasonable?

- For cases involving proceedings in court or before a tribunal, the assessor will decide how much you should pay according to special costs rules. These are rules and regulations set down by law.
- For other types of work, the assessor will decide what amount is fair and reasonable, taking into account all the circumstances of your case. These will include:-
 - how difficult the work was;
 - how experienced the advocate is;
 - how much time the advocate spent working on the matter;
 - the number of documents they had to look at;
 - how important the work was to you;
 - any terms of business agreed between you and your advocate.

The results of the assessor's review

- If the assessor decides that you should pay a lesser amount than what has already been paid to your advocate, your advocate will have to refund the difference to you.
- If your advocate's fees are reduced to less than 75% of what they originally charged you (excluding VAT and any expenses they may have paid for you), your advocate will be ordered to pay the costs of reviewing the bill (including the £50 fee you paid when you applied).

- However, if your bill is reduced by 25% or less (excluding VAT and any expenses your advocate may have paid for you), you will have to pay the assessor's costs. These may be more than the £50 fee you paid when you applied for your bill to be checked. The maximum cost may be around 10% of your final bill. (Please note that your initial £50 fee is counted as part of any costs you have to pay following the review).

Interest

If you have not paid your bill then your advocate is usually entitled to charge you interest from 1 month after the date the bill was sent to you.

To avoid having to pay interest when you are complaining about a bill, you can pay it in full and at the same time write to your advocate saying that you are paying it on condition that they obtain a Remuneration Certificate. This way, interest will not be added to your outstanding bill whilst it is being checked.

Please note that advocates do not have to accept money on this basis but they cannot refuse to apply for a Remuneration Certificate if your application is valid.

Assessment by the Court

- Either you or your advocate can apply for your bill to be assessed by the Court. An officer appointed by the Court will review your bill to make sure that it is fair and reasonable.
- This method of checking your bill can only be used where the work carried out by your advocate involved proceedings before a court or tribunal.

- As with the Remuneration Certificate procedure, you have to apply for assessment within strict time limits. You have only 6 months to apply for assessment from when you receive your bill or when your advocate informs you of your right to assessment of that bill. Please note that your advocate may advise you of this right by printing information on the back of your bill.
- If you apply for assessment after 6 months, the Court may order assessment of your bill but it is not obliged to do so. You will have to give a good reason for your application.
- Unfortunately, as with all court proceedings, assessment is likely to involve you paying court costs. Even if your bill is reduced, you may have to pay your own costs and your advocate's costs. This will be decided by the Court.
- Assessment is a technical and complex process. It is recommended that you talk to another advocate before applying for assessment of your advocate's bill.

Useful contacts

- **Advocates' Disciplinary Tribunal**
Government Offices
Bucks Road
Douglas
IM1 3PW

Phone: 685211

- **Isle of Man Law Society**
27 Hope Street
Douglas
IM1 1AR

Phone: 662910
Fax: 679232
E-mail: iomlawsoc@advsys.co.uk
Web-site: www.iomlawsociety.co.im

- **Office of Fair Trading**
Government Buildings
Lord Street
Douglas
IM1 1LE

Phone: 686500
Fax: 686504
E-mail: iomfairtrading@gov.im

- Citizens Advice Service**
 Room 3, Promenade Church, Douglas Phone: 626863
 Unit 4, Bourne Concourse, Ramsey Phone: 813466
 Southern District, Southlands
 Res. Home, Castletown Rd, Port Erin Phone: 833976

- The Office for the Supervision of Solicitors**
 Victoria Court
 8 Dormer Place N.B. Please refer to page 9
 Leamington Spa
 Warwickshire
 CV32 5AE

Phone: 01926 820082
 Website: www.oss.lawsociety.org.uk

- The Complaints Commissioner**
 General Council of the Bar
 Northumberland House N.B. Please refer to page 9
 3rd Floor 305-306 High Holborn
 London
 WC1V 7JZ

Phone: 020 7440 4000
 Website: www.barcouncil.org.uk

- Institute of Legal Executives**
 Kempston Manor
 Kempston N.B. Please refer to page 10
 Bedford
 MK42 7AB

Phone: 01234 841000
 Website: www.ilex.org.uk

Negligence Panel

Cains

15-19 Athol Street
Douglas
IM1 1LB

Phone: 638300
Fax: 638333
E-mail: law@cains.co.im

Messrs. Corbridges

Rosemary House
Mount Havelock
Douglas
IM1 2QG

Phone: 670940
E-mail: mail@corbridges.com

Dickinson Cruickshank & Co

P.O. Box 33
33-37 Athol Street
Douglas
IM1 1LB

Phone: 647647
Fax: 620992
E-mail: mail@dc.co.im

Messrs. Laurence Keenan

47 Victoria Street
Douglas
IM1 2LD

Phone: 611933
Fax: 611893
E-mail: info@lklaw.co.im

Cains Gordon Bell

3-5 Auckland Terrace
Ramsey
IM8 1AF

Phone: 811311
Fax: 815525
E-mail: law@cainsgb.co.im

Corlett Bolton & Co

4 Finch Road
Douglas
IM1 2P1

Phone: 676868
Fax: 676966
E-mail: mail@corlettbolton.com

Kelly Luft Stanley & Ashton

Talbot Chambers
16-18 Athol Street
Douglas
IM1 1QD

Phone: 674316
Fax: 675200
E-mail: law@kellyluft.enterprise-plc.com

Mark Moroney

1 Mount Pleasant
Douglas
IM1 2PU

Phone: 624964
Fax: 620124

Quinn Kneale
50 Arhol Street
Douglas
IM1 1JB

Phone: 623195
Fax: 676763
E-mail: mail@quinnkneale.com

Simcocks
Ridgeway House
Douglas
IM99 1PY

Phone: 620821
Fax: 620994
E-mail: mail@simcocks.com