

Delays: Common issues in legal practice



What are common scenarios where delay may arise in legal practice?

This is a guidance note for lawyers, designed to provide information about common scenarios where delay may lead to complaints to the Legal Profession Board of Tasmania (the Board).

Introduction

A large proportion of complaints received by the Board each year allege delay by a lawyer. In the Board's experience, these complaints often come about as a result of client's stress, frustration or misunderstanding about actual or perceived delays with the progress of their legal matters.

The *Legal Profession (Solicitors' Conduct) Rules 2020* require lawyers to deliver legal services competently, diligently and as promptly as reasonably possible¹. Where lawyers fail to appropriately progress client matters, disciplinary action may be taken.

Below are some common scenarios seen in complaints about delay.

Failure to progress matters substantially or at all

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

A failure to progress a matter is not necessarily limited to situations where no work at all is done on a file. Where minimal work has been conducted over an extended period of time, none of which has substantially progressed a matter, there may be a finding that this also falls below the standard expected of a competent and diligent lawyer.

In circumstances where there are repeated or sustained failures to progress a matter, disciplinary action is more likely to follow. Such was the case in *LPBT v Barclay*² and *LPBT v Lester*³.

¹ Rule 8(c), *Legal Profession (Solicitors' Conduct) Rules 2020*

² *Legal Profession Board of Tasmania v Barclay* [2022] TASSC 14

³ *Legal Profession Board of Tasmania v Lester* [2021] TASSC 41

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Delayed non-urgent work

There are varying degrees of delay and the consequences of delaying one file over another may also vary considerably.

Although some matters may not seem urgent or are not the subject of formal deadlines, they should not be overlooked or postponed indefinitely in favour of other files. Where delays begin to extend beyond a reasonable timeframe, lawyers should re-prioritise their work rather than neglect otherwise less urgent files. As stated in the decision of *LSC v Galatas*⁴, at a certain point non-urgent matters must be accorded a more urgent status simply because of the passage of time.

Release or transfer of client files

Upon completion or termination of the law practice's engagement, ownership of the client's file rests with the client themselves. Lawyers are reminded that in the absence of a valid lien over the file, all documents (or if they are electronic documents, copies of those documents) to which the client is entitled must be given to the client as soon as reasonably possible after a request for them is made⁵. Clients are entitled to their file unless a lien is validly claimed over the file⁶.

Similarly, where the client has transferred their matter to the care of a new lawyer, client documents should be forwarded to the new lawyer promptly. A failure to deliver a file in a timely manner following a request, as seen in *LST v Practitioner H*⁷, can result in disciplinary action.

Responding to correspondence from the other side

Lawyers are required to act honestly and courteously in all dealings in the course of legal practice.⁸ Inherent in that obligation is a duty to respond to correspondence from the opposition within a timely manner.

The Board occasionally sees complaints where lawyers have failed to respond or delayed responding to lawyers for the other side. Regardless of whether the delay is intended as a tactic to stall matters or merely a failure to respond at all, such conduct may warrant disciplinary action.⁹

Inadequate communication with the client

The Board regularly receives complaints about lawyers who fail to return clients' phone calls or emails or respond to clients' specific inquiries. Lawyers have a duty to ensure clients remain well informed as to the progress of their matters. The ability to manage client expectations and provide regular updates where reasonably practicable can help reduce the possibility of complaints.

To an extent, delays may be unavoidable especially for lawyers in a busy practice; however communication delays ought to be acknowledged by the lawyer. Even if the lawyer is not at fault, inadequate communication with clients causes stress and frustration which in turn often leads to complaints.

Significantly delayed communication is likely to be viewed by the Board or a Court as constituting a serious breach of a lawyer's obligation to act with reasonable skill, care, promptness and professionalism. In circumstances where there are repeated or excessive communication failings disciplinary action is likely to follow. Such was the case in *A Legal Practitioner v Law Society of Tasmania*¹⁰ and *Law Society of Tasmania v Scott*.¹¹

⁴ *Legal Services Commissioner v Galatas* [2013] VCAT 214 at 16

⁵ See Rules 18 and 19, n1

⁶ Rule 19, n1

⁷ *Law Society of Tasmania v Practitioner H* [2002] LPDT

⁸ Rule 8(b), n1

⁹ *Council of the Law Society of ACT v Legal Practitioner 2* [2016] ACAT 120

¹⁰ *A legal Practitioner v Law Society of Tasmania* [2005] TASSC 28

¹¹ *Law Society of Tasmania v Scott* [2007] TASSC 30

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Responding to requests for information from the Board

It is not uncommon for lawyers who have received a complaint about delayed communication with clients to then also delay responding to the Board.

Lawyers have an obligation to cooperate with the regulatory authority including responding to requests for information from the Board within a reasonable timeframe.¹² Where the Board issues a Notice to a lawyer to provide further information or documents which may be required to assist in the investigation of a complaint, a lawyer is required to comply with that request.¹³ A failure to comply with a Notice from the Board within a prescribed timeframe, or without a reasonable excuse for non-compliance, is a serious breach of a lawyer's professional obligations, as was the case in *LPBT v Ruddle*¹⁴ and *LPBT v Walker*¹⁵.

Lawyers will be provided with reasonable opportunities to provide the requested information or documents before any disciplinary action is taken. In the event a lawyer continues to fail to meet requests or provides only part of the information or material, disciplinary action will usually be taken.

In circumstances of extended non-compliance, the Board has the power to recommend to the Law Society of Tasmania, as the prescribed authority, that a lawyer's practising certificate be suspended while a failure to comply with a request continues.¹⁶ This was seen in *Etter v LPBT*.¹⁷

Lawyers are encouraged to contact the Board at the earliest opportunity if they are having difficulty providing a response or the requested information with the timeframe provided by the Board.

Pragmatic considerations

The Board occasionally sees complaints where an instance of minor delay, when not addressed at an early stage, has the propensity to cross the threshold to become a conduct issue.

In circumstances where lawyers are experiencing difficulty in complying with their professional obligations, the Board encourages them to seek assistance or advice through one of the following avenues as soon as practicable:

- Speak with a partner or senior lawyer outside the firm;
- Contact the Law Society of Tasmania (LST);
- Contact a practitioner on the Senior Practitioners List details of which can be obtained from the LST;
- In appropriate cases, contact the Law Society's EAP provider, Converge.

The information contained in this Guidance Note has been adapted with permission from the Victorian Legal Services Board + Commissioner, 'Delays: Common issues in legal practice' Fact Sheet.

¹² Sections 584 and 586 of the *Legal Profession Act* 2007. See also Rule 48(2), n1

¹³ Section 572, n11

¹⁴ *Legal Profession Board of Tasmania v Ruddle* [2014] TASDT 2

¹⁵ *Legal Profession Board of Tasmania v Walker* [2017] LPDT 1

¹⁶ Rule 446, n11

¹⁷ *Etter v Legal Profession Board of Tasmania* [2018] TASFC 2

Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

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