

Settlement of claims and complaints - how far can you go?

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Claimants bringing professional negligence claims can sometimes also threaten, or bring, a regulatory complaint in respect of the same issues which form the basis of the civil claim for damages. In claims against solicitors, a Claimant may consider that the threat of a complaint to the Solicitors Regulation Authority (“SRA”) will prompt the defendant to settle the claim at an earlier stage, or perhaps for a higher amount. Accordingly, a Claimant who threatens to make a complaint to the SRA may be motivated by litigation tactics, rather than any concern that the conduct which is the subject of scrutiny should be brought to the Regulator’s attention. It has to be said that in our experience, the threat of a report to the SRA rarely has the desired effect of prompting the settlement of a civil claim.

From the professional’s perspective, achieving finality and avoiding adverse publicity will often be important factors when concluding the settlement of a claim for professional negligence.

Practitioners will therefore often seek confidentiality clauses as part of an agreed resolution. In addition, it may be possible, depending on the circumstances, to achieve a settlement which “buys off” other risks, for example, further claims arising out of the same retainer or transaction. It is important, however, for professionals to have regard to their regulatory obligations when considering the scope of the settlement of the claim.

In a recently published Agreed Outcome^[1] the SRA rebuked a solicitor who had, in the context of discussions aimed at settling a complaint, tried to prevent the complainant from making a complaint to any regulatory body. The decision is based on the fact that seeking to include such terms in the agreement constitutes a breach of Rule 7.5 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the Code”). This provision makes it clear that:

“You do not attempt to prevent anyone from providing information to the SRA or any other body exercising regulatory, supervisory, investigatory or prosecutory functions in the public interest.”

A lawyer’s desire to achieve finality in a settlement is understandable. The relevant provisions of the Code, however, are aimed at ensuring that there is no impediment to bringing appropriate matters to the SRA’s attention so that, when necessary, action can be taken to enforce professional standards and uphold public confidence in the delivery of legal services.

Those regulated by the SRA should therefore carefully consider the wording of offers to settle claims and complaints and any settlement agreements to ensure that they comply with the Code. Any precedent documents and clauses should be reviewed to ensure compliance. Any attempt to prevent a client, former client or third party complaining to the Regulator could itself result in a regulatory sanction.

[1] <https://www.sra.org.uk/consumers/solicitor-check/133103/>

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