Blind Justice

The documents

Sources for The Memory of Justice II: The Decisions That Never Exist

This bundle contains the documents on which the briefing is based. All of them were disclosed to Blind Justice UK by the Legal Ombudsman on 25 August 2026 in response to a request made under the Freedom of Information Act 2000 on 29 July 2026, reference FOI00867. None of them had been published before.

They are reproduced here in full, in the form in which they were disclosed. Where a document carries redactions, those redactions were applied by the Legal Ombudsman and not by Blind Justice UK, and no inference is drawn in the briefing from any redacted passage.

The Legal Ombudsman answered every item of the request that it holds and refused nothing. The handwritten signature of the officer who signed the response has been removed by Blind Justice UK. Nothing else has been altered.

Contents

The Legal Ombudsman Scheme Rules were also supplied with the response. They are not reproduced here because they are already published, and are at legalombudsman.org.uk. The version relied on in the briefing is the one including amendments applying to complaints referred from 1 April 2023.

Blind Justice UK, 26 August 2026
Registered Charity No. 1217562

Queensbury House, Queens Road, Brighton, BN1 3XF
edward@blindjustice.org.uk | www.blindjustice.org.uk | +44 7713 949546

Subject: RE: FOI00867
Date: Tuesday, 25 August 2026 at 15:02:24 British Summer Time
From: Information Rights & Security <infosec@legalombudsman.org.uk>
To: Edward Romain <edward@blindjustice.org.uk>
Attachments: image001.jpg, image002.png, image004.png, image005.png, 25.8.2026.FOI00867.Final response.pdf, NEW scheme rules copy.pdf, Withdrawn complaints_Redacted.pdf, 2-08 Complainant advance notice of rule 5-7 decision request.pdf, Case fees and their application_Redacted.pdf, Chapter 5.4 and 5.7_Redacted.pdf

CLASSIFICATION: OFFICIAL SENSITIVE

Dear Edward Romain

Further to your request, please find the attached.

Yours sincerely,

[signature removed]

Grace Garande
Information Governance Officer
Email: infosec@legalombudsman.org.uk

LEGAL OMBUDSMAN

CLASSIFICATION: OFFICIAL SENSITIVE

From: Information Rights & Security <infosec@legalombudsman.org.uk>
Sent: 01 August 2026 12:38
To: edward@blindjustice.org.uk
Subject: FOI00867

Dear Edward Romain

I refer to your request.

Please find the attached.

Yours sincerely,

[signature removed]

Grace Garande
Information Governance Officer
Email: infosec@legalombudsman.org.uk

LEGAL OMBUDSMAN

From: Edward Romain <edward@blindjustice.org.uk>
Sent: 29 July 2026 18:50

To: Enquiries <Enquiries@legalombudsman.org.uk>
Subject: Freedom of Information request

Caution: This email originates from outside the organisation. Do not click on links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam

Please find attached a request under the Freedom of Information Act 2000 on behalf of Blind Justice UK. I would be grateful for an acknowledgment of receipt.

Regards,

Edward Romain

Blind Justice

Edward Romain, ACILEX
Founder & CEO | **Blind Justice UK (Registered Charity No. 1217562)**
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A Queensbury House, Queens Road, Brighton, BN1 3XF

Legal Ombudsman
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SL1 0EL
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Private & Confidential
edward@blindjustice.org.uk

Freedom of Information Act (FOIA) 2000 – Request For Information

Reference: FOI00867

25 August 2026

Dear Edward Romain

Further to your request; please see the response below:

1). For each of the last five complete reporting years, the number of complaints closed before a formal investigation commenced, broken down by closure category (for example: withdrawn by the complainant, discontinued, dismissed under rule 5.7 of the Scheme Rules, resolved without formal investigation, other).

Closure Code	FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26	
Agreed Outcome - Chapter 5	39	295	325	326	271	
Agreed Outcome – Guided Negotiation	182	927	604	537	673	
Agreed Outcome - Reasonable Offer Made	227	482	434	418	506	
GET closed - offer accepted	476	450	412	276	306	
GET withdrawn - other	245	189	252	343	295	
Ombudsman's decision to dismiss under 5.24(h) or 5.32 (c)		15	7	8	12	
Ombudsman's decision to dismiss/discontinue under 5.7		2761	1885	2038	1996	

2). The current template or templates of the letter sent to complainants when an investigator provisionally concludes that a complaint should be dismissed or discontinued under rule 5.7 of the Scheme Rules, including the standard section headed 'Next Steps' or its equivalent.

Please find the attached document entitled 2-08 complainant advance notice of rule 5-7 decision request.

3). Of the complaints recorded as withdrawn in each of those five years, the number withdrawn following the issue of such a notice letter, if this is recorded.

We do not record withdrawals made specifically on the basis of the issuance of a 2-08 complainant advance notice letter; I am thus unable to provide this information to you.

4). Any internal guidance, scripts, template libraries or training materials provided to investigators concerning: the drafting of rule 5.7 advance notice letters; the 'Next Steps' section or its equivalent; and the recording of complaint withdrawals at the pre-investigation stage.

Please find the attached guidance entitled Chapter 5.4 and 5.7 and Withdrawn complaints. Further information regarding 5.7 can also be found in our Scheme Rules, attached.

5). Any performance measures, key performance indicators or targets, whether applying to individual investigators or organisationally, that relate to the closure of complaints before or without formal investigation.

The closure productivity target for early resolutions for the period in question is 5 case closures per month per investigator. The figures we report on are a combination of early resolutions (for complaints closed before an investigation has commenced) and business as usual (formal complaints) as both workstreams can close complaints at either stage. There is no reportable target for complaints closed by early resolution alone.

6). The treatment of case fees where a complaint is withdrawn before a formal investigation commences, including whether a case fee is charged to the service provider, together with any policy document recording that treatment

Please find the attached document entitled Case fees and their application.

If you are unhappy with our response or the handling of your request and wish to request an internal review of our decision, please write to:-

Legal Ombudsman
Information Rights and Security Team
PO Box 6168,
Slough,
SL1 0EL
infosec@legalombudsman.org.uk

If following the review, you remain unhappy with the outcome, you have the right of recourse with the Information Commissioner's Office (ICO). They can be contacted at:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF.
Email: casework@ico.org.uk
Telephone: 0303 123 1113.

Generally, the ICO cannot provide a decision until you have exhausted the review process within the Legal Ombudsman.

Yours sincerely,

[signature removed]

Grace Garande
Information Governance Officer
Email: infosec@legalombudsman.org.uk

LEGAL OMBUDSMAN

This document will be held in accordance with the Legal Ombudsman's retention and disposal schedule. If you have any concerns on how the Legal Ombudsman processes your personal data please contact the Data Protection Officer at infosec@legalombudsman.org.uk. To view the Legal Ombudsman's privacy statement please visit https://www.legalombudsman.org.uk/privacy/

Legal Ombudsman
PO Box 6167
SLOUGH
SL1 0EH
T 0300 555 0333
www.legalombudsman.org.uk

18 August 2026

File Reference:

Dear XXXX

Your complaint about XXXXXXX

I have now reviewed the information we currently have in relation to the above complaint and believe that we may be unable to assist you with [your complaint / elements of your complaint].

[If the case is in ERT, you must set out a brief background of the complaint and a summary of the complaints that have been raised]
[If the case is at investigation, you must set out the list of complaints that have been scoped and agreed to form the investigation. We cannot proceed with a 5.7 if the complaints are not agreed. Briefly set out any other relevant background to the request.]

Turning now to the reasons why I consider that we are unable to assist with the complaint, our Scheme Rules, in particular Chapter Five, set out reasons that explain why we can look to dismiss certain cases. In this instance, I believe that we have reason to look at the dismissal of [all/part] of your case. The rule we are referring to says specifically:

> *5.7 An ombudsman may (but does not have to) dismiss or discontinue all or part of a complaint if, in their opinion:*
> [quote each 5.7 rule in full, as worded in the Scheme Rules) that you are relying on]

[Set out a clear explanation as to why you are intending to ask for the case to be dismissed. If you are using one 5.7 rule for all heads of complaint, then you need to explain why that rule applies to the complaint as a whole.

Alternatively, if you are using different rules for different heads of complaint, you need to set out clearly which rule/s you are using for each head of complaint with a clear explanation of why the rule/s apply.

If, having received this explanation, you accept my reasoning, please let me know, and we will treat [those complaints / the complaint] as withdrawn. No further decision will be required. I will write to you further to confirm this.

Alternatively, I understand that you may disagree with me.

If you disagree with the reasons for dismissing your complaint, please provide your comments by [insert date 10 working days from date of the letter]. We aim to resolve complaints quickly and with minimum formality, and I would encourage you to keep your response to a maximum of 3 pages. If you choose to use artificial intelligence to assist your response, please note that AI content may not be correct or reliable, and you risk disclosing your personal data and information to that type of technology as well as potentially breaching legal privilege

You should also provide copies of any evidence you have to support your view. I will then forward any information you give me to an ombudsman to consider, who will then make a decision on whether or not an investigation should proceed.

The Ombudsman will write to you with their decision.

If the Ombudsman agrees with my view, [the complaint/the part of the complaint I have put forward for dismissal] will be dismissed. If the Ombudsman does not agree with my view, the investigation will continue.

I look forward to hearing from you by [insert date 10 working days from date of the letter].

Yours sincerely

XXXX
Investigator

Legal Ombudsman
Telephone:
Email:
www.legalombudsman.org.uk

[redacted]

Chapter 5.4 and 5.7

Last modified at 19/02/2026 [redacted]

Summary

[redacted]

This guidance explains when and how to use Rule 5.7 and 5.4 of our Scheme Rules. The relevant Scheme Rules (Rule) being:

- Rule 5.4: If the service provider claims that all or part of the complaint is not covered under Chapter two, is out-of-time under Chapter four or should be dismissed under paragraph 5.7.
- Rule 5.7: Grounds for dismissing or discontinuing a complaint.

Guidance type: Technical and Business Process.

This guidance can be applied at the following stages of the assessment or investigation.

- Assessment
- Investigation
- Resolution
- Decision

This guidance is to be applied by the following roles:

- GET Advisors
- GET Investigators
- Investigators
- Ombudsmen.

Contents

[redacted]

Guidance

1. Dealing with a claim under rule 5.4.

Rule 5.4 states:

If the authorised person claims that all or part of the complaint:

a) is not covered by the Legal Ombudsman under chapter two; or

b) is out-of-time under chapter four; or

c) should be dismissed under paragraph 5.7;

then the authorised person should provide reasons for their challenge at the earliest possible opportunity following which an ombudsman will give all parties an opportunity to make representations before deciding.

Processing a claim under Rule 5.4

Although a challenge under 5.4 should be at the earliest possible opportunity, a service provider may contact us at any stage of the process to say we cannot, or should not, investigate the complaint. The service provider may not be clear in saying they are making a claim under Rule 5.4, but it should still be treated as such. If in any doubt, ask the service provider for clarification of what their intention is.

Back to top

Note: If we have accepted a complaint for investigation, but the service provider insists that a complaint has not been made or that they have not been given a chance to deal with it, this should be treated as a challenge under 5.4 b).

The steps you must take at Assessment and Investigation.

This applies to GET Advisors, all investigators of any type.

Before asking an ombudsman to make a final decision under Rule 5.4, you should first consider whether it is something that you could deal with informally. For example, if the service provider is unfamiliar with or has misunderstood LeO's scheme rules, and a short explanation of why we can accept the complaint would resolve the challenge. If it cannot be resolved in this way, you must follow the steps set out below.

- Write to the service provider, using the template letter "2-07b Rule 5.4 notification" to confirm that we are treating their correspondence as a claim under Rule 5.4 and explain the next steps. If the service provider has not been clear about their reasons for raising a Rule 5.4 challenge, you may need to contact them again to obtain this further information.
- At the same time as confirming to the service provider that we are treating their correspondence as a claim under Rule 5.4, you must also write to the complainant and/or their representative, using template letter "2-07a Rule 5.4 notification" to invite comments from the complainant so that their view can also be considered. If you have needed to gain clarity from the service provider about their claim, you must obtain this before writing to the complainant so that you can explain in full, why the service provider is making their claim.

  When inviting comments from the complainant, you should be clear what you consider their complaint to be about to avoid any misunderstanding. If the case is at assessment stage then this should be done using the information we have on file at that time, if the case is at investigation stage then the scoped heads of complaint should be confirmed. You should explain clearly why the service provider believes the complaint cannot, or should not, be investigated. For example, it is not enough to only tell the complainant that the service provider believes the complaint is outside our jurisdiction, you need to be as specific as possible so the complainant has a fair opportunity to respond.

  The complainant will have 14 days to provide their response to this.
- Refer the case to an ombudsman for a final decision to be made.

  Once the complainant has had an opportunity to respond, you should consider whether you have enough information and / or supporting documents for the ombudsman to make a decision under Rule 5.4. Once you are satisfied you are ready to make the referral to the ombudsman you should include the following information in the decision request:

  - The complaint details

  - The service provider's claim as to why we cannot, or should not, investigate

  - The complainant's comments

  - Your view on the above, confirming whether or not you believe we should investigate the complaint / continue with our assessment.
- The ombudsman will then make their decision and confirm the outcome to the service provider and complainant.

2. When to use rule 5.7

Rule 5.7 states: *5.7 An ombudsman may (but does not have to) dismiss or discontinue all or part of a complaint, if, in his/her opinion:*

Scheme Rule 5.7 may be used at any stage in our process, but it is important to consider it right at the start of a case. This section of the Scheme Rules gives us a discretionary power to dismiss complaints – we must decide whether it is reasonable to do so in the circumstances. There will be cases which we

Back to top

consider have no merit, or would be better dealt with by a court, but that we consider we should still investigate. Whether or not we do so will depend on what we think is fair and reasonable in each individual case. It is important to understand that this should not be used as a means of turning away service users who we can, and should, be helping. However, in some cases it may not be proportionate, appropriate, or a reasonable use of the parties' time for us to proceed with an investigation.

For the vast majority of cases it will be important for us to make sure we have a good understanding of the complaints we are being asked to investigate and we have confirmed these with the complainant. This is because we need to understand what it is we are being asked to investigate, before we can decide if it is something we should investigate. If the case is at assessment stage, then we should use the information we have on file at that time to confirm our understanding of the complaint. If the case is at investigation stage, the complaints should be scoped before a referral for 5.7 is made.

We may decide that it is more appropriate to discontinue a case under 5.7, rather than dismiss it. If we dismiss a case, then we would only reopen the case in exceptional circumstances. However, if we discontinue the case we can reopen the case if specific conditions are met. For example, if legal proceedings are ongoing, and have not been stayed, we may discontinue the case but allow the complainant to bring the complaint back to us once those proceedings are over and if there are outstanding service issues not considered by a court. If we decide to discontinue a case it is important that we specify exactly when the complainant must come back to us in order for us to consider reopening it.

If a a 5.7 dismissal is appropriate then the process to follow is:

- Draft and send the "2-08 Complainant advance notice of Rule 5-7 decision request" letter to the complainant. This letter should set out the heads of complaint agreed at scope, which 5.7 rule is being relied on and the reasons why. You should include a 14 day deadline for the complainant to respond to this
- Once a response is received, or the 14 day deadline has passed, a request for a 5.7 decision should be made.

Set out below is what the different parts of Rule 5.7 say. For each part we have provided an explanation of what the part means, followed by questions which will help you consider the different aspects of rule 5.7 which may apply to all or part of a complaint. These questions are intended as a prompt, and key things for you to consider.

5.7 a) it does not have any reasonable prospect of success

This applies to cases referred to the Legal Ombudsman on or after 1 April 2023. For cases referred prior to 1 April 2023, this rule includes the wording under 5.7 (o) below

Explanation:

Something which might "not have any reasonable prospect of success" includes those complaints that are totally without merit, where the act or omission complained about is so negligible that it doesn't amount to poor service or there is clear evidence to show it did not or could not have happened as the complainant has stated. It could also be used early on in the investigation, where the service provider has provided enough evidence to show their service was reasonable, or we are able to obtain one or two pieces of evidence that would be enough to confidently conclude the service was reasonable. This would be in cases where the complainant would not be able to dispute the reasonableness of the service due to the conclusive nature of the evidence.

It does not include those complaints for which there is no evidence in support (see 5.7(n)) or where a case contains significant allegations of poor service, but the investigator finds none following a full investigation. In these circumstances, the investigator should write a Case Decision and, if necessary, pass the case to an ombudsman for a final decision.

Back to top

In addition, we may consider that a complaint does not have any reasonable prospects of success if we cannot achieve the outcome the complainant is seeking. For example, if they are looking for a court order to be overturned this is not something we can direct. It will be important that the options of what we can do are explained to the complainant, but if they are adamant they want an outcome we cannot direct it may be that there are no reasonable prospects of success in investigating the complaint.

Examples:

- A complaint that has arisen as a result of a misunderstanding of a rule or process
- A complaint that the service provider provided the other side, who were representing themselves, a copy of the court bundle would lack merit because the Civil Procedure Rules confirms that in those circumstances the authorised person has to do this.
- A complaint that the service provider has failed to release a file, when more than six years have passed and they have legitimately destroyed it would not be upheld.
- A complaint that the service provider told the complainant's LEI/ATE insurance providers that the claim lacks merit when it is a requirement under the terms and conditions of the policy that they do so, would not be upheld. However, there may be a legitimate related complaint about whether the service provider told the complainant they were going to take these steps or where the complainant is concerned the service provider reached the wrong decision about the merits of their claim or failed to take all relevant factors into account, which we should investigate. However, if early on in the investigation we have evidence to show that the service provider explained to the complainant the reasons why the case lacked prospects of success, it is likely we would determine there are no reasonable prospects in continuing with an investigation.
- A complaint about the service provider asking the complainant to pay their costs up front, before they do any work.
- It was outside the service provider's control
- The service provider may have been late to court because of a road traffic accident or delays on public transport and this did not impact on the hearing going ahead. Providing the service provider informed the parties and the court they would be delayed and why, we would not uphold this complaint.
- A complaint that a hearing was adjourned because of the other side
- The service provider falling ill or being involved in an accident which means they were unable to attend a hearing and someone else had to represent the complainant instead at short notice (However, we may investigate any concerns raised by the complainant as to how well they were kept informed about what was going on).The service provider wasn't responsible for what happened
- A complaint that relates to something that happened in court when the service provider wasn't present.
- The complainant blaming the barrister for something that was the solicitor's responsibility, such as obtaining witness statements.
- The complaint relates to the firm failing to register the property at HM Land Registry, however we have evidence to show that this was done
- The complaint relates to the firm not meeting a court deadline, however there is clear evidence to show that they have met this

Questions:

- Does the complaint have merit? If not, why not?
- If the complaint was upheld, would it be considered poor service?

Back to top

- Was what happened actually the correct action? For example, the issue complained of was done as an SRA or CPR requirement, or in compliance with another rule or regulation.
- Was what happened outside the control of the service provider?
- Was the service provider responsible for what happened? Is the complaint misdirected and should it be raised about another service provider? For example, the barrister rather than the solicitor.

5.7(b): The complainant has not suffered (and is unlikely to suffer) significant financial loss, distress, inconvenience or detriment

This applies to cases referred to the Legal Ombudsman on or after 1 April 2023. For cases referred prior to 1 April 2023, the word 'significant' does not apply

Explanation:

Scheme Rule 1.6(a) defines a complaint as "an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment". The aim of any remedy, would be to put the complainant in the position they would have been in, had the service been reasonable. Therefore, if no detriment has been alleged or there is no apparent detriment based on what the complainant has told us, the complainant is already in the position they would have been in meaning no remedy is required. So if the complainant is not claiming any form of loss, distress or inconvenience, but simply wants to make a point about the service they received, you will want to consider whether we can add any value.

This ground is often an alternative to 5.7(a) because those very minor issues of complaint which have no merit, are also unlikely to have caused any detriment. However, you should use 5.7(b) rather than 5.7(a) for those cases where there is a genuine cause to complain but that even if we upheld it, it is apparent that the service failure had no impact on the complainant.

If the complainant is claiming financial loss as a result of the alleged poor service you will probably need to try to resolve, or investigate, but consider whether the claimed loss is in fact entirely speculative, and out of proportion to what was at stake.

Remember that just because no detriment was caused to the case itself, it doesn't mean the complainant has not suffered an emotional impact. The key question is whether the complainant has suffered any significant detriment or loss as a result of what the authorised person did or did not do.

If the alleged detriment is one of inconvenience or distress, consider whether the alleged inconvenience is actually inconsequential, or whether the distress claimed is evidenced in any way, or appears exaggerated, in proportion to the nature of the alleged poor service.

What will be determined to be significant financial loss, distress, inconvenience or detriment will be considered on a case by case basis. It will be important to consider for each individual complainant the impact to them as what will be considered significant for one complainant will not be for another. Under Rule 5.36 we have to take into account what is fair and reasonable in all the circumstances of the case and it is therefore important to apply that principle when considering a potential dismissal under 5.7 (b). For example, a modest impact payment of £100 might be significant for a vulnerable customer, but not to another.

It is important that we do not use 5.7 (b) where we have investigated the complaints but following that investigation have found there to be no detriment to the complainant, despite upholding a complaint. We would only dismiss a complaint under 5.7 (b) where we can see early on in our process that the complaint being investigated is not capable of causing significant financial loss, distress, inconveneince or detriment.

Examples:

- The authorised person missed a court deadline but it had no impact on the case itself, which still went ahead as planned, and the complainant was not aware of this at the time. This means they

Back to top

did not worry about it at the time, nor did they need to chase the firm. This would mean that although the service was poor, there was no detriment caused to the complainant.

- A service provider drafted a power of attorney on behalf of the deceased before they died. They made an error in the document which was rectified at the time, but the executor/beneficiary claims they were put to the inconvenience of having to travel from the service provider to the deceased's home to get them to re-sign the document and deliver it to the service provider. In this situation, the detriment that has been alleged has been suffered by the executor/beneficiary and not the deceased, who was the person receiving the legal service and to whose estate, any remedy would be awarded.
- In a personal injury case, that settles in favour of the complainant and they have been awarded a settlement. There is a delay by a couple of weeks from the service provider in sending the settlement cheque to the complainant. In some cases there might not be a significant financial loss, distress, inconvenience or detriment to the complainant as they received their settlement cheque anyway and therefore received the money. In cases like that we might look to dismiss under 5.7 (b). However, for some complainants, there might be a significant impact in not receiving the settlement cheque straight away, for example if they had outstanding bills to pay, and therefore we may find there to be a significant financial loss, distress, inconvenience or detriment and as such not look to dismiss.
- A conveyancing case where there is a two week delay in the firm requesting relevant searches. In some cases there might not be significant financial loss, distress, inconvenience or detriment as other properties in the chain were not ready and as such the two week delay did not impact the progress of the file. In those cases, 5.7 (b) may be applicable. However, in some cases, that two week delay might have meant a mortgage offer expired, or a transaction fell through and in those cases significant loss, distress, inconvenience or detriment has been incurred and we should proceed to investigate.

Questions

- Does the complaint have any possibility of having or had a significant impact on the complainant in receipt of that service?
- If so, is that impact capable of being remedied by us? (See also 5.7(g))
- Has it already been remedied? (See also 5.7(c))
- Does the remedy sought have any relationship to the issue complained of?

5.7(c): The authorised person has already offered a fair and reasonable redress in relation to the circumstances alleged by the complainant which has either already been accepted by the complainant or is still open for acceptance

This applies to cases referred to the Legal Ombudsman on or after 1 April 2023. For cases referred prior to 1 April 2023, the words 'which has either already been accepted by the complainant or' does not apply, and 5.7(n) would be used in these circumstances)

Explanation:

Sometimes we come across cases where the service provider has made a fair and reasonable offer during their own complaints process (which might simply be an apology), which they have confirmed is still open for acceptance by the complainant or the complainant has already accepted. It might apply to the complaint as a whole, or to just some of the issues raised.

Cases where offers are still open for acceptance

The first thing to note is that only offers made at the first tier stage will be considered. Any offers made once the case has been accepted for resolution are not part of this process.

When considering whether the offer made is fair, you will have to give some thought to what remedy you would award if you upheld all of the complaints that have been raised. In order to form a view you

Back to top

should:

- List anything that could be considered a detriment, taking into account any detriment the complainant themselves has alleged.
- Consider how, if you upheld the complaint in exactly those terms, you would look to remedy it (this could be one or a combination of remedies).
- Then turn to what the firm has done or offered and compare to that

It is important that we explain things clearly and thoroughly to the complainant so they don't go away believing we haven't properly considered their case. By taking the approach above, you should be able to demonstrate to the complainant that you have a full understanding of what they have gone through.

It will also help to explain to the complainant how we consider remedies and why the remedy offered by the service provider is fair and reasonable. You might find it helpful to share the remedies guidance available on our website to help them understand.

Consideration of whether the offer is reasonable or not should be given early on in our process, around scope and evidence requesting stage. One common mistake made is that consideration of whether or not an offer is reasonable is not given until evidence has been received and reviewed. Upon review of evidence, the investigator upholds some complaints, but not others, and then considers the firm's offer to be reasonable based on the complaints they are upholding. A ROM wouldn't apply in that instance as we need to consider what remedy we would give if all complaints were upheld.

Examples:

The complaint is that the firm failed to respond to some emails and didn't telephone the complainant back when promised. The firm have offered £150 compensation. The detriment here is an emotional impact only, frustration and inconvenience caused by the firm not responding to the complainant. If we were to uphold the complaint, we would award compensation within the modest category. As the firm's offer falls within that category, it is reasonable in the circumstances.

Questions:

- Has the service provider acknowledged the matters complained of?
- Do they accept that there was poor service?
- Have they sought to remedy the matter?
- If not, is it still open for acceptance?
- What, if anything, are we likely to suggest that is different in the circumstances?
- Is the remedy offered in line with what we are likely to suggest and is it consistent with our remedy guidance for the impact claimed?

Case where the offer has already been accepted

This part of the rule only applies to cases referred to the Legal Ombudsman on or after 1 April 2023. For cases prior to 1 April 2023, use 5.7 (n)

This applies where the complainant has already accepted an offer at first tier, or settled court proceedings, and it is clear that the acceptance/settlement was to bring the complaints to a close. In those cases, we would look to dismiss under 5.7 (c).

If the complaint has been accepted, you must consider the offer is a fair and reasonable offer for a dismissal under 5.7 (c) to be appropriate. The guidance above applies in determining whether the offer that has been accepted is fair and reasonable in the circumstances. If you don't consider the offer is fair and reasonable then consider the guidance under 5.7 (n) below.

What is important here is that there is a clear offer from the service provider and a clear acceptance by the complainant in full and final settlement of the complaints. An acceptance is normally shown by an email/letter from the complainant to the service provider accepting the offer but can take other forms.

Back to top

For example, sometimes service providers will send a cheque with their final response. This would not automatically mean the complaint has been resolved. If the complainant does not cash the cheque, there has been no acceptance from them to resolve the complaint. In contrast, if the complainant does cash the cheque, this would be deemed to be acceptance of the service provider's offer to resolve the complaint.

It is also important to consider whether the offer was made and accepted in full and final settlement of the complaint. For example, some service providers will make an offer that is a gesture of goodwill and specifically state the complainant is entitled to bring the complaint to the Legal Ombudsman after receiving that money. In those cases, it is likely we would proceed with an investigation, although we can still consider whether the offer is reasonable and should be dismissed on that basis.

5.7(d): The complainant has previously complained about the same issue to the Legal Ombudsman (unless the ombudsman considers that material new evidence likely to affect the outcome, only became available to the complainant afterwards)

Explanation:

Where we have already dealt with a complaint about the same service – the same case arising from the same set of instructions – we should presume that the complaint has already been investigated. The only exceptions may be if the new complaint:

- arises from a new set of instructions (such as the conveyancing following a divorce, rather than about the divorce itself);
- is about something which has taken place after the conclusion of the last complaint; or
- is about something separate which was unknown to the complainant at the time of the last complaint.

We can use this power if the complaint is about something the complainant knew about before, but simply didn't raise earlier.

Questions:

- Has the complainant complained about the same service to anyone before?
- Was the service failing complained about from the same case and same set of instructions to the same service provider?
- Does it arise from a related but not an identical matter?
- If so, is the substance materially the same (e.g. solicitor was rude when he did my divorce and was rude when he did the resultant conveyancing)
- Was the complainant aware of the issue at the time of the previous complaint, prior to its conclusion?
- Has something happened after the last complaint was concluded which has led to the new complaint?
- Has the complainant subsequently become aware of the issue?

5.7(e): A comparable independent complaints (or costs assessment) scheme or a court has already dealt with the same issue

Explanation:

The question of whether to use the power depends on exactly what has already been dealt with. If the court or scheme considered all the complainant's issues, we can use this power. But if a hearing was

Back to top

simply to examine whether a bill was legally owed – rather than whether it was reasonable – we might choose to accept the case.

The two most common situations where this arises is where the complainant is already taking legal action against the service provider on the same facts, and dealing with the same issues that we are being asked to consider, or where the service provider is taking legal action against the complainant (such as in relation to outstanding costs) and the complainant has entered a defence/counterclaim which is the same as the complaint raised with this office. Whether or not you use 5.7(e) or 5.7(f) will depend on whether the court has already dealt with the issues or whether the proceedings are still ongoing.

Where the court has already made their decision, it is important to ensure the court has actually dealt with the issues being complained about and given their view, and has not dismissed them or struck them out.

Where the service provider has sued the complainant for outstanding fees, and the complainant entered a defence which is exactly the same as the complaint raised with this office, our decision as to whether to dismiss the complaint will depend on what the court actually considered. This is because court was unlikely to have considered any service issues raised in the defence and would only have been concerned with whether the bill was legally owed. Courts will often advise complainants to refer their concerns to our office. Any decision will need to take into account whether we can be satisfied that the court did in fact consider the service issues.

The exception is where the complainant has also submitted a counterclaim as the court is likely to have considered the issues raised in it, in order to determine whether the counterclaim succeeds. However, in any case, you will need to see a copy of the court's judgment in order to determine what the court has and has not looked at.

It is also important to note that the Solicitors Regulation Authority (SRA) is not a comparable complaints scheme.

Examples:

The firm have taken legal action against the complainant to recover their outstanding fees. In response to this action, the complainant submitted a defence and a counterclaim as they considered the firm's service was unreasonable. Upon reviewing the defence and counterclaim it is clear that the issues raised within this are the same as those we are being asked to investigate. As such, the court has already considered the same issues that we have.

Questions:

- Did the court deal with exactly the same issues, arising from the same set of instructions, as those raised with this office?
- If so, what did they decide and why?
- Did the court dismiss or strike out the claim?
- If so, was it the complainant's fault?
- Did the court deal with all of the issues or just some of them? Did the court tell the complainant to refer certain issues to our office?

5.7(f): A comparable independent complaints (or costs assessment) scheme or a court is dealing with the same issue, unless those proceedings are first stayed (by the agreement of all parties or by a court order) so that the we can deal with the issue

Explanation:

If the complainant has issued proceedings against the service provider on the same issue (as opposed to merely obtaining independent legal advice), we would generally expect them to continue with that course of action rather than bringing the complaint to us, unless there is a good reason for the

Back to top

proceedings to be stayed so we can investigate the complaint (for example, where the costs of continuing have become a barrier or the complainant is struggling to obtain representation).

If we consider it is appropriate for us to become involved, it is important to establish how far along the proceedings are so we can consider the likelihood of them being stayed. Our experience is that courts are keen for us to try and resolve a complaint without their involvement. It is only if the proceedings are almost coming to an end that they might decline. You will also need to consider whether there might be any adverse cost implications for the complainant if they have issued proceedings, but then proceed with our investigation and agree an outcome.

The firm might refuse to agree to a stay, but the complainant can also apply to the court for a stay of proceedings. However, there is usually a fee to make this application, currently £50, which, if necessary, we should make the complainant aware of in advance. They should also be advised to ask for a stay of at least six months but preferably a year, to allow us sufficient time to investigate the complaint.

Where no stay is agreed, and the complainant's claim against the service provider will continue with the courts, we are likely to dismiss it.

If the lawyer is taking legal action (to recover costs, for example) the same principle applies in relation to staying the proceedings. Where no stay is agreed then any decision to dismiss the case is likely to turn on whether the complainant has lodged just a defence, or a defence and counterclaim.

As explained above, the court is unlikely to consider service issues in the defence. However, to be sure, we should consider suspending our investigation until the court has made their decision. The complainant should then refer the complaint back to us at the conclusion of the case if the court did not consider their concerns. As above we will need to see a copy of the judgment.

Where the complainant has lodged a counterclaim, because the court is likely to consider the issues in those circumstances, we can look to dismiss the complaint.

Questions:

- Who initiated the proceedings? The complainant or the firm?
- If the firm, has the complainant lodged a defence or a defence and counterclaim?
- Has the complainant raised exactly the same issues with the court as what has been raised with this office?
- How far along are the proceedings? Are the court likely to agree to a stay? Are there any cost consequences for the complainant if we investigate the complaint?
- Who is best placed to give the complainant the remedy they are looking for?

5.7(g): It would be more suitable for the issue to be dealt with by a court, by arbitration or by another complaints (or costs assessment) scheme

Explanation:

While this office can investigate the **approach and legal advice** given by a service provider along with issues that could also give rise to a negligence or breach of contract claim, there are very limited occasions where the issue being complained about can only be fairly determined by a court.

Similarly, if the complaint turns specifically on a matter of law or is particularly complex, it might be more appropriate for a court to deal with the issues, rather than us. In some cases, the level of remedy the complainant is looking for, or the seriousness of the allegations of service might also give us reason to consider whether the complaint should be dismissed.

When it comes to complaints about **costs**, while we cannot carry out a costs assessment like the courts do, we can still assess whether the costs are reasonable. For example, if someone says work has been duplicated, they have been charged at the wrong hourly rate or their lawyer sent them five emails in one day when one would have sufficed, these are all issues we can and should be looking at. In most cases, where someone says the firm's costs are excessive, they generally mean the costs

Back to top

were more than what they were expecting to pay. In these circumstance, it is the costs information you are looking at.

If you believe the concerns raised by the complainant would be better dealt with by the Senior Courts Costs Office (such as where the complainant simply wants someone to compare the firm's time recording ledger to the work on file), you will need to consider a number of factors before deciding whether to dismiss the complaint as follows:

- You will need to be satisfied that the complainant falls within the SCCO's time limits and jurisdiction – this is generally within one month of getting the bill or within 12 months if special circumstances apply. However, if the bill was paid more than 12 months ago, the court has no power to assess the costs and so this option will not be open to the complainant.
- You need to consider what proportion of the firm's bill is being challenged – if it is less than 20% the complainant should not be referred to the SCCO otherwise, they will have to pay the solicitor's costs for the assessment proceedings.
- You will need to consider whether the complainant is in a position to fund the costs assessment proceedings – it is not a free service and along with a court fee, the complainant may also have to instruct a costs draftsman and, as with any litigation, carries a risk of having to pay the solicitors' costs if the court does not reduce the bill by more than 20%.

We should be able to do with most complaints about costs and it is only in exceptional circumstances that we will need to refer a complainant to the SCCO.

Examples:

Some examples of where we may dismiss a complaint on this ground are as follows **(approach and legal advice)**:

- Where an executor/beneficiary is complaining that the deceased's will was incorrect or invalid, or that the deceased did not have capacity to make a will, it will not be within our remit to determine this, and nor can we go behind a will. These are matters that fall within the jurisdiction of the courts and only they can resolve these concerns.
- Where a complainant holds their service provider responsible for the fact they lost their case, and they want this office to overturn their conviction/court order, this is not something we are going to be able to achieve. You should speak to the complainant and explain our remit and what types of remedy we can consider. If the complainant insists that the only remedy they are interested in is having the conviction/court order overturned, you should consider dismissing the complaint.
- Where a complainant alleges the service provider has forged their signature on certain documents or that they have misappropriated funds, it is not within our remit to carry out the sorts of forensic examinations required to determine such matters. Instead the complainant should look to complain to the police.
- Where a complainant alleges criminal misconduct such as misfeasance, collusion, perverting the course of justice or fraud, these are better dealt with by the police.

Questions:

- Can we provide the complainant with the outcome they are looking for?
- Are any of the allegations criminal in nature?
- Are any of the complaints so complex, or do any turn on a matter of law, that only a court could determine them?
- Does the remedy requested exceed our compensatory powers to the extent that it would not be in the complainant's interests to limit their claim to £50,000?
- Does the complainant fall within the time limits to have their costs assessed by the SCCO? Was the bill sent less than 12 months ago and does it remain unpaid?

Back to top

- Can the complainant fund the costs assessment process?
- Does the extent of the disputed costs exceed more than 20% of the firm's bill?

5.7(h): The issue concerns an authorised person's decision when exercising discretion under a will or trust

Explanation:

Where there is a challenge about the exercise of a discretion, then unless it is obvious that it was exercised unreasonably, we are unlikely to investigate the complaint.

Where a lay executor/trustee has raised the complaint, the approach will be the same. However, we might investigate any concerns they have that the professional executor/trustee made a decision without consulting them beforehand especially as executors and trustees should act jointly.

Examples:

For example, some wills or trusts gives the executor/trustee complete discretion as to what payments to make, when and to whom. These are known as discretionary trusts. If a beneficiary is unhappy that the professional executor/trustee's decision not to distribute any money/gifts to them, we are unlikely to investigate the complaint unless they can evidence that discretion was exercised unreasonably. Some other examples include how and where to invest money or decisions to seek independent financial advice.

Questions:

- Is the complainant a beneficiary or a co-executor/trustee?
- Is the service provider an executor/trustee? (If it is not and the service provider was following a lay executors/trustees' instructions, this heading can't be used)
- What is the nature of the discretion?
- Is there anything obviously wrong about the way the service provider exercised their discretion?
- If the complainant is a co-executor/trustee, did the service provider consult them about how the discretion would be exercised?

5.7(i): The issue concerns an authorised person's failure to consult a beneficiary before exercising a discretion under a will or trust, where there is no legal obligation to consult

Explanation:

This is similar to (h) above.

There will be occasions when we expect the service provider (acting in their capacity as executor or trustee) to consult with a beneficiary before they do something. For example, where the will leaves a beneficiary something specific, like a ring or shares in a company, but the professional executor/trustee decides they want to sell the ring or the shares and give the beneficiary the cash instead. In these circumstances, the service provider should be consulting with the beneficiary and asking for their instructions.

There may be occasions when the service provider has no legal obligation to consult a beneficiary but where we consider that, from a service point of view, they should have done so.

Examples:

The service provider may have discretion to sell the deceased's house under the will or trust, but a beneficiary is living in it. While the service provider may have no legal obligation to consult the beneficiary about their decision to sell the property, it would be unreasonable service if the first time the beneficiary found out about it was when the for sale boards went up outside, or people were coming to view the property.

Questions:

Back to top

- What is the nature of the discretion?
- Was there a legal obligation to consult the beneficiary?
- Did anyone else, such as a lay executor/trustee, consult the beneficiary?
- Even if there was no legal obligation to consult the beneficiary, should the firm still have done so from a service point of view and has their failure to do so caused a detriment?

5.7(j): The issue involves someone else who has not complained and the ombudsman considers that it would not be appropriate to deal with the issue without their consent

Explanation:

We can use this ground if we feel that it would not be fair and reasonable for the investigation to proceed without the involvement of someone who has not complained.

Examples:

The most common situation in which this arises is where someone is raising a complaint on behalf the client under a power of attorney, but there are concerns that the client does not actually wish to complain. In these circumstances, we may wish to obtain confirmation from the client themselves, rather than simply relying on the power of attorney.

Another situation where this might arise is where the person contacting us is only a beneficiary but there is a lay executor. It can often be best for the complaint to be made by a lay executor as they have rights and responsibilities because of their status, which means they should have control over the assets of the deceased. This would include a financial award (or refund of fees already paid). So, because they have those rights, it would generally make sense for them to lead the complaint.

Questions:

- Who instructed the firm? The person contacting us or someone else (For example, the Supervisor of an IVA, liquidator or administrator)
- Is the person contacting us the person who received the legal service or a representative acting on their behalf? If a representative, are we satisfied the person who received the service is actually unhappy and wants to complain?
- If the person contacting us is a beneficiary of a complaint, what are they looking to achieve in terms of a remedy? Would this be better achieved by having the executor complain?

5.7(k): It is not practicable to investigate the issue fairly because of the time which has elapsed since the act/omission

Explanation:

Time elapsed alone will rarely be a ground for refusal; what matters is whether there is sufficient evidence to make a safe decision. This ground is unlikely to be used in cases less than six years old, since most service providers keep files for this period of time. But it might be appropriate if cases are older, there are no papers, and it would be unreasonable to expect reliable witness evidence.

Even if the case is more than six years old and the lawyer no longer has the file of papers, we should still take steps to see what evidence is available (from the complainant) to determine whether we can reach a conclusion on the complaints raised. If after taking these steps, we cannot make a fair and reasonable decision then this ground may apply.

Examples:

The complaint relates to a conveyancing transaction that took place and completed 20 years ago. The firm no longer have the file, and after requesting evidence from the complainant, there is nothing available to be able to fairly make a determination on the complaint

Questions:

- Does the firm still have a copy of the file?

Back to top

- If not, does the complainant have copies of relevant documents?
- If not, can the documents be obtained from a third party?
- Can adverse inferences be drawn?
- Does the fee earner with conduct of the case still work for the firm or are they contactable?

5.7(l): The issue concerns an act or omission outside England and Wales and the circumstances do not have sufficient connection with England and Wales

Explanation:

We will only use this power in cases where neither the lawyer, the complainant nor the geographical basis for the service was based in England and Wales. For example, where the lawyer is regulated by the SRA but they are based abroad, the complainant is based abroad and the proceedings took place abroad. In these circumstances, we might dismiss the complaint.

However, where the parties are both located abroad, but the proceedings were issued in England or Wales, we will investigate the complaint.

Examples:

For example, if a French client wishes to complain about advice on French law given in France by a French lawyer who is also qualified in England and Wales

Questions:

- Although regulated by the SRA, is the lawyer based abroad?
- Is the complainant based abroad?
- Was the case governed by the laws of England and Wales? (For example, the proceedings were issued in England or Wales)

5.7(m): The complaint is about an authorised person's refusal to provide a service and the complainant has not produced evidence that the refusal was for other than legitimate or reasonable reasons

Explanation:

The term 'prospective customer' is used to cover an individual who approaches a lawyer in order to obtain a service but where there has not yet been any formal lawyer/client service created. For example, contact is made but the lawyer declines to take on the case.

While we will accept these cases for investigation should they meet our other jurisdiction requirements, we should ensure the complainant is informed at the earliest opportunity that in order for an investigation to go ahead, the complainant must provide the ombudsman with convincing evidence that:

- the denial of service was unreasonable; and
- they suffered a loss because of the denial of service.

If either test is failed, the presumption is that Rule 5.7(m) will be invoked to rule out any investigation. The complainant should not be given the impression in the allocation letters or during initial contact that we will be investigating their complaint. Any correspondence should be amended to reflect the above requirements and to warn that unless they can provide such evidence, the complaint may be dismissed.

Please read the Prospective customer guidance on how to apply this rule.

Examples:

Back to top

- The complaint is that the firm refused to take on the complainant's case because they are a woman. However, the complainant has not been able to provide any evidence to support the fact the firm refused the case on this basis. They have also not provided evidence that this suffered any loss as a result of this

Questions:

- Is there evidence that the reason for the denial of service is discrimination?
- Was there a legitimate expectation that a service has been or will be offered (for example, where a lawyer has promised to look into a case and come back to the prospective customer as a matter of urgency)?
- Did the lawyer initially offer a service but then withdrew that offer without explanation?
- Has the complainant evidenced that they have suffered a loss or detriment?

5.7(n): There are other compelling reasons why it is inappropriate for the issue to be dealt with by the Legal Ombudsman

Explanation:

This rule should only be used when there are no other 5.7 rules that apply. If a different rule could apply, that should be used in the first instance.

By definition, there can be no definitive list in respect of this. However, there are situations that we regularly apply it.

Examples:

- If there is clear acceptance of an offer by the complainant, but we have decided the offer is not fair and reasonable, it may still be appropriate to dismiss the complaint. For example, if there is evidence to show that the complainant clearly accepted the offer to bring matters to a close and fully understood the consequences in doing so, it may not be fair and reasonable for an investigation to proceed
- Similarly to the "frivolous" examples in 5.7(o) below, there may have been some service issues which the firm apologised for or otherwise remedied at the time and we consider the remedy offered at that time was sufficient. For example, there may have been occasional and not excessive delays in responding to emails or phone calls, where the progress of the complainant's case has not been negatively affected, and the firm apologised for this at the time. Or, there was an error on one of the firm's invoices which when raised the firm resolved and apologised to the complainant or gave some other remedy.
- The complainant wants us to carry out a wholesale review of the service provider's file and provide a second opinion or some assurance as to whether they have done what they should have done.
- Where the complaint relates to a conduct issue, such as a conflict of interest, and the SRA have concluded that a conflict did not exist.
- Where the complaint raised centres around an issue of which there is no evidence, other than both parties' versions of events, and no basis upon which to draw adverse inferences, it may be difficult for us to reach a fair conclusion. Furthermore, the more serious the allegation, the more robust the evidence would have to be. This could apply to the whole of the complaint or specific complaint headings.
- We might dismiss a complaint where we have confirmed our understanding of the complaints and how we want to proceed with the complainant, along with the service standards, yet they refuse to allow us to proceed on that basis. In these circumstances it is unlikely we are going to obtain a satisfactory resolution for the complainant or one they are going to agree with. Before we do so, we need to be satisfied that the complaints are an accurate reflection of what the complainant has raised and the standards we have set accurately reflect the circumstances of

Back to top

the case, best practice at the time, any relevant codes of conduct and, where relevant, what decision a court might make.

- However, be careful: An allegation made about, for example, something said in a private conversation that was not recorded or witnessed, may not be capable of proof but it is still capable of investigation and may still require it. If you are unsure, seek advice.
- There will be occasions where, even without a file or evidence, we can reasonably come to a conclusion. For example, if a complainant has come to sell their house 20 years after buying it, and realises they do not own it, we can easily conclude that the firm failed to register it without seeing a file, because it was their responsibility to ensure this was done following completion.
- Where the complaint relates to being offered a service that is not required (in other words, cold calling), we might dismiss the complaint if the complainant cannot evidence that the calls were persistent, that they came from the same service provider and they had asked for the calls to stop.
- Where the complainant raises additional issues of complaint part way through the investigation that they were aware of at the outset but didn't raise. You should consider this guidance as this explains when it would be appropriate to dismiss the complaint in this circumstance
- Where to determine a complaint requires evidence that is only available at a cost (for example court transcript or expert report) and the complainant is not in a position to incur that cost to obtain the evidence. It would not be proportionate use of our resource to incur the financial cost of obtaining that evidence and we cannot fairly determine the complaint without it

Questions:

If service issues did arise during the case and were raised at the time, did the firm acknowledge and address them at the time? If so, is the remedy they gave at the time (which could have been an apology) in proportion to the service failing?

Does the complainant have specific examples of why they are unhappy with the service or do they just want someone to give them a second opinion of the work the service provider carried out?

Does the complaint relate solely to a conduct issue which the SRA have not upheld?

5.7 (o) it is frivolous or vexatious

This applies to cases referred to the Legal Ombudsman on or after 1 April 2023 only, for cases prior to this, this is included under 5.7 (a)

Explanation:

A complaint might be considered ***"frivolous"*** if it is either fanciful ("my solicitor is an alien") or trivial ("my solicitor's office was untidy"). It might make outrageous or extravagant claims, or it might focus on the personality or character of the service provider rather than any specific actions they are alleged to have taken. Asking the question, what is the actual poor service here? might help in sifting out the frivolous.

Examples:

- Being unhappy about what the service provider was wearing;
- Thinking the service provider is out to get them; or
- Where the complaint is very minor with no detriment such as where the firm didn't respond to a letter/email/phone call the same day when there was no urgent requirement or agreement/SLA to do so, or a one off spelling error in a document which had no consequence and which we wouldn't say amounted to an unreasonable service.

Questions:

- Is the complaint "frivolous"? If so, why? Is the complaint fanciful? (e.g. the solicitor is an alien)

Back to top

- Is it trivial and of no consequence? (e.g. solicitors office was untidy, full stop in wrong place)
- Does it focus on the character, personality or appearance of the person complained about rather than what happened?
- Is it extravagant?
- Can you clearly explain the poor service? Is it sufficiently serious that we would say the service was poor, even if upheld? (For example, not responding to routine emails)

Explanation:

A complaint will be ***"vexatious"*** if it is intended to be, or has the effect of, vexing, harassing or upsetting the person against whom it is directed. If it seems to you that the complainant's motivation is one of personal animosity, rather than a genuine wish to secure reasonable remedy for a poor service, you may consider the complaint vexatious. Considering the behaviour and response of the complainant to earlier attempts to resolve their complaints might help you decide whether this one is vexatious. But remember it is the complaint which might be held to be vexatious, not the complainant.

Examples:

- Someone who continually raises complaints with us about the service provider after this office has already carried out an investigation into other complaints, and the new issues are minor.
- Someone who seeks to prolong matters by continually changing the substance of their complaint, or who fails to clearly identify the substance of their complaint or what issues they want us to address.
- Someone who has told the service provider that the reason for referring the complaint to us is just to inconvenience them, or out of principle.

Questions:

- Is the complaint "vexatious"? If so, why?
- Does it look as though it is intended to vex, harass or upset the person against whom it is directed? (For example, has the complainant avoided all reasonable attempts made by the service provider to resolve the complaint)
- Is it repetitious to the point of doing so or intended to be?
- Are either of the above as a result of a failure to respond effectively?
- Is the motivation personal animosity, rather than a genuine desire for reasonable redress? Previous responses to attempts at resolution may inform this

5.7 (p) it would not be a proportionate use of the ombudsman's time to investigate the complaint, due to the likely impact or due to its complexity, the amount of evidence provided, or due to the conduct of the complainant during the investigation

This applies to cases referred to the Legal Ombudsman on or after 1 April 2023 only.

The Legal Services Act s113(1) requires the Scheme to deal with complaints "quickly and with minimal formality". This rule allows discretion to dismiss or discontinue cases where the nature of the complaint or the behaviour of the complainant effectively prevents us from doing this. This is intended to be a rare occurence which would be done after consultation with an ombudsman.

There are four different aspects of this rule and the complaint could be dismissed or discontinued under any aspect. There is no requirement for all four aspects to be met for a dismissal or discontinuation to be made.

Back to top

Time due to likely impact

Explanation:

This rule isn't intended to be used to dismiss complaints of low remedy outright. Consideration must be given to the size and heads of complaint and what the outcome is likely to be. However, there might be some rare cases where the size and number of complaints raised, balanced against the likely impact or outcome if those complaints were upheld, make it disproportionate for this office to investigate the complaints. This would apply here where the complaint is likely to take up a significantly disproportionate time on an investigator's average case holding which prevents progression of their other cases. For example, cases with over 50 complaint issues although it must still be considered what is fair and reasonable in the case.

Examples:

- A probate case with a 100 page complaint letter, raising a high volume of service complaints, that are all fairly low impact and minor. After scoping, the investigator has narrowed this down to 62 complaint issues, which include heads of complaint and associated sub-heads of complaint. Although the heads of complaints are all valid service complaints we could look if there is a significant amount of investigation work required to determine them. The impact on the complainant is minor and the remedy we are likely to direct is not significant. Due to the amount of complaints involved, and the investigator's time to investigate, the impact here is not reasonable to proceed.

Questions:

- Do the amount of complaints and potential remedy involved justify an investigation?

Due to its complexity

Explanation:

Although we can dismiss under 5.7 (g) where we consider the matter is better dealt with by the court, this extends to complaints which we are able to deal with but contain a high level of technical complexity, where it is reasonable to determine that the time required to deal with the complaint will be much higher as a consequence of research and additional enquiries made.

This could also be used as an alternative to 5.7 (g) as the complainant might not have the resources to take the matter to court, but ultimately an investigation by this office is not able to determine their issues and is not best placed to deal with the complaint.

Example:

- A technical immigration case that requires extensive knowledge or research into the current legislation that we don't normally deal with
- A case involving a complex trust issue that requires financial knowledge and understanding

Questions:

- Is this an area of law that we routinely deal with on a day to day basis?
- Does it raise any points that would require more than a quick check of the current law/process?
- Are there any other matters involved that would need to be understood to determine the complaint? For example, financial, tax etc

Amount of evidence provided

Explanation:

In most cases, the amount of relevant evidence provided would not prevent us from progressing with an investigation. We see cases where parties send us lots of evidence that isn't relevant to our investigation and not what we have requested. In those cases, it is for the investigator to manage the receipt of evidence and make clear to the parties what is required and what isn't, to limit the relevant evidence received.

Back to top

However, there are rare instances where we will receive large amounts of evidence which a review would represent a disproportionate amount of our time. It is those cases where we might consider that it is not proportionate for us to investigate the complaint. It is important that ombudsman advice is sought if this is the case.

Examples:

- The service provider has closed down and the complainant has obtained the file. This has been sent to us, however there are a number of large box files. The files are not in order. It would take a disproportionate amount of time to collate and sort this into relevant evidence for us to investigate and as such we could look to dismiss the complaint. This doesn't apply to all cases where a firm has closed and the complainant obtains a file, as sometimes the file is in a reasonable order and it is not disproportionate to review. We should also offer the complainant the opportunity to review and sort the files first, before they come to us.
- We have received a large amount of ledgers as part of the evidence received, which are relevant to the complaint. 5.7 (g) is not appropriate here as the time elapsed means that the complainant can't take the matter to the Senior Courts Costs Office. However, the amount of forensic analysis of ledger required is not proportionate for this office to investigate.

Questions:

- What is the amount of relevant evidence?
- Can you ask the parties to resend only relevant evidence rather than the whole file?
- Can the file be easily sorted into a logical manner?

Conduct of the complainant

Explanation:

We have discretion to dismiss or discontinue complaints due to the behaviour of the complainant during our investigation into the complaint, which would only be done after consultation with an ombudsman and appropriate warnings given to the complainant to moderate or change their behaviour. The process in the Managing unacceptable behaviour policy should be followed in the first instance. One possible outcome of this is a dismissal under 5.7 (p).

There is guidance and a process to follow where a complainant doesn't agree the heads of complaint (link) and this rule can be used to dismiss those complaints where the process has been followed. However, this rule can also be used at any stage throughout the investigation, where the conduct of the complainant is unreasonable.

If after warning, the complainant says they are going to moderate or change their behaviour and then they don't, we may still look to send a further warning and dismiss under this rule as a further example of their behaviour been disproportionate.

In these cases, it might be more appropriate to discontinue a complaint rather than dismiss it to allow the complainant to return to us if their circumstances change and they can evidence their behaviour going forward will be different.

Examples:

- A high volume of correspondence, either by email, letter or telephone which prevents the investigator undertaking an investigation quickly and with minimal formality. For example, in excess of five contacts per day or 20 per week.
- Lengthy correspondence, letters, emails or long frequent telephone calls which prevents a quick investigation
- The complainant adds in large numbers of additional complaint issues or frustrates the process by failing to agree complaints which extends the period of the investigation

Back to top

Questions:

- Are there any special circumstances that need to be taken into account for this particular complainant that might explain their behaviour? For example, any medical conditions. If so, do reasonable adjustments need to be offered?
- Is a representative available to help deal with the complaint?

5.7 (q) the ombudsman considers that there has been undue delay in the complainant raising the complaint

Applies to cases referred to the Legal Ombudsman on or after 1 April 2023 only

Explanation:

Our time limits are set out in this guidance (link) and apply to any new complaints being raised as well. This rule applies where the complaint letter to the firm details all of the complaints. At scoping stage, it is agreed that an issue of complaint is not to be included with the investigation but during the investigation the complainant tries to bring back into the complaint. The complaint is not premature and in time, but it would not be fair and reasonable for the complaint to now be included when it was agreed initially that it would not form part of the investigation.

Use of this rule would only lead to a partial, and not a full dismissal of a complaint. The partial dismissal would relate to the new complaint being raised, not the origianl onces agreed and scoped.

3. When not to use rule 5.7

As outlined above, whilst we can dismiss complaints for any of the reasons listed above, it is important that we consider whether it is fair to do so on a case by case basis. If there are circumstances that means it is best for all parties for us to investigate the complaint (even if it does lack merit, for example) then we should do so. These circumstances could include where the customer is vulnerable, the service provider want/need a final determination to bring a line under protracted correspondence or to move matters forward or where our office is the only option the complainant has for their concerns to be considered.

There are other scheme rules that can be used to dismiss or otherwise close a case. You do not need to use rule 5.7 in the following situations:

- Complainant agrees to withdraw their complaint.

  If you are able to reach agreement with a complainant to withdraw their complaint because of any of the rule 5.7 grounds – or for any other reason – then you do not need a decision. See withdrawn complaints guidance.

- Complaint outside our time limits.

  If the complaint is outside of our time limits, there is no need to request a rule 5.7 decision, as it is outside of our jurisdiction there is no valid complaint to discontinue. See jurisdiction review requests guidance.

- Insufficient information to make a rule 5.7 decision.

  If you do not have sufficient information or evidence for a rule 5.7 decision, you should not request one. This particularly applies to rule 5.7(a) and rule 5.7(b) where it would be unlikely you could make a decision without some evidence. You must attempt to gather all evidence you feel is necessary to allow you to reach a considered view. This does not prevent you from requesting a rule 5.7 decision later on in the investigation, if you are satisfied that it applies.

- Complainant fails to provide information. See Chapter 5.24 and 5.32 guidance
- Complainant fails to comply with a time limit. See Chapter 5.24 and 5.32 guidance

Back to top

Back to top

[redacted]

Withdrawn complaints

Last modified at 08/08/2023 [redacted]

Summary

This guidance explains the process that should be followed where the decision has been made by the complainant to withdraw from our process, specifically:

1. When a file should be closed as withdrawn.
2. When it is not appropriate to close a file as withdrawn.
3. The process for closing a file as withdrawn.

   Including:
   3.1 what information should be given to the complainant and the service provider when a file is closed as withdrawn and
   3.2 case fees on files closed as withdrawn
4. Reopening a file closed as withdrawn

Type of guidance - Business Process

This guidance applies to the following stages of the process:

- Assessment
- Investigation

This guidance applies to the following roles:

- Investigator
- L1 Ombudsman
- Team leader
- L2 Ombudsman

[redacted]

Contents

[redacted]

Guidance

1. When should a file be closed as withdrawn

A file must only be closed as withdrawn when:

- The complainant asks to withdraw their complaint, or states that they no longer wish to follow our process;
- and both the team leader and investigator can see no alternative way for the case to proceed.

The complainant should not be encouraged to withdraw their complaint. However, in certain circumstances, such as if a Case Decision has been issued and the complainant refuses to accept it but does not want an ombudsman's final decision either, there may be little choice but for them to withdraw. Providing all the available options have been discussed and the complainant clearly does not want to pursue any of them then this is sufficient ground to close the file as withdrawn.

Investigators must ensure the complainant is fully aware of all their available options prior to closing the file as withdrawn.

It should be noted that there is a difference between withdrawing the complaint as a whole and a complainant withdrawing from the process.

- Withdrawing from the complaint as a whole requires the normal withdrawal letter 4.02a and 4.02b.
- If the complainant has chosen to withdraw from the process, because they do not accept the outcome of the Case Decison for example, the letters must be amended to reflect this so it is clear as to why the complainant is not proceeding. This will help avoid future service complaints in which this has not been made clear to the complainant.

2. When it is not appropriate to close a file as withdrawn

- If the complainant refuses to provide information or evidence, or you are unable to contact them. In these circumstances you should seek to have the file dismissed under rule 5.24(h) or 5.32(c). See the Requesting information and Chapter 5 to dismiss guidance notes for more information.
- If the complainant is unable to continue with the case and it is suitable to be suspended, then the file should not be closed as 'withdrawn'.
- If the complaint is resolved without investigation, the closure code 'complaint resolved without investigation' should be used. Further information is available within the Closing files and reopening closed files guidance.
- If you find no poor service, and the complainant disagrees, you should not ask the complainant to agree to withdraw their complaint. The proper course in that situation is to draft and issue a case decision.
- Ongoing court proceedings on a file are not a valid reason to close it as withdrawn. The nature of those proceedings would determine whether the investigation should:

    a. be dismissed/discontinued under rule 5.7; or

    b. continue; or

    c. be suspended;

3. The process for closing a file as withdrawn

If a complainant asks for their complaint to be withdrawn, you should record the request in a file note. If the request was made during a telephone conversation, then the investigator must ensure that the complainant is aware of the implications of the decision during the call, in order to make an informed choice.

The complainant must be informed that:

- They have a 14-day cooling off period, within which they can change their mind regarding the withdrawal.
- They cannot bring the same complaints to the Legal Ombudsman at a later date once the 14-day cooling off period has expired.
- Once the complaint is closed as withdrawn the complaint will only be re opened in exceptional circumstances.

Back to top

The call ID should also be recorded in the case note and the case reference number tagged on the call in Cloud Recording.

If the complainant notifies the investigator in writing or via a voice message that they wish to withdraw their complaint then the investigator can proceed as set out below.

You should then set a 'withdraw file' internal request for your Team Leader to review.

You should:

- provide a brief description in the internal request of the reasons provided by the complainant for them wishing to withdraw.
- have drafted the withdrawal letter (4-02a/4-02b - Withdrawal of complaint or resolved without investigation
- have completed the closure sub-grid correctly including the status of the case fee

The Team Leader should take appropriate steps to satisfy themselves that the complainant has made an informed decision based on all options available to them to ensure that closing the file as withdrawn is appropriate. This should include:

- Review the task set
- Check for any relevant case notes
- Review the email/letter in which the complainant confirms they wish to withdraw or listen to the call if agreed over the phone.

The team leader will need to consider the following:

1. Was it the complainant's decision to withdraw and have they clearly agreed to a withdrawal of their complaint?
2. Has the complainant been made aware of all the options – have other options been considered where possible, other than a withdrawal?
3. If the complaint was withdrawn over the phone, was the complainant made aware of the implications of withdrawing their complaint?

- Check the withdrawal letter (4-02a/4-02b - Withdrawal of complaint or resolved without investigation) has been drafted to both parties to inform them of the withdrawn complaint and that all relevant information is in there (please see section 3.1 [below] - what information should be given to the complainant and service provider when a complaint is withdrawn)
- Has the correct closure code been used? for eg is there an option to suspend instead or has the complaint resolved before it reached us in which case it should be 'resolved without investigation'

(Please note that the investigator should not send these letters or close the case until the task has been approved by the team leader).

The team leader should then record their comments in the 'Response Description' section of the internal request. If the closure is agreed then the investigator can close the file on that same date and issue the appropriate letters (4-02a/4-02b - Withdrawal of complaint or resolved without investigation). Should the complainant decide they have made the wrong decision, the letter gives them 14 days to change their mind. The closure code 'Complaint withdrawn' should be used.

To see how to close a file as withdrawn on CRM please click here.

3.1. What information should be given to the complainant and the service provider when a complaint is withdrawn

The 4-02a/4-02b letters include a 14-day 'cooling off' period (10 working days). All files closed as withdrawn must be confirmed with both parties in writing. This means that if a complainant chooses to

Back to top

withdraw their complaint, you must send a letter that:

- explains what you understand to be the reason for their withdrawal, including whether they are withdrawing from our process or withdrawing their complaint entirely. This needs to be made clear on the occasions in which the complainant is withdrawing from our process but may still wish to pursue their legal complaint outside of the Legal Ombudsman;
- clarifies the implications of this action; and
- Includes the date that the 14-day 'cooling off' period (10 working days) expires

If the complainant changes their mind within the following 14 days then you will need to reopen their file and continue the investigation.

Note: It is important to remember that once a file has been closed as withdrawn and the 14-day 'cooling off' period has expired, it is unlikely that the matter will be reopened unless there are very convincing reasons for doing so, such as new evidence. See the 'Reopening a file closed as withdrawn' section below.

3.2. Case fees on file closed as withdrawn

If a complaint is withdrawn, you must consider whether or not the case fee should be waived. Further information is available within the Case fees and their application guidance.

It does not necessarily follow that the case fee will automatically be waived, the quality of the service provider's complaints-handling still has to be considered. If the complaints-handling has been poor then a case fee will be chargeable.

4. Reopening a file closed as withdrawn

If the complainant comes back to you within the 14-day 'cooling off' period and they would like the investigation to continue then you should reopen the file. To do this press reopen file.

If the complainant comes back to us after the 14-day 'cooling off' period has expired, the file will only be reopened if there are good reasons why it is fair and reasonable for the investigation to proceed.

If you are considering reopening a file you should always notify the Service Provider and give them an opportunity to comment. Once the Service Provider has responded, or the deadline for the response has passed, you will need to seek Team Leader approval to re-open the file. You should set a 'reopen file' internal request for your Team Leader to review.

In the internal request for the Team Leader you should:

- Make sure the request to reopen is outside the 14-day 'cooling off' period
- Explain the reasons for the request to reopen
- Check that the relevant correspondence or case notes are uploaded to the file and provide the names of the documents for the team leader to consider.

There is no appeal process through LeO to the Team Leader's decision. If the complainant is unhappy with this decision then they should be provided with the JR factsheet.

Further information about reopening a file is available in the Closing files and reopening closed files guidance.

Back to top

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Case fees and their application

Last modified at 01/07/2026 [redacted]

Summary

This guidance explains when a case fee becomes chargeable, when it should be applied, and when it should be waived in accordance with the Scheme Rules and in line with the two part test. It also explains when an Operations Manager can write off a case fee.

Guidance type: Technical and Business Process.

This guidance is relevant to the following stages of the process:

- Investigation
- Resolution
- Decision

This guidance is to be applied by the following roles:

- Investigators
- Team Leaders
- Ombudsmen
- Operations Managers

[redacted]

Contents

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Guidance

1. Scheme Rules.

The Legal Services Act 2007 says that we must set a structure for a case fee that will be charged to service providers. The Scheme Rules say:

6.1 A complaint is potentially chargeable unless:

a) it is out of jurisdiction; or

b) it is dismissed or discontinued under paragraph 5.7.

6.2 A case fee is payable by the business/partnership or individual authorised person for every potentially chargeable complaint when it is closed unless:

a) The complaint was:

- abandoned or withdrawn; or

- settled, resolved or determined in favour of the authorised person; and

b) the ombudsman is satisfied that the authorised person took all reasonable steps, under his/her complaints procedures, to try to resolve the complaint.

6.3 The case fee is £400 for all chargeable complaints.

It goes on to state how the remaining costs for running the Legal Ombudsman are covered, being a levy on approved regulators by the Legal Services Board

2. When the case fee becomes chargeable.

The case fee becomes chargeable as soon as the case is moved out of assessment and is accepted for investigation.

3. When to inform the service provider the case fee applies.

The service provider must be told the case fee position at the following points throughout an investigation.

a) When the case has been accepted for investigation.

b) When they are making an offer to resolve the complaint and it is more than what was offered at first tier.

c) When they are accepting our findings and the remedy required is more than what was offered at first tier.

d) When a final decision is issued.

CRM will prompt you at closure stage if you need authorisation from your team leader to waive a case fee. Be careful not to tell the service provider that the case fee will be waived if you feel a waiver is appropriate, until a team leader has approved it.

A team leader can reject your request, even if you have sought advice from an ombudsman and they have said a waiver is appropriate. Any letters to the service provider confirming the case fee position on resolution must also not be sent until a team leader has approved or rejected any related case fee waiver request.

4. When to decide if the case fee applies or should be waived, and the tests which must be applied to determine this.

If you close a case using any of the following closure codes, a case fee will be charged unless both the tier one remedy and the recommended/final remedy (R/F Remedy) are both financial, and the tier one is greater than, or equal to the final remedy.

- Complaint resolved without investigation

Back to top

- Complaint withdrawn
- Ombudsman's decision to discontinue under scheme rule 5.24(h) or 5.32(c)
- Informal agreement
- Resolved by case decision – Scheme rule 5.20
- Ombudsman final decision

When to complete CRM

You should keep the 'Case Fee' section under the 'Closure' tab up to date at all times, based on your current understanding of the information submitted. You should always be able to answer the 'Tier 1 Process Adequate' and 'Tier 1 Remedy Amount' questions ('Evidence of Poor Service' and 'R/F Remedy' type and amount will be completed at the point the file is closed).

Where we have found that a service provider's complaints handling has been inadeqaute, we **must** record the reason for that. If 'Tier 1 Process Adeqaute' = No, you should be able to provide one or more 'Tier 1 reasons' from the field below it. If 'Tier 1 Process Adequate' = No, a further field appears in which we can record whether or not the service provider signposted the complainant to us.

Your understanding may change once you have requested evidence (and you have additional complaint correspondence or the complaints procedure) or after you have clarified the value of a Tier 1 remedy, but it should always be up to date. It is the responsibility of the person currently handling the case to be satisfied with the Case Fee information on the file.

When an Ombudsman makes a Decision, while this information should be present, it is the responsibility of the Ombudsman (who is resolving the file) to satisfy themselves that it is accurate.

The test

Before going through the different parts of the test, it's important to remember that it's a two part test. For the case fee to be waived in any case, both parts of the test must be satisfied. This means that even if the complaint is withdrawn or determined in the service provider's favour, they will still pay the case fee if they failed to take all reasonable steps to address the complaint under their own procedure.

Part A

Under Scheme Rule 6.2, part A of the test says that we can consider waiving the case fee if:

a) The complaint was:

-abandoned or withdrawn; or

-settled, resolved or determined in favour of the authorised person

Was the complaint abandoned or withdrawn?

Usually, this will be straightforward to determine. A complainant might decide they no longer wish to proceed with their complaint during the course of the investigation and withdraw from the process. Alternatively, they may stop engaging with us, which could lead to their complaint being dismissed under Scheme Rule 5.24(h) or 5.32(c). In either of those circumstances, it is fair to say that the complainant has withdrawn or abandoned their complaint.

As long as you are satisfied that the complaint has been abandoned or withdrawn, part A will be satisfied and you can move on to part B of the test.

Was the complaint settled, resolved or determined in the favour of the authorised person?

If the complaint wasn't abandoned or withdrawn, you will need to consider whether it was resolved in the service provider's favour. There are two standard circumstances in which this will be the case:

- When our investigation has concluded that there was no unreasonable service.

Back to top

- When our investigation has concluded that there was unreasonable service, but the final remedy is equal to, or less than, what was offered at first tier.

As you can see, for the purposes of part A, whether or not there has been unreasonable service is not the deciding factor. Where there has been unreasonable service, the crucial thing to consider is what the firm offered to the complainant under their own complaints procedure.

The exception to this is where the service provider found their service to be reasonable, and offered no remedy, but we find there was unreasonable service but no detriment, and so there is no remedy. Here, the unreasonable service would be the deciding factor.

Although the value of the remedy is zero in both cases, we would not consider the firm's first tier offer to be greater than or equal to the recommended/final remedy in this instance because the two outcomes are not equal. The complaint has not been resolved in the service provider's favour and part A would not be satisfied.

What counts as a first tier offer?

A first tier offer is any offer made by the firm before the case is moved to investigation after assessment. The offer might form part of the firm's complaint response, but any offer made whilst the case is awaiting acceptance for investigation will count as a first tier offer for our purposes.

Since September 2019, LeO has sent letters to some service providers whilst the case has been awaiting allocation to an investigator, which may have resulted in them increasing an existing offer, or making a new one. If the firm have done this, it will count as their first tier offer. It's important to check the case carefully when it is allocated to make sure that the information recorded on CRM correctly reflects the firm's first tier offer.

Offers made at investigation stage

If the service provider increases their offer once a case has been accepted for investigation, even by a penny, the case fee cannot be waived as the complaint will not have been resolved in the service provider's favour for our purposes. For that reason, it's important to make sure that service providers are aware of the potential case fee implications of increasing their offer during our investigation.

You may come across service providers who propose to increase their first tier offer on the basis that we agree to waive the case fee. This is not something that we can agree under any circumstances as it is important that we apply the rule consistently and fairly.

Is the recommended remedy equal to or less then the firm's first tier offer?

In most cases this will be straightforward to determine because in general, the remedies firms offer and we recommend, are financial in nature. However, you may come across cases where this is not so simple to determine, for example where the remedy includes non-financial elements, such as an agreement to complete additional work.

In these cases, you will need to consider the overall value of the remedy and whether this is greater than what was offered at first tier. It doesn't need to be exactly equivalent, but will need to be broadly similar to satisfy the test.

Example:

You dealt with a conveyancing complaint that went to final decision stage. The ombudsman directed that the firm must take steps to address requisitions that are preventing the property from being registered at HMLR. They also directed that the firm pay the complainant £150 in compensation. The firm offered £200 at first tier. They have confirmed that the work involved in dealing with the requisitions will take around four hours. Is part A met?

In the above example, although we have directed that the firm pay less compensation than they offered at first tier, four hours of their time is worth more than the additional £50. Therefore, the complaint has not been resolved in the firm's favour and part A of the test is not met.

Part B

Back to top

For the test under part B to be met, we must be satisfied that the service provider has taken all reasonable steps under their complaint procedure to try to resolve the complaint. There are a number of factors to consider when deciding whether a service provider has responded reasonably and properly to a complaint. The stand-alone guidance First tier complaint handling - what we expect from service providers may also help here.

When considering part B, we are considering the initial internal complaint handling. At scoping, partially premature complaints may be identified, and the firm must be given the opportunity to respond. Waiving that right and agreeing that the investigation can continue does not fail this element; it is a procedural step in an investigation.

Did the service provider respond in a timely manner?

It's a common misconception that as long as a service provider has responded to a complaint within eight weeks, we will automatically conclude that their complaint handling was reasonable.

The eight week period referred to under Scheme Rule 4.2 is the period a complainant must wait before referring a complaint to us unless there's an overriding reason. The eight week period is about us, and the timescales we allow, rather than the service provider.

What this means is that the test for the service provider's complaint handling is effectively set by themselves. If they said they would acknowledge a complaint within five days and respond substantively in two weeks, it's reasonable to expect that they would do as they said they would.

In general, we would expect a service provider to abide by their own complaints procedure and to meet any expectations they have set for the complainant and themselves. For example, if the firm advise that they will respond to a complaint within 21 days and then don't respond until five weeks later, without warning the complainant, or any mitigating circumstances, it is likely we would consider their complaint handling unreasonable, even though they have responded within eight weeks.

It's important to consider each case on its own merits. If a service provider has said they will acknowledge a complaint within five days and have taken six, but then go on to do a very thorough review and respond within agreed timescales, you might consider their complaints handling to have been reasonable.

Did the service provider respond politely and explain their complaint procedure clearly?

We would expect a service provider to respond to a complaint politely and professionally, and to provide details of their complaints procedure when asked to do so.

Although the six month rule will not apply if the service provider has not correctly signposted the complainant to us in their complaint response, that in itself is not sufficient to prevent the test under part B being met.

Does the response deal with the concerns or issues raised?

We expect a service provider's response to be sufficiently thorough and to deal with the issues raised, requesting any further clarification from the complainant if necessary.

If the service provider's response fails to address the issues raised satisfactorily, they cannot be said to have taken all reasonable steps to resolve the complaint under their complaint procedure.

It's important to be sure that we have all the relevant correspondence before making a decision. If you can see that the response we have refers to other correspondence, make sure that you request it from the service provider.

Again, it's important to consider each case on its own merits. If the complainant has made three complaints and the service provider has only responded to one, then it is likely we would consider their response unreasonable. If the complainant has made a large number of complaints across multiple pieces of correspondence, and the firm have prepared a thorough response that misses a minor issue, the position might be different.

Allegations of negligence at first tier

Back to top

If the complaint contains allegations of negligence and suggests that the complainant intends to take legal action against the firm, it would not be unreasonable for the firm to refer the matter to their insurer before responding further.

On the other hand, the fact that a complainant uses the word 'negligent' in their complaint letter does not mean the firm cannot respond to it under their complaint procedure.

Complaints brought by third parties

Occasionally you will come across complaints made by third parties on a complainant's behalf, for example by a family member or another service provider. In those cases, the service provider cannot respond without the complainant's consent and it's reasonable for them to request this before they address the complaint.

5. Waiving the case fee.

If CRM is charging the case fee but you think it should be waived you will need to:

- Update CRM as set out in CRM - How to process case fee challenges
- Set an internal request for your team leader to review and decide if the case fee should be waived.
- When you set the request, you must explain why you think it is appropriate to waive the case fee on the basis of the application of the tests and questions set out in part A and B above.

A team leader will not make a decision on whether to waive the case fee if any of the following are missing from the internal request:

- CRM updated to provide accurate complaints correspondence dates and remedy information.
- Details of the application of part A and B.
- The full complaint correspondence in a single bundle, in chronological order in the documents tab of the case.

6. Case fee challenges.

Service providers have the right to challenge the application of the case fee. If that happens, an ombudsman must make a decision on whether to waive it.

Before requesting a case fee decision, it's important to obtain as much information as possible from the service provider as to why they believe the case fee should be waived. It's useful to obtain this information in writing so that the ombudsman can consider it in full.

Before you submit a case fee challenge, you will need to think about whether the two part test under Scheme Rule 6.2 has been met. If you think there is some merit to the challenge, you can request an ombudsman's decision straight away.

If you don't think the two part test has been met, and that the case fee is chargeable, you should write to the service provider and explain your views using the '4-06 Response to Case Fee Query' letter template. The letter invites the service provider to provide a clearer explanation or can help them to understand they don't have grounds to bring a challenge.

If the service provider continues to dispute the application of the case fee, you will need to request an ombudsman's decision at that stage. You should follow the process detailed in the CRM - How to process case fee challenges

7. Closed service providers.

Back to top

When dealing with a closed firm it is essential to follow the closed service providers and successors guidance. Essentially the former partners must be given a reasonable opportunity to deal with the complaint. If the firm is closed it is unlikely that the complainant will have complained to the former partners directly because they wouldn't have been in a position to contact them. By following the steps in the closed service providers and successors guidance, you should be able to make contact with the former partners and allow them a reasonable opportunity to deal with the complaint.

If you did not follow the closed service providers and successors guidance to make contact with the former partners, then making a decision about the case fee could be difficult. This is because the authorised person could argue that they did not have an opportunity to take reasonable steps because they were not told about or made aware of the complaint.

8. Writing off the case fee.

An ombudsman may only waive a case fee where 6.2a and 6.2b are met. There is no further discretion.

There are, however, times when a case fee is legitimately chargeable, but LeO may make a decision not to pursue it. This would be a 'write off'. The only person who can write off that case fee debt is the Head of Finance.

A potenital time where writing off a case fee is relevent is in relation to a class action where the same action (piece of service) has impacted multiple individual cases and is the basis of finding unreasonable service in every case. The case fee would still remain chargeable once.

A situation where this would not be appropriate may be where there are two distinct but linked retainers (such as a sale then a purchase) or where linked cases are receiving individual sevices (such as linked PI cases from the same family).

The Head of Finance has delegated the authority to approve write offs in limited operational circumstances as below. The Head of Finance may still write off case fee debt in other circumstances, but that is beyond this guidance.

The use of write offs operationally is likely to be a rare occurrence, but the important criteria are:

- The service which is found to be unreasonable is the same on all applicable cases and was one action by the service provider (if different cases have additional elements of poor service which are in addition to the joint issue, the case fee remains chargeable on those cases)
- The complaint handling was reasonable (if it was not, the case fee remains chargeable regardless)
- The case fee is being charged (this is likely to mean there is a remedy which is higher than anything offered at first tier)

If these points are fulfilled, the process is:

1. Set an internal request for 'Approve to Waive the Case fee'*
2. In the request description, list the relevant linked cases and address the above criteria
3. Assign the request to your Operations Manager (or their buddy in periods of leave)
4. The Operations Manager will respond and give their reasons. They will also confirm on which file the case fee remains chargeable.
5. If approved, the Operations Manager must email the Head of Finance to confirm their decision.
6. The Investigator will inform the service provider themselves (there is no letter) that an Operations Manager has written off the case fee, with a short summary of their response.

*The name of the Internal Request in CRM is not being changed for now as this will be rare, but it is understood this is a write-off, not a waiver.

Back to top