LEGAL OMBUDSMAN

Complaints in focus:

Personal injury complaints

Thematic report

Contents

Introduction

Personal injury ('PI') can be a complex area of law to navigate for both customers and service providers.

From a customer perspective, dealing with any area of law for the first time can be a daunting experience, but a lot of people will have some experience either directly or indirectly with conveyancing, probate or perhaps family law. Personal injury, however, can be a totally unknown territory for most and taking litigation action against another party it can be an overwhelming prospect.

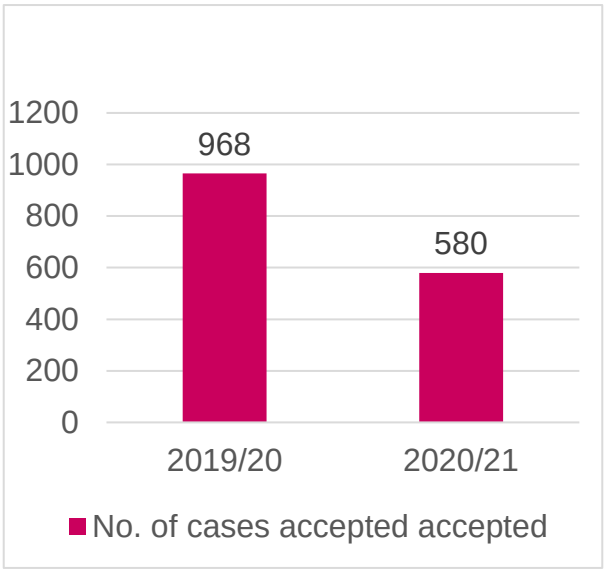
From a service providers' perspective, it can be a fine balancing act between providing enough information to meet the regulatory requirements and not overwhelming the customer with complex funding options and the multiple scenarios/routes/decisions the customer may have to face along the way.

In 2020/21 personal injury accounted for 13% of the Legal Ombudsman's complaints and this has been a consistent figure for the last few years. Whilst this may seem a small percentage compared with the number of claims made per year, the investigations undertaken show a common pattern of poor service. 53% of cases that had an ombudsman decision showed evidence of poor service. A common theme of complaints revolves around poor communication and not managing expectations well. The repetitive issues we find in our investigations highlight where improvements could be made to improve the customer journey for PI claims.

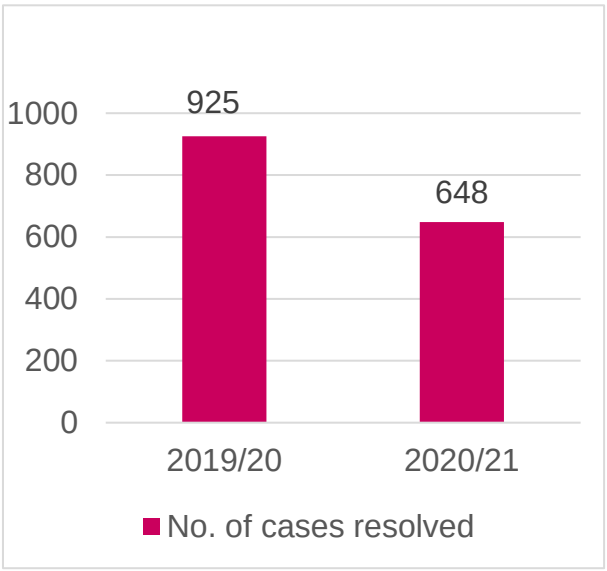
Below we share the data for personal injury claims received by the Legal Ombudsman in 2020/21 and then a closer look at the issues identified within our casework which will give greater insight into how we determine service and the type of remedies we award.

Data 2020/21

How many cases were accepted?



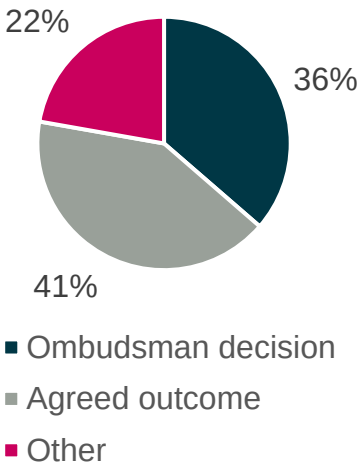
How many cases were resolved?



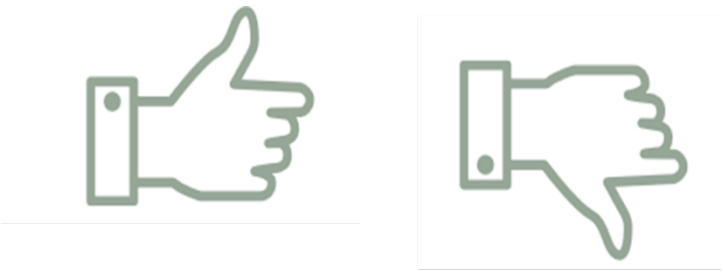
Did we find evidence of poor service?

Yes 53% | **No 47%**

Closure type



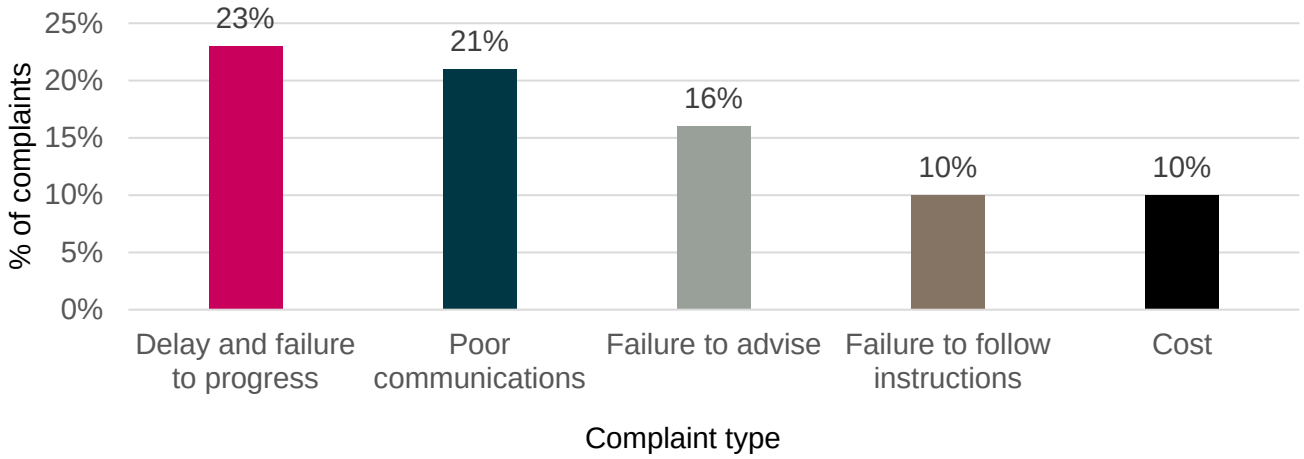
Did we find the tier one complaints process adequate?



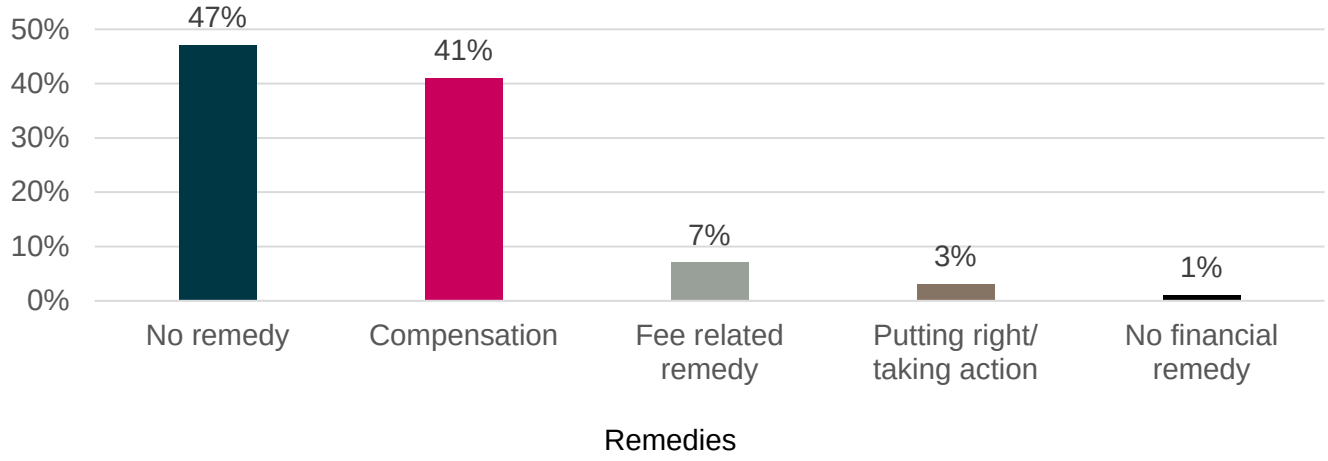
YES 81% NO 19%

Did we charge a case fee?

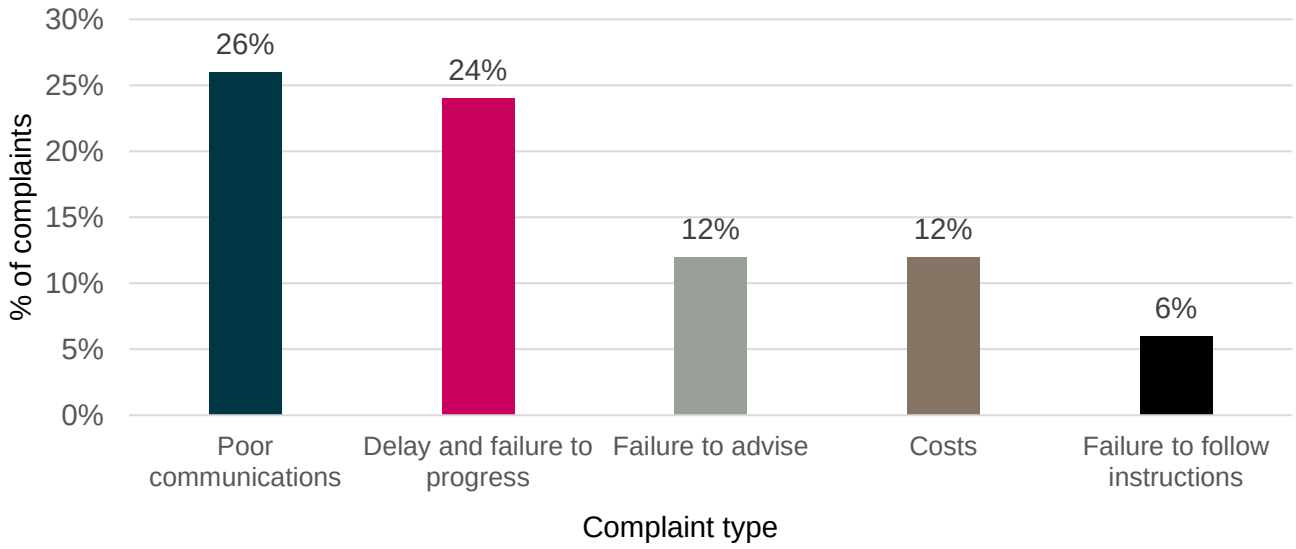
What were complaints about?



What remedies were awarded?



Upheld complaints



Complaint themes and casework

A common and reoccurring theme throughout the complaints we investigate is poor communication. Improving the level and detail of communication could see complaints reducing. There are typically five main areas during a claims process that we receive complaints about which we explore in more detail below.

1. Funding

Funding can be a complex area to cover and service providers are faced with a challenge right at the outset in explaining all of the options available to a customer and the implications of each one, in simple terms.

A common complaint we see is where a service provider has not given correct information at the start of the process or hasn't explored all the funding methods available to their customer.

For example, failing to explain the terms of a conditional fee agreement ('CFA') and when the customer may become liable for the other parties' costs. Customers often say that they didn't understand or weren't made aware of the implications of the CFA or that a success fee would be due.

Where this has been well explained and there is evidence to support this, such as an attendance note, or evidence of a call with a follow up letter, we are likely to find that the service has been reasonable, and the complaint is unlikely to be upheld.

A lot of the funding is dependent upon the assessment of the merits of the case and what looks to be a strong claim at the outset can suddenly change. Often, a customer may be unaware of the relationship between the service provider and the insurer and the fact that the service provider has a duty to keep the insurer updated on anything that changes the merits of a claim which may affect the funding of the case.

We have seen cases where the funding has been withdrawn but the explanation to the customer as to why it has been withdrawn has been poor or non-existent.

Service providers should manage expectations at the outset and clearly explain the role of the insurer and themselves and how funding can be affected during the claim process. Again, any conversations should be followed up in writing so there is a log of the advice given.

Another area where service providers play a key role is clearly explaining the importance of the information the customer provides. We have seen cases where the claimant hasn't been honest or clear enough in the detail given to their service provider either about past accidents, pre-existing medical conditions or details relating to the claim. Giving false or inaccurate information can have severe consequences, not only to the claim itself but to the claimant after, for example criminal sanctions or bankruptcy.

The onus is on the service provider to clearly explain the implications of giving inaccurate information and the severe consequences it can have on the funding and potential costs so that the customer can make an informed decision. We have made a determination of poor service where the service provider hasn't clearly explained the implications and in one severe case this led to the repossession of the customer's property when they were left liable for the other parties' costs and couldn't afford to pay them.

To provide reasonable funding advice, providers should send out an agreement and then follow up with a call to explain what the different funding methods mean, when they can be revoked and what the implications would be.

Case study – reasonable service

Mrs H was stationary in her vehicle at a roundabout when she was struck from behind by another vehicle. Suffering whiplash symptoms, Mrs H instructed the firm to represent her in a personal injury claim. When she brought her complaint about the firm, Mrs H says that it was her understanding that her fees were being paid via a Legal Expenses Insurance policy but the firm say they agreed to represent Mrs H under a Conditional Fee Agreement or 'no win no fee'.

In her complaint, Mrs H said that the firm did not give her any information about their Conditional Fee Agreement or their terms of business generally. She said that as such she did not know what to do if she wished to raise a complaint about the firm, or end the claim, or how third-party costs would be settled.

The firm accepted that Mrs H hadn't received any documentation at the start of their retainer but say that it was sent and due to an 'unfortunate issue with the postal service' she didn't receive it. They accepted that Mrs H was under the incorrect impression that the matter was being funded by insurance but say when she questioned the funding position six months later, they sent a copy of their agreement to her at that point and answered the questions she had about their agreement.

Was the service reasonable?

We decided having reviewed the information provided that there was no evidence that Mrs H either wanted to complain or to end the claim prior to the firm sending her the agreement. although it was accepted that she considered that the matter was being funded by insurance up to that point. However, we agreed with the firm on balance that the agreement and other relevant information was sent by post at the outset and unfortunately for whatever reason Mrs H did not receive it. The letter was correctly addressed and we couldn't blame the firm for the fact that it did not get to Mrs H, and when the firm were aware that Mrs H had not got a copy, they sent it again promptly and answered the questions she had about the contract.

We found this to be reasonable overall, and we did not uphold the complaint.

Case study – poor costs information impacting the funding

Mr R and his brother instructed a firm to represent them in claims after they were injured in a road traffic accident. The firm progressed both Mr R and his brother's claim on a Conditional Fee Agreement, more commonly known as a 'no win no fee' agreement, with the firm initially being of the view that the prospects of success of both claims were reasonable. The claim proceeded to court, and at the hearing the judge dismissed both claims on the basis that she found them to be fundamentally dishonest, also awarding the defendant their costs of £14,857.40 which Mr R and his brother had to pay.

The firm then wrote to Mr R and his brother, advising them that as the judge had found them to be fundamentally dishonest, they had both breached the terms of their agreement with them, which meant that they were liable to pay their fees and disbursements. They therefore issued an invoice for £23,479.35 in respect of these.

Mr R complained that the firm failed to tell him that he could potentially be liable for their fees if he lost, or if he was found to be fundamentally dishonest. He did however acknowledge and accept that the firm told him that he could be liable for the defendant's costs and that he could be sent to prison if the judge found him to be fundamentally dishonest. He therefore accepted that he and his brother were liable for the £14,857.40 in respect of the defendant's costs, but said in his complaint that to receive the firm's invoice for £23,479.35 was a "*bombshell*" for him.

When they investigated Mr R's complaint, the firm found that although they told Mr R and his brother that they could be liable for their fees if the claim was found to be "fraudulent", they did not make it clear what this meant – and that this would include a finding of fundamental dishonesty. They also accepted that they had not provided Mr R and his brother with any information regarding the costs they had incurred in dealing with the claims at any point during the retainer. They therefore accepted that the bill would have been a shock to him, and they offered to reduce their invoice by 50%.

Was the service reasonable?

When we investigated the complaint, we agreed that the firm should have provided cost information to Mr R and his brother – both in terms of an overall estimate of their costs at the outset and then regular updates of the costs incurred to date during the period that they acted in the claim. Whilst we did accept that the firm had told Mr R and his brother that they could be liable for their fees if the claim was found to be "fraudulent" they were not informed at any point what those fees could be. Like the firm, we agreed that receiving a bill for £23,479.35 would have been a real shock for Mr R and his brother and upheld the complaint he had raised.

However, we also found that the firm's offer to reduce their invoice by 50% was fair in the circumstances, as they had completed the work and were entitled to charge for their fees if the terms of the Conditional Fee Agreement had been breached, which was the case here.

How was the issue resolved?

Our decision was to endorse the offer that the firm had made in response to Mr R's complaint.

2. Decisions on the merits of a case

Once the funding is understood, it is important to balance that with two areas:

- The valuation of the case – how much is it worth
- The prospects of success – how likely are you to win (cost benefit analysis)

Managing expectations around these areas is important and can lead to complaints if not managed well. Claimants can often feel their claim is worth a lot more and the outcome can come as a surprise if it hasn't been clearly understood.

Funding through insurance depends on thresholds (the prospects of success) and for a conditional fee agreement ('CFA') to be used by a firm, the threshold is generally set at a 51% chance of success or sometimes more.

Service providers should clearly explain to the customer:

- what the prospects need to be for the claim to progress – whether it is a 51% chance of success or a 60/40 split
- what evidence will be used to support this view – medical evidence/other party evidence
- what will happen if new evidence comes to light that lowers the threshold of success – this can happen at any point and funding could be withdrawn

If new evidence comes to light during a claim and the chance of success reduces, the customer should be informed as soon as possible. At this stage it is important to be aware of the limitation period. A customer may wish to seek a second opinion if their chance of success has dropped, and they can only do this before the limitation period ends. If a provider delays in informing their customer and it has implications on the limitation period and their chance of getting a second opinion, we are likely to uphold a complaint. **As always, the provider should record this in an attendance note and follow it up in writing as this will be used as evidence should a complaint arise.**

It is not uncommon for a customer to disagree with the findings when the merits of a claim change, particularly when medical or other evidence has affected the prospects of the claim. In these circumstances we look for evidence that the service provider has clearly explained why the prospects of success have changed and that they have dealt with the customers concerns and addressed these or reported their concerns back to the medical or other expert to be considered.

The key issues we find here are:

- poor communication around explaining why the prospects have changed
- not clearly explaining their role versus the role of the medical expert
- not dealing appropriately with the responses to the decision – a consideration of comments received and passed on appropriately to the medical expert
- the timing of these conversations – leaving it too late for the customer to seek a second opinion/representation

Again, this is usually down to poor communication. Complainants should feel they have been listened to and that concerns have been addressed appropriately.

Case study – the merits of the case changed

Mrs B was involved in a road traffic accident and instructed the firm to bring a claim against the third party driver. As the claim progressed, the solicitors representing the third party driver made an allegation of fundamental dishonesty against Mrs B – that the accident had been low speed, low impact and therefore Mrs B could not possibly have sustained the injuries she was claiming for.

When such an allegation is made, we would expect a firm to tell their client what this meant and what could happen in the event that the court agreed with the allegation. The firm failed to do so until it was far too late – the advice was given just before the court hearing, when it was too late for Mrs B to withdraw her claim.

What had also happened was that having received the allegation, the insurer who had agreed to insure Mrs B's claim withdrew cover leaving Mrs B exposed to any costs award made against her, which did then happen in court when the judge agreed with the other side.

The firm then billed Mrs B the sum of £48,000, saying that these were the fees they had incurred in dealing with the claim, and under the terms of her Conditional Fee or 'no win no fee' agreement.

Was the service reasonable?

We found that, although the firm were entitled to charge fees under their contract in the event that the client breached its terms – and being fundamentally dishonest was one of the breaches mentioned. In this case we found the service was unreasonable as the firm failed to inform Mrs B of the allegation and the challenges in a timely manner or of the issues this presented to the claim. When the firm did inform her, just three days before the hearing, it was far too late in the proceedings.

Mrs B she was unable to make an informed decision on how to proceed and had no choice other than to go to court.

How was the issue resolved?

We decided that the firm should not charge the fees incurred and they were directed to waive them.

We also decided that the firm should reimburse Mrs B for the losses she incurred in having to pay the other side's costs, as she was not placed in an informed position regarding the risk of going to court in time to do anything about it.

Case study – reasonable service when ending a claim

Mr M had an accident at work and was injured. He blamed his employer for his accident and asked the firm to represent him in his claim. Initially, the firm assessed the claim as having good prospects and agreed to act for Mr M under the terms of a 'no win no fee' agreement. As the matter progressed and the firm gathered more information however, their view on the prospects of the claim changed to the extent that they no longer considered that the claim was more likely to succeed than to fail, which was a requirement of the insurer who was covering Mr M.

The firm advised Mr M of their change of view and sent him a detailed letter explaining the reasons for their decision. When Mr M disagreed with them, they instructed a barrister to provide a second opinion on the prospects of the claim. When the barrister agreed with the firm, the firm advised Mr M that they were closing his file.

Mr M was very unhappy with the firm's decision. When he brought his complaint to the Legal Ombudsman, he explained that he had obtained alternative legal representation and, with their help, he had progressed the matter following which his employer had made a significant settlement offer which he had accepted. He therefore felt that the firm were wrong in their assessment and they had failed to act

in his best interests in closing the file.

Was the service reasonable?

We determined in this case that the firm had provided a reasonable service to Mr M. They assessed the case as we would expect them to at various points in the claim and having concluded that the claim no longer had reasonable prospects, they provided advice and an explanation to Mr M and obtained a second opinion from a barrister when he disagreed with them. We had sympathy for the position Mr M found himself in, but the firm were entitled to use their professional judgement to assess a case based on the evidence before them and the fact that the claim subsequently settled did not mean that the firm were wrong – the claim was not tested in court and a judge may have agreed with the firm.

How was the issue resolved?

The complaint was not upheld.

3. Running of the case

It is important to have good communication channels during the running of a case, ensuring updates and timescales are communicated. Litigation can take a long time and there can be long periods of inactivity while waiting for responses such as medical experts and the other side. It is important that customers have a clear understanding of when they should hear from their service provider and when they shouldn't and when there may be a period of inactivity.

Responding to enquiries in a timely manner is also important, service providers should set out in the client care letter what the response times will be for emails, telephone calls and letters. When investigating a complaint about delay, we will review the terms and conditions attached to the client care letter setting out what the service provider agreed to. If the service provider misses a deadline, they need to address this in the next communication with the customer and apologise. Things can get missed and we wouldn't always deem this unreasonable service, we'd look for a repeated pattern of behaviour.

Another common complaint we see during the running of the claim is when there is a change in a case handler and whilst this can't always be avoided, the failings we find are to do with how this is communicated to the customer. We see cases where the customer finds out after they have sent several chasers or received bounce-back emails from their case handler. We have also investigated complaints where there have been six or seven changes in the case handler, which has led to duplication of work, repetition, missed deadlines, poor handovers, and frustrations for customers.

To avoid this, we advise providers to keep detailed case notes, to limit changes in case handlers where possible and to update customers in a timely manner when changes are made so they know who to approach if they have any questions.

Case study – poor communication on a change to case handler

In Mrs C's case, the solicitor who had conduct of her claim left the firm suddenly and the matter was passed to another solicitor to deal with. However, the firm did not tell Mrs C that the change had taken place, so she continued to correspond with the original case handler. What then happened was that the second case handler also left and the matter was passed to a third solicitor to deal with. Whilst it was not the firm's fault that either solicitor left their employment, they should have promptly informed Mrs C of each change and they failed to do so. This was an important matter for Mrs C and she was put to the inconvenience of subsequently chasing the firm to determine who was dealing with her claim when she was told that the first solicitor was no longer dealing with matters.

A consequence of all the changes to the case handler in Mrs C's claim was that she was not contacted during a three-month period. The second case handler did not contact her at all and there was a period following the claim being passed to the third case handler when he too did not contact Mrs C. During that time Mrs C was chasing the original case handler for an update, but he had obviously left the firm and was not able to respond to her.

Was the service reasonable?

During this period the firm should have been preparing for court and advising Mrs C of the process and what was happening with her claim, but they failed to do so. Mrs C was left not knowing what the position was regarding her claim, which was significant as during this period the other side made an allegation of fundamental dishonesty

which was not communicated to Mrs C at all.

When we determined this complaint, we found that the firm had provided poor service in relation to these issues.

How was the issue resolved?

We awarded Mrs C a sum of compensation to reflect the stress and inconvenience that she had been put to as a consequence of the firm's failure to communicate with her.

Case study – reasonable communication on a change in case handler

Mr S was walking through his local shopping centre when he tripped over an uneven paving slab. He instructed a firm to represent him in a claim against the Local Authority in respect of the injuries he sustained. Mr S's complaint was that the case handler who was looking after his claim changed on seven occasions, which he says caused him inconvenience as well as delays to the progress of his claim.

The firm did not dispute that seven employees handled the claim, but did dispute that this delayed the claim, and they explained that on each occasion Mr S's case handler was changed, he was informed and full details of the new case handler was provided so he always had someone that he could contact if he had any issues or concerns.

Was the service reasonable?

When we investigated the complaint, we found that there were various reasons for the changes of solicitor – some left the firm, one went on maternity leave and, due to the fact that the Local Authority disputed liability claiming that it rested with the management company of the shopping centre, the firm made the decision to move the claim to a different internal department to deal with. There were no reasons however that we determined to be poor service on the part of the firm and we agreed with them that Mr S was kept updated throughout. There were no periods during the firm's representation that we found they had delayed the claim and the handovers between solicitors were always efficient and timely.

How was the issue resolved?

Whilst it was clearly frustrating and unsettling to Mr S to have so many people represent him, we found that the firm provided a reasonable service in the circumstances and we did not therefore uphold the complaint.

4. Settlement

Not surprisingly complaints are often generated by a dissatisfaction with the outcome of the claim, or the amount of money received. It is important to manage expectations around this early on and throughout.

Dealing with formal offers under Part 36 of the Civil Procedure Rules, there are specific consequences aligned to this and we sometimes find poor case management around the failure to understand and explain these implications to the customer.

We also see complaints where customers say they felt pressured into settling and that upon reflection they believe their case has been undervalued. Little can be done when a Consent or Tomlin order has been agreed between parties, it is important that the customer understands that this is binding and the implications of this. If this has been agreed verbally in court, we would expect to see this followed up in writing shortly after.

Court proceedings can be an unknown territory for most. We find a lot of customers that raise complaints felt unprepared for court proceedings. Some customers expect to go to court and feel they will have an opportunity to tell their story and quite often things can be settled before it reaches that stage, on the other hand others may expect to reach settlement and then find themselves facing a court trial. Service providers play a vital role in managing expectations around court and preparing their customer in the best way.

It can be very difficult to prepare someone for court or to know how they might handle it, we would look for evidence that the service provider clearly explained to the customer what the process will be, what to expect, who they will meet and what their roles are.

If a settlement is on the table, service providers should explain what this means for their customer and give them time to consider their options.

Case study – reasonable advice on settlement

Mr K's Legal Expenses Insurer instructed the firm to represent him in a personal injury claim after he was injured in a road traffic accident. The other side admitted liability for the accident and made a formal Part 36 offer under the Civil Procedure Rules to settle which Mr K was not happy with. The firm however advised Mr K to settle on the terms of the

offer. He complained that the firm placed him under undue pressure to settle and then, when he continued to refuse, they ended their retainer and came off the court record as acting for him.

The firm explained to Mr K that, if the claim went to court, there was a good chance that the judge would not award an amount in damages which was higher than the Part 36 offer that the other side had made and, if this turned out to be the case, it would be disastrous for Mr K as the judge would then likely make an award for the other side's costs against Mr K. When Mr K continued to refuse to accept the firm's advice, they told him that they were no longer able to represent him and then closed their file.

Was the service reasonable?

When we looked into the complaint, we found that although it was understandable that Mr K wanted a higher amount in settlement and was prepared to go to court to get it, the advice that the firm provided was reasonable, based on the risk of litigating and the value that both they and the barrister that they had instructed to advise on the claim had determined.

The firm informed Mr K that his Legal Expenses Insurer had decided, given that the other side had made a reasonable offer, to withdraw cover and they advised him of this, together with the possible consequences to him if he went to court with a formal offer on the table. The firm initially informed him that he had the option to take matters forward at his own cost, although they advised against this, but they then told Mr K given his comments that, as he continued to disagree with them, they were no longer able to represent him.

We decided that the firm had acted reasonably in the circumstances and provided full advice to Mr K throughout regarding his claim. The firm had provided full advice to Mr K on the offer the other side made and it was the insurer's decision to withdraw cover. There was no evidence that the firm had placed Mr K under undue pressure to accept the other side's offer although the advice was robust in telling Mr K what could happen to him at court if the judge agreed that the other side had made a reasonable offer under Part 36. Given the nature of the comments made by Mr K to the firm, we decided that it was reasonable for the firm to close the file and come off the record as it was clear that the solicitor client relationship had broken down.

How was the issue resolved?

We did not uphold Mr K's complaint.

Case study – poor advice on settlement

Mr B was a retired engineer whose hearing had deteriorated over time, a consequence he felt of working in noisy environments without adequate ear protection. He therefore instructed the firm to represent him in an industrial deafness claim. Mr B had worked at two factories and was unsure whether and to what extent each of his former employers had caused his hearing loss. The firm therefore proceeded with claims against both employers.

Mr B's first employer accepted liability for contributing to his hearing loss and made an offer of £3,500 to settle the claim. Mr B accepted this offer and was paid this amount. Six months later however, he received a bill for £10,000 from the second employer's solicitors in respect of their fees, as the claim against them had not succeeded, as the first employer had accepted liability in full which meant that the second employer could not be liable. Mr B had to pay this amount, as the solicitors threatened him with bankruptcy proceedings if he did not pay.

The firm tried to claim this amount off the After the Event insurer as they had put a policy in place to protect Mr B. The insurer refused the claim however, saying that the firm should have sought to claim the second employers' costs from the first employer, and had they done so the insurer would have covered any shortfall.

However, the firm had not done this and so the insurer would not pay, leaving Mr B £6,500 out of pocket for having brought the claim.

Was the service reasonable?

We decided that this was not fair and that the firm failed to protect Mr B's position with regards to the second employer's costs. This is not an unusual situation in claims of this type where the claimant is unsure which of a number of defendants should be liable and we found that the firm should have done more to protect Mr B.

How was the issue resolved?

In order to put him back in the position he should have been in had the firm done so, we directed them to pay Mr B the £10,000 that he paid to the second employer.

5. Costs

To avoid cost complaints there should be no surprises at the end of a claim. It is important to clearly explain the success fee not only at the beginning of the retainer but before a settlement is agreed or a trial is set. Success fees can vary, and they shouldn't come as a surprise. We often see complaints where the customer feels the fees weren't clearly explained to them or they didn't understand how much they'd be expected to pay.

Another key factor is the cost benefit analysis/cost risk analysis. A service provider should clearly explain the likely costs and what they can expect to recover, looking at whether the costs are proportionate. It is an important discussion to have with the customer. We have seen cases where the cost benefit hasn't been properly considered or explained and a moderate claim has left the customer worse off because the fees incurred were higher than the claim itself.

As mentioned earlier, a key role the service provider plays is to outline the implications of a withdrawal of funding. Providers should be frank about what the customer may become liable for, that it can, in some circumstances, form a public record and that it can also affect future applications for insurance, mortgages etc. or may adversely affect future court proceedings. Where the claim is found to be fundamentally dishonest, there can be severe implications for the customer in some circumstances – this can lead to criminal proceedings against them, or bankruptcy or an individual voluntary arrangement.

A customer should be aware of what costs they could become liable for. Remember, no surprises.

Case study – full waiver of fees

Mr B and seven other members of his family were on holiday in Crete when they became unwell. They were staying in an all-inclusive hotel and whilst on resort they were approached by a third party who informed them that they could make a holiday sickness claim against the hotel and obtain compensation for their illness. Mr B agreed to progress a claim, and the third party then instructed the firm to represent Mr B and his family.

The firm were acting on the basis of a 'no win no fee' agreement, a copy of which was sent to Mr B but not to any other family member. Two of the claimants were minors. When they progressed the claim,

the firm were informed by the hotel that various family members had filled out a customer satisfaction survey in which no mention was made of any sickness, so the hotel therefore disputed the claim and informed the firm that they intended to defend it.

The firm's view was that the survey "blew the claims out of the water". However, they did not tell Mr B or any of his family of their views. Instead, they progressed the claim all the way to court at which point Mr B received and accepted an offer from the other side to 'drop hands' on the claim and withdraw it, based on their advice regarding a potential finding of fundamental dishonesty. The firm then sought to rely on the terms of their Conditional Fee Agreement to charge Mr B and his family their fees in full, as the insurance they had put in place would not cover a claim which was fundamentally dishonest.

Was the service reasonable?

When we investigated the complaint, we found that the firm had no contact with five of the seven family members. They sought to rely on the fact that they were corresponding with Mr B to mean that they were entitled to charge fees for the rest of the family, and that all family members had breached the terms of the Conditional Fee Agreement.

When investigating the complaint we found that, although the firm were entitled to take on the claims, they should have obtained Conditional Fee Agreement for each and every claimant, with the childrens' agreements signed by an appropriate adult representative, and it was not fair for the firm to rely on the fact that Mr B had signed an agreement to bind the other family members. We also found that it was not reasonable for the firm to continue the claims to court in circumstances where they had received evidence that, in their view, invalidated the claims. To do so was not to act in their clients' best interests.

How was the issue resolved?

We consequently decided to direct the firm to waive fees in full for the seven family members as they could not be bound by an agreement they had neither signed nor seen, and reduce Mr B's fees by 75% given their actions in progressing a claim that, in their professional view, had no prospects of success.

Case study – repay fee for poor advice

Mr D instructed the firm to represent him in a personal injury claim. He was a vulnerable adult with learning difficulties. The firm progressed the claim and obtained confirmation from the other side that liability

was admitted, following which the other side made a formal offer to settle the claim under Part 36 of the Civil Procedure Rules. The firm advised Mr D of the offer but did not seek his instructions on whether to accept or reject the claim. They also failed to advise Mr D of the possible consequences to him of rejecting the offer if he went to court and did not obtain a greater amount in settlement.

Consequently, Mr D went to court. The judge was aware of the other side's offer of £4,500 and agreed it was reasonable. He therefore made this award and, as the Part 36 offer had not been exceeded, awarded costs against Mr D of £29,000.

Was the service reasonable?

When we looked into this matter, we decided that the firm had failed to properly advise their vulnerable client of the significance of the offer the other side had made, whether it was reasonable and the risks to Mr D of having his day in court. The firm claimed that Mr D was insistent that the matter was fully litigated but this was not supported by the evidence. We therefore found that the firm had provided poor advice and provided a poor service.

How was the issue resolved?

Whilst we could not say for certain that had full advice been provided then Mr D would have agreed to settle, he was not put in a position whereby he was able to make an informed choice.

Our decision was therefore to direct the firm to pay Mr D the £29,000 loss he had suffered in court.

Other areas of concern

Third party

referrals

It is important that service providers send out their own client care letter and draft their own retainers, rather than relying on third party referrals. Service providers should be assured of the customer's understanding. This is also highlighted in the SRA's warning notice on risk factors on personal injury claims, which outlines service providers obligations to complying with LASPO on referral arrangements.

Cyber crime

Dealing with large sums of money carries potential cyber security risks. It is important to ensure policies and procedures follow Law Society Guidance on protecting client money. We also have some guidance on our approach to dealing with cybercrime.

Success fees

We would expect the customer to be informed as to what the service provider will charge if they win their case so that they can make an informed decision as to whether to instruct that service provider or look elsewhere. We have seen cases where a success fee has been deducted from the settlement and the customer was unaware that such a charge would apply.

Summary

It is clear there are many areas within personal injury litigation that are complex for service providers to explain in simple terms to customers who can have little knowledge of what to expect.

Service providers must juggle their obligations to their customer but also to the court and third parties (such as insurers and medical experts). Service providers are also expected to comply with the SRA's Standards and Regulations at all times, whilst providing their customer with simple and easy to understand information.

Whilst this is undoubtably challenging, it is important to balance these requirements out with the basic principles of good customer service. Most of the issues outlined in this report come down to poor communication and poor expectation management.

Customers should be able to make informed decisions based on having relevant information to hand and they should not reach the end of a claim and be shocked or surprised at the amount owed. Service providers must make improvements to address these issues.

Service providers should always:

- **Clearly explain the options available to the customer and the implications of these options;**
- **Provide a detailed cost benefit and risk analysis and update this throughout the claim;**
- **Clearly explain the role of the customer, provider, court and third parties so the customer has a clear understanding of their role and obligations as well as the others involved in their claim;**
- **Keep the customer fully informed of anything that alters the claim or impacts the customer at the earliest opportunity;**
- **Keep detailed notes and follow up any conversations or important information in writing;**
- **Respond to queries in a timely manner; and**
- **Prepare the customer for possible court action.**