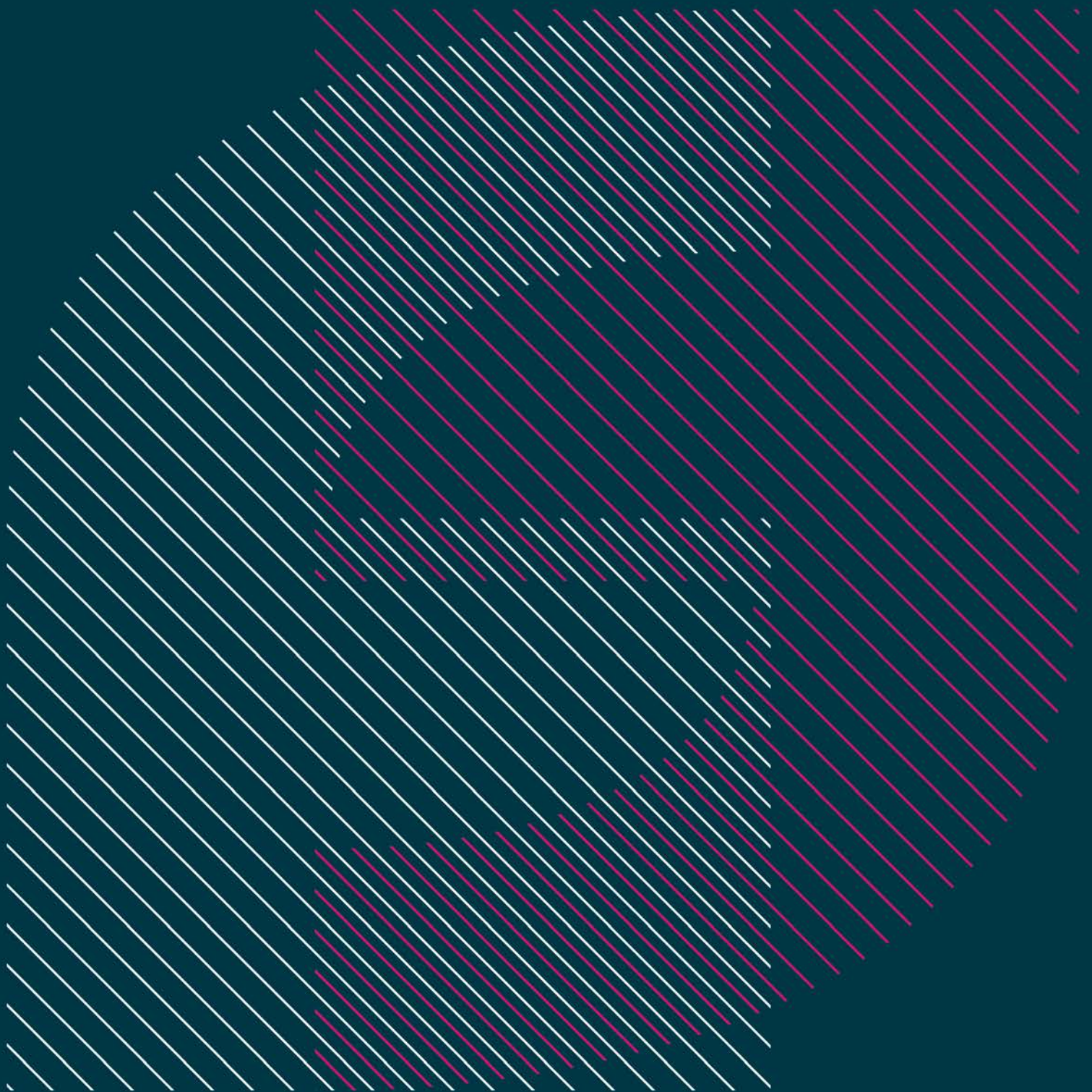


Guidance for accountants:
**Overview of
Legal Ombudsman
scheme**



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This guidance provides Chartered Accountancy firms¹ that have become authorised providers of probate services, under the provisions of the Legal Services Act 2007, with an overview of the Legal Ombudsman scheme.

Why do I need to know about the Legal Ombudsman?

From September 2014, chartered accountants¹ in England and Wales have been able to authorise firms to undertake probate activities under the Legal Services Act 2007 (“the Act”). It is also a licensing authority for Alternative Business Structures.

Once an accountancy firm becomes authorised to undertake probate activities it falls under the jurisdiction of the Legal Ombudsman. The Act provides the Legal Ombudsman with the power to investigate complaints about all “authorised persons” (or legal service providers) who have provided a legal service, once the first tier complaints process has been completed.

What does the Legal Ombudsman do?

The Legal Ombudsman opened in October 2010. Its role is to investigate complaints about the **service** consumers have received from legal service providers. This means it looks at matters such as:

- Did the service provider give the consumer the right information so they could make an informed choice about the work?
- Did the service provider give the consumer proper and timely information about how much it was going to cost them?
- Did the work take place in a reasonable timescale and was the consumer kept informed?
- Did the service provider follow instructions?

¹ ICAEW and ACCA are both licensed to authorise firms to undertake probate activities under the Legal Services Act 2007 (“the Act”). The Institute of Chartered Accountants Scotland (ICAS) are also approved regulators for probate activities, however have not authorised any members to date. This guidance will apply to ICAS members if they are authorised in the future.

- Did the service provider deal with the complaint properly?

The Act requires us to operate a scheme which resolves complaints quickly and with the minimum formality. As a lay body, our focus is to ensure that consumers receive a **reasonable** level of service from their provider. We do not usually consider the legitimacy of any legal advice provided; unless we are satisfied the advice is so unreasonable that no other service provider would have reached the same view in the same circumstances. Where we consider the advice given or approach taken to be as such, this may amount to poor service.

Will the Legal Ombudsman be able to investigate complaints about all of my accountancy work?

Under the Act (s.125² and s.128³) the Legal Ombudsman has the ability to investigate a complaint when an authorised person has provided a legal service. This means our jurisdiction is not limited to the reserved legal activities included in the Act which firms have been authorised or licensed for.

In the case of chartered accountants, we are aware that there are some services which are a legal service, such as probate and estate administration, and some which are not.

As a general rule activities set out in Annex 1 to the “ICAEW statement on engaging in public practice,” such as book keeping and auditing are considered to be non-legal activities. **However accountants should be aware that this is not an exhaustive rule.** There are some activities such as representing a client in a tax situation, and providing tax advice and planning (and administrative work which flows from this) where the Legal Ombudsman will look carefully at the complaints to decide whether a legal service has been provided.

² <http://www.legislation.gov.uk/ukpga/2007/29/section/125>

³ <http://www.legislation.gov.uk/ukpga/2007/29/section/128>

In determining whether an activity is a legal service, we will have regard to the definition provided in section 164 (10) of the Act⁴ and use the following test:

Is the complaint about a service which consists of or includes a legal activity as defined in Section 12 (3) of the Act? That is:

1. is the complaint about a reserved legal activity? or
2. does the activity complained about include one or both of the following –
 - i. the provision of legal advice or assistance in connection with the application of the law or the resolution of legal disputes;
 - ii. the provision of representation in connection with the application of the law or resolution of legal disputes?

This test is explained further in a [policy statement](#) and case scenarios which can be found on our website.

What date will you accept complaints from?

The Legal Ombudsman will only be able to accept complaints about legal services you have provided since your firm became authorised for probate work.

You should also be aware of our standard timescales for accepting complaints. These are set out in our [Scheme Rules](#), and state:

A complaint can be brought to us if it meets the following steps:

1. The problem happened after 5 October 2010; **or**
2. If the problem happened before 5 October (but the consumer did not realise there was an issue at the time) the complaint is referred to us within three years of the consumer finding out there was a problem; **and**
3. The complaint is referred to us within six months of their service provider's final response.⁵

⁴ S.164 defines a legal service (for the purposes of that section) as, "services provided by a person which consist of or include legal activities carried on by, or on behalf of, that person".

⁵ The final part of our time limits is due to change in the near future as a result of the EU Alternative Dispute Resolution Directive. To ensure you keep up to date with these change you can sign-up for our newsletter [LeO News](#)

How will I know what level of service the Legal Ombudsman expects?

The Legal Ombudsman website has information to assist you to understand this.

Our [publications page](#) contains reports which you may find useful, for example our Guides on Costs and the Guide to Complaint Handling.

We also run a [complaints handling course](#) which goes into more detail on best practice in complaint handling and the Legal Ombudsman's investigation process.

What does the Legal Ombudsman expect me to do when I receive a complaint?

Under the Legal Services Act all accountancy firms (who are authorised for probate activities and have provided a legal service) must inform consumers how to complain to the Legal Ombudsman, and cooperate with our investigations. Non-cooperation with the Legal Ombudsman may result in a misconduct referral to your regulator.

We have produced a "[Guide to good complaint handling](#)" which sets out how we expect authorised persons to deal with complaints internally. We call this "first-tier" complaints handling.

When consumers contact us we tell them we consider that eight weeks is usually a reasonable amount of time for a complaint to be dealt with at the first tier. If a consumer has not had a response after eight weeks, or if they are dissatisfied with the response that they have received from the firm, they can ask the Legal Ombudsman to step in and investigate.

If a consumer contacts us without making a first-tier complaint we will usually direct them back to you. We also ask consumers if they would like us to let you know that they have been in contact with us, and so we

may send you a letter to make you aware that a consumer has raised with concerns with us.

If you cannot resolve the complaint then you must signpost the consumer to the Legal Ombudsman. In addition the ICAEW have developed suggested signposting paragraphs for firms' initial letters of engagement which can be found on its [website](#).

If you have provided a consumer with a legal service, failing to signpost consumers to the Legal Ombudsman is a breach of ICAEW's probate regulations. If a consumer has not been correctly signposted then any complaints considered by the Legal Ombudsman will be subject to a case fee (see below) and may also lead to a misconduct referral.

What else should you know about the Legal Ombudsman's jurisdiction?

In addition to the Act, our [Scheme Rules](#) set out how our jurisdiction is applied in practice. It covers areas such as: who can complain, what legal service providers must do and how we deal with complaints.

How does the Legal Ombudsman investigate complaints?

Our investigations are impartial and independent. When we receive complaints we look at the facts of each case individually and take into account the views and opinions of both parties. We do this by reviewing the paper evidence which is available and discussing or exchanging views on the complaint with both parties.

If we think the consumer has received poor service we will aim to put them back in the position they would have been in, if the service had been reasonable. The remedy that will be appropriate will depend on the case but could include, for example:

- Redoing a piece of work.
- Refunding the cost of a piece of work which was not completed to a reasonable standard.
- Compensating for additional costs or inconvenience incurred as a result of poor service.

We always try to negotiate a resolution to which both parties can agree. If this is not possible, we will prepare a report of our investigation which will be forwarded to both parties for comment. When both parties have had an opportunity to comment on the report, we will make a final decision on the complaint. Both parties are informed of the decision which if the consumer accepts, becomes binding on you. We also have the power to enforce a decision if we think it appropriate.

How do I communicate with the Legal Ombudsman

If we receive a complaint about your firm our investigators will usually contact the complaint handler in your firm. Where possible we aim to discuss complaints by telephone to ensure that we understand the issues.

What will it cost me?

If we accept a case for investigation, a £400 case fee is charged which is set by the Lord Chancellor. However there are circumstances where the case fee will be waived: for example if the complaint is withdrawn, if it is resolved in favour of the service provider, or if we are satisfied that the service provider took all reasonable steps to resolve the complaint.

How do I obtain further information about the Legal Ombudsman and my responsibilities?

Our website www.legalombudsman.org.uk contains a wide range of information to help you.

- Scheme Rules* The rules which set out how our jurisdiction is applied in practice.
- Case fee guidance* How and when a case fee may be waived.
- Signposting pack* A useful pack to ensure consumers are correctly signposted to the Legal Ombudsman.
- Reports and Guides* A series of reports on various topics such as complaints handling and best practice in cost information.
- Professional Learning Programme* Courses which look at best practice for complaints handling and a chance to explore the Legal Ombudsman's complaints process.
- Case summaries* A wide range of examples of decisions we have made.

Alternatively you can contact our Assessment Centre who will be happy to help with your questions:

Email: enquiries@legalombudsman.org.uk
Phone: 0300 555 0333
Post: Legal Ombudsman, PO Box 6806, Wolverhampton, WV1 9WJ