



Summary

This guidance sets out the approach the Legal Ombudsman will take when considering complaints as a result of the difficulties brought about by COVID-19.

The Legal Ombudsman is currently able to maintain a reasonable level of service and therefore, where it is possible, our aim is to continue to progress complaints. However where this is not possible we will talk to both service providers and complainants to agree an approach which is fair to all parties.

We know that COVID-19 has created challenges for all businesses in terms of how they operate: while some are able to operate as usual, others are operating a reduced service and some have taken the decision to close completely. In addition many complainants do not have the capacity to follow a complaints process at the moment.

As different providers are in different positions, we will not seek to take a blanket approach to any particular rule or issue, but consider each in the context of the individual circumstances and the principles we set out in this guidance.

This guidance is set out in two sections:

- Specific guidance about our Scheme Rules
- General guidance on working with clients and responding to complaints

While we are unable to make short-term changes to the Scheme Rules, we do have the power to use our discretion and make case by case decisions which are appropriate for these specific circumstances.

Our rules and timescales

Will service providers have longer than eight weeks to respond to complaints at first tier?

The eight week rule is set out in our scheme rules¹ and it is not within our power to vary this in the short term. We will, however, take into consideration any delay that occurred as a result of COVID-19 at the appropriate stage of any investigation.

For service providers who are still operating, albeit remotely, we expect them to try to complete investigations into complaints within eight weeks. However where this timescale is not possible, or a reduced/limited service is being provided:

- Be open and honest with your client about this as soon as possible. Explain the challenges you are facing and the reasons why it is taking longer than usual to consider their complaint.

¹ Scheme rule 4.2a) <https://www.legalombudsman.org.uk/wp-content/uploads/2019/03/Scheme-Rules-1-April-2019.pdf>

- Attempt to provide a realistic timescale for a response and keep people informed if this is not achievable, including any reasons for further delays.
- Keep clear notes throughout your complaint handling process to evidence any delays or consequential difficulties if the complaint is raised with us.
- If your business has closed for this period you should communicate with your existing clients and let them know when you are likely to be able to respond.

Overall, in considering your service, we will look at how well you kept the client informed about what was happening when and why, as well as your assessment and acknowledgement of any impact this has on them – particularly for vulnerable people or urgent matters.

Complainants will still be able to bring a complaint to the Legal Ombudsman after eight weeks. However, you will be aware that there will be a delay before we investigate, and you should continue to seek to resolve the matter. You will be able to provide any responses that were sent outside the eight weeks so that these can be considered during the investigation. If you are able to resolve the complaint through your complaints handling process, just let us know.

Will complainants have longer to bring a complaint to the Legal Ombudsman?

Our scheme rules² state that complainants must bring a complaint within six months of receiving a final response, so long as they have been told about this timescale in the final response letter. More information on this is available in our signposting guidance³.

This rule provides complainants with a significant time period to make their complaint and should be sufficient for most people, even under current conditions. The scheme rules already allow an ombudsman to use their discretion to accept complaints after this period if there are exceptional circumstances and we will consider this on a case by case basis and provide clear reasons where we exercise our discretion.

Will service providers have extra time to respond to ongoing LeO investigations?

We understand that some service providers are operating as normal, whilst others are having greater difficulty. We will respond flexibly to requests from service providers for extra time to gather evidence and respond to questions. It is important that you are open with your investigator about any challenges you are facing in providing us with information. Your investigator will be best placed to discuss options with you.

One such option is to temporarily put an investigation on hold; to suspend it. This is a step we don't often take, however, as both service providers and complainants may find it more difficult to engage with our investigations at the moment, we are likely to consider a suspension if there is no practical way to move forward. We will discuss this with you if necessary.

² Scheme rule 4.4b)

³ <https://www.legalombudsman.org.uk/wp-content/uploads/2017/11/180802-Signposting-pack-updated-May-2018-FINAL-design.pdf> .

Will service providers be penalised under the prospective customer rule if they do not take on new clients?

We have received queries about this from a number of areas, particularly in relation to taking instructions for new wills. The Law Society have also issued guidance on this⁴.

This rule refers to unreasonable refusal to provide a service. If you are complying with Government guidance, and there are health and safety requirements which means it is not practical to meet a prospective customer, or your business has been affected with levels of absence which mean you are unable to accept new business, then in these circumstances it is not unreasonable to refuse to accept a customer.

As always it is important to tell prospective customers clearly why you can't accept instructions. This can be done on a case-by-case basis, or it may also be appropriate to update your website with information specific to your business and situation. If we receive a complaint about a refusal to provide a service, we will consider the reasons you have given and the information you provided to the prospective customer. This will include considering any refusal made as a result of COVID-19 challenges that your business is facing.

How will the Legal Ombudsman respond to sole practitioners who cannot respond to complaints?

We would expect sole practitioners to act in line with their usual contingency plans for illness or absence from the office, if these are in place. If a sole practitioner is ill and cannot respond to first-tier complaints, then they should seek to let the complainant know. If possible this should ideally be done immediately or, if a sole practitioner is too ill and has nobody to support them, as soon as is practical. Sole practitioners should make sure that their clients know when they are likely to receive a response to any complaint that they have made and also keep them updated about any potential delay.

Vulnerability, whether complainant or service provider, will be taken into account when we look at the circumstances of a complaint. This is particularly relevant for sole practitioners and the Legal Ombudsman recognises this.

How will the Legal Ombudsman respond to conveyancing and litigation complaints which have been impacted by COVID-19?

The Legal Ombudsman is aware that there are certain areas of law, such as conveyancing and litigation, which may be particularly impacted by the COVID-19 situation.

Our Scheme Rules set out how we determine complaints and this includes giving consideration to what was good practice at the time of the act or omission. We are keeping up-to-date with the guidance which has been issued by regulators and professional bodies and will use these as a basis for determining expectations and what

⁴ <https://www.lawsociety.org.uk/support-services/advice/articles/coronavirus-covid-19-advice-and-updates/>

was deemed good practice at the specific point in time. This will allow us to take account of the changing landscape and advice to providers and the public through the period.

General guidance

Communication

In all client relationships, communication is key. This is even more relevant in the current situation. Take steps to ensure your clients have clear information which sets out any changes to timescales, delays that may occur, or any challenges that may be encountered which are specific to COVID-19.

In addition, take steps to manage expectations about how often clients can expect to hear from you or your firm, and ensure they know who to contact if they have any questions. With so many of us working from home, we appreciate that the way you are communicating is likely to have changed. In providing a reasonable service to your clients, we would expect you to have discussed with them what this means for them and for their specific circumstances.

Documentation

We will be flexible and take a common sense approach to accepting complaints and progressing investigations over the coming months. If issues are occurring now, it is likely to be several months before complaints about these issues are brought to the Legal Ombudsman.

It will be important to have clear documentation to show how you have communicated with your clients, if you have made organisation-wide policy changes (i.e. to T&Cs), and the dates that information is communicated through your website or standard messaging. Having a clear record of these and supporting documents will help investigators and ombudsmen further down the line. Again, we would expect you to have taken account of vulnerability and impact in any changes you have made.

Further information

If you have any questions about the guidance provided in this document please contact us using the details below.

Email: support@legalombudsman.org.uk

Tel: 0300 555 0333