

Toolkit: Delay and communication

Model Complaints
Resolution Procedure



Version

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Introduction

This guide is intended to support lawyers to ensure that they are offering reasonable standards of communication and information about timescales. It draws on LeO's insights from seeing a wide range of complaints relating to both communication and timescales (including complaints about progression and delay).

It also sets out how to address service issues when they do arise.

Communication

Communication is one of the most common areas of complaint. This section of the toolkit focuses on common failings, and how to avoid them, what reasonable service looks like, and how to put things right when they do go wrong.

1. Communication – what is reasonable?

Different standards for communication apply to different areas of law, to different types of lawyer, and will depend on your own service standards.

However, we believe there are a number of key principles for reasonable communication, which apply across the sector:

- You should, where possible, have realistic timescales to reply to incoming phone calls and correspondence.
- These timescales should be prominent on your website, and/or in client care information, so the consumer is aware of any response timescales.
- You should also consider whether there are other sources of information, for example, email footers, and automatic updates provided by a case management system.
- All correspondence should then be responded to within those timescales, even if that response is an acknowledgement, which informs the consumer of any reasons for delay, and when they can expect a reply.
- If you do not have service standards or timescales, in the main LeO will expect to see that any correspondence is responded to promptly and in line with what we consider to be reasonable in all the circumstances.
- If communication from the consumer is very frequent, or excessive, a single response can be used to address multiple contacts, and the response should make it clear what is being responded to.

The key principles in terms of the content of communication are:

- All communication should be clear as possible, and where appropriate plain English, explaining any complex legal terms.
- Communication should be tailored for the needs of the recipient.
- Where communication is in response to consumer queries, all queries should be addressed, and where that isn't possible the reason for that should be clearly explained.
- If communication presents the consumer with choices, these should be clearly set out and the implications of each choice explained, to enable the consumer to make a fully informed decision.

2. Communication – common issues

There are a range of common issues which arise in terms of communication, which include:

- Timescales for the provision of responses – this can include delays in responding and responses which are provided outside of stated timescales.
- Failure to respond – this issue arises where a consumer has not had a reply to phone calls or written correspondence.
- Not responding to all issues raised by the consumer in their correspondence – this issue also includes not providing an explanation for the issues not addressed.
- Correspondence not being clearly written or communications not meeting a consumer's reasonable adjustments.
- Correspondence being unduly direct (and so interpreted as rude) or unprofessional.
- Correspondence putting undue pressure on the consumer.

3. Communication – how to avoid common issues

Set clear expectations (and meet them) or say why not

This is the single most important thing service providers can do to avoid complaints about communication.

Where possible, have a clear service level for responses, and make sure consumers are aware of the relevant timescales.

Tell consumers if there will be any delays in responding to their communications, such as extended periods of leave, waiting for information from third parties, like court timescales.



Example – communication delays

Ms F instructed her direct access barrister to prepare a witness statement and represent her at a hearing.

The barrister was instructed on 2 April 2024, ahead of a hearing on 5 May 2024. The witness statement needed to be served by 14 April 2024. On 8 April, Ms F contacted the barrister to ask when they would prepare the witness statement, but she did not receive a reply. Ms F

emailed the barrister again on 10 April saying she was getting worried they would miss the deadline, and she did not receive a response, so she emailed again on 12 April, and in response the barrister sent her a draft witness statement for input. Ms F provided her input, and the witness statement was submitted on time. However, she then raised a complaint about the barrister's communication, the fact she needed to chase and the worry that was caused.

Chambers investigated the complaint and did not uphold it, as the witness statement was completed and filed on time. Ms F then escalated to LeO, who investigated and upheld the complaint, because, although the witness statement was filed on time, the communication was poor, as Ms F should have received a quicker response, given the proximity of the hearing. The Ombudsman directed £100 as compensation for the worry caused to Ms F.

This complaint could have been avoided, if the barrister had informed Ms F of their availability to draft the witness statement, and when they would send it to her for comment.

Ensuring communication addresses all issues raised

The content of communication can also lead to complaints. Therefore, it is important that correspondence either covers all issues necessary or raised, or explains why that will not be done.

It is entirely reasonable for lawyers not to spend unnecessary time on correspondence, as ultimately that time is a cost to the consumer. However, when a consumer has asked for advice on five issues, if you only respond on two, the consumer is bound to ask where the other three are. Providing an explanation that says, "you asked about five issues, but I've only addressed two, as the other three aren't relevant in your circumstances because.." (and then provides brief details) can then prevent the consumer raising queries, or a complaint.

Tone and content

Consumers are often using legal services during very stressful periods in their life, and so they are likely to be more sensitive to the tone, and content of correspondence. As a result, there are often complaints about what is or is not considered in letters, the tone, the fact that the consumer feels the advice being given is unreasonable, or that it is putting them under unfair pressure.

You should always carefully consider the tone of correspondence, and how it may be read by the individual you are working with. If there is a risk that the consumer could feel pressured, or feel that the advice is unreasonable, then adding a paragraph explaining why you have to advise in this way can reduce complaints. It can also reduce the chance a complaint is ultimately upheld by LeO.



Example – tone and content

Mx G wanted to make a claim against a neighbour in respect of a boundary issue. Firm H were asked to provide advice on the merits of success by Mx G's legal expenses insurer.

The firm considered the evidence and wrote to Mx G saying they did not believe the claim enjoyed sufficient prospects of success. The explanation provided was complex and included legal terminology. Mx G was also of the view that the letter did not show them that all of their evidence had been considered and reviewed. As a result, Mx G complained about Firm H's advice and the content of the letter.

The firm accepted that the letter was overly legalistic and upheld Mx G's complaint. Firm H offered £50 as compensation for the service failing. Mx G did not accept the offer, and escalated their complaint to LeO.

The case was passed to LeO's Early Resolution Team, who dismissed the complaint on the basis the offer of £50 was reasonable for the communication failing, and dismissed the complaint about the advice on the basis it had no reasonable prospects of success; there was no reason for LeO to consider the advice unreasonable.

This complaint could have been avoided by ensuring the letter was written in plain English, by adding an explanatory paragraph that all evidence was considered (but may not be referred to) and briefly setting out the approach to be taken when considering merits assessments.

Timescales (and delay)

LeO sees a wide range of complaint issues relating to timescales, progression and delay. This section of the toolkit focuses on common failings, and how to avoid them, what reasonable service looks like, and how to put things right when they do go wrong.

1. Timescales – what is reasonable?

There is a significant variety of lengths of retainers in different areas of law, and every possible instruction can have differing timescales depending on a wide range of factors.

However, we recommend some standard principles that can be applied to ensure reasonable service in respect of timescales:

- Where possible, give an outline or average timescale or range of timescales for the retainer – for example, “average personal injury claims can take between one and three years”.
- Where it is not possible, explain that to the consumer, but also give a clear context that it will take “at least...”.

- If there are any changes to advertised timescales, tell the consumer of the change and the reasons for it as soon as possible, ideally in advance.
- If there are likely to be periods of any significant inactivity (for example waiting for third party action) explain this to the customer, make clear that the timescale is out of your control, and inform them of any expected timescales.

2. Timescales – common issues

There are a range of common issues which arise in respect of timescales:

- The matter taking too long, or longer than the consumer expected – this can include promised timescales not being met, or a specific deadline being missed, as well as the overall period of time being too long.
- Periods of specific delay, or inactivity – this can include periods where third party action is awaited.
- Specific delays or missed deadlines, for example, a particular document being submitted to court late.

3. Timescales – how to avoid common issues

Set clear expectations (and meet them), or say why not

There are lots of good reasons that various types of legal work take the time they do, and the simple fact is that for many consumers they may have limited experience of legal processes, and so timescales may be unknown or unexpected.

Giving a customer an idea of what to expect at the beginning of a matter, both in terms of overall timescales and process can manage expectations and prevent complaints.

If you are able to give a timeframe in outline, do so clearly. If you can't, say so and explain why. You should also be clear about whether any timescale you are providing is an average or takes into account particular features of the consumer's matter (for example, it's a leasehold conveyance, so will take longer than a freehold transaction).

You should also update the consumer at key points in the process, and remind them of what steps (and where appropriate timescales) remain. Also, update them if anything significant changes. Referring to the initial timescales (or the most recent version of them) will help remind the consumer of the consistency of information you have given them.



Example – failure to provide adequate information about timescales

Miss T was buying her first property, a leasehold flat. The firm provided a client care letter which provided details of the average time for a standard conveyance. The firm did not explain that often leasehold transactions take longer or that there are extra steps involved.

The firm requested the management pack from the managing agent. There were delays in providing the pack, and Miss T started to raise concerns about the time the transaction was

taking, but the firm did not explain the reason for the delay. The transaction completed several months after Miss T expected, and she then raised a complaint with the firm.

The firm did not uphold her complaint as the delay was not down to them. Miss T then referred her complaint to LeO, who investigated, and upheld the complaint on the basis the firm could have kept Miss T better informed and that led to an emotional impact. LeO directed a remedy of £200 compensation.

This complaint could have been avoided with clear up-front expectation management and an update when delays occurred.

Third party delays

There are a range of third parties who can be involved in various legal matters, including the courts, the other side, and other organisations such as the Land or Probate Registry.

Third party delays are not down to the legal service provider, but complaints to the legal service provider about those delays can be avoided by keeping the consumer updated, and by ensuring that the third party is being seen to be chased appropriately.

Delays that are down to the service provider

Sometimes avoidable delays do occur; the key focus here should be keeping the consumer informed and getting the matter back on track as quickly as possible.

By offering to put matters right proactively, either with a financial remedy, or by doing something else to put it right, complaints about delay could then be avoided.