LEGAL OMBUDSMAN

Guidance on Remedies

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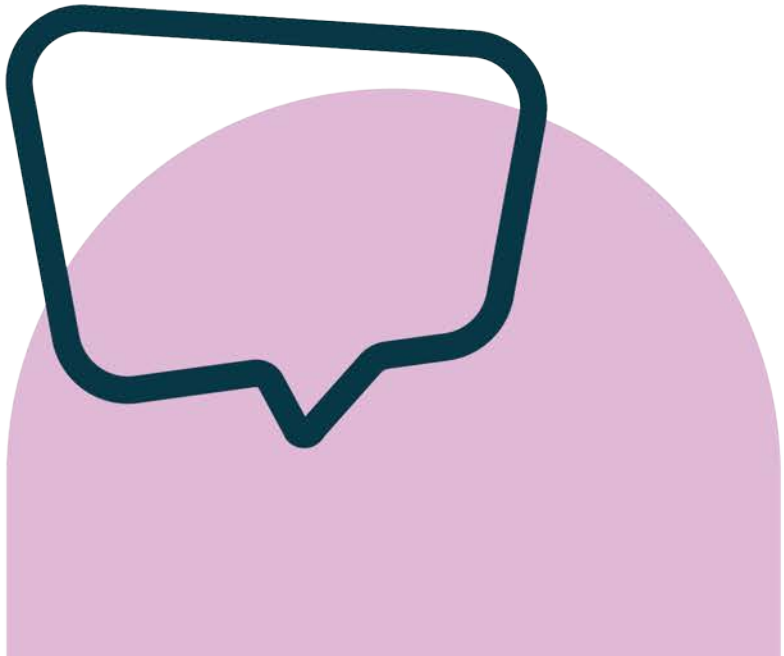

Introduction

This guidance sets out the Legal Ombudsman's approach to putting things right. When we make decisions about complaints, we always base it on the evidence we have available and what is fair and reasonable in the circumstances. We'll never direct something that penalises the lawyer and we'll never direct less than we believe is right; our remedies are always about fair redress.

Any resolution will be based on the impact of any poor service and on the individual circumstances of the complaint. We prefer it if the parties can agree on an outcome.

Our approach

When determining whether a remedy is appropriate, we'll consider five things:

1. Was the service of a reasonable standard?
2. If it wasn't, has there been any detriment to the person complaining?
3. If there has, was that detriment caused by the failings?
4. If it was, do we believe a remedy is appropriate?
5. If we do, what sort of remedy best addresses the detriment we've identified?

We won't direct a remedy if:

- *We believe the service was reasonable overall:* this can sometimes mean we say some things that could have been done better, but these were minor points, and the work overall was still of a reasonable standard.

- *We don't believe the failing or failings caused an effect significant enough to justify a remedy:* we're looking to put right the effects of what's gone wrong. It isn't enough to say there's a failing; we'll need to be able to point to an effect that needs to be remedied.

- *We aren't satisfied that the effect has been caused by the failing or failings*: people often tell us of a number of things they think went wrong in the service they received. It might be that we decide that there were failings on one point, but the effects that the person wants redress for were caused by other points. The detriment we remedy must have been caused by something the lawyer did wrong.

- *We can't come to a conclusion on what a fair and reasonable remedy should be:* sometimes, the person complaining tells us there has been a financial loss, but we can't get enough evidence to help us decide how much the loss has been. If we can't be confident on a fair number, we won't tell the lawyer they need to pay it.

Remedy always follows the detriment

Any remedy we direct will always be designed to address the impact of what has gone wrong. We will look at the negative effects of any failings on the person complaining and it'll be those effects that lead us to consider an appropriate remedy.
We will ask questions about the effects of any failings, and we'll want to see any supporting evidence available.

Four types of remedy

Our remedies fall into four broad categories:

1. Compensation for financial loss
2. Reduction or refund of costs
3. Non-financial remedies
4. Compensation for the emotional effects

We might decide that more than one of these is appropriate to put things right. If that happens, will ensure we don't remedy the same detriment twice.

Our awards for compensation are limited to a total of £50,000. This doesn't apply to a reduction or refund of fees, and there is no limit for these.

1. Compensation for financial loss

If someone has lost money as a direct result of a failing in their lawyer's service, our starting point is that the lawyer should give them compensation for the amount they've lost.

Lawyers sometimes tell us that financial loss claims should really be directed to the courts, under the heading of a professional negligence claim. Our view is, if we believe we're best-placed to help the parties resolve their dispute, we are generally able to come to a view on most financial loss questions, so the complaint can stay with us.

Our approach is similar to the courts' approach in the calculation of the loss, although it's important to be clear that we aren't required to reach the same view as a court would in the same situation, so there will sometimes be differences.

How we deal with the remedy for financial loss will depend on the facts of the case, but they fall into three groups:

I. When the person complaining was in control of the action taken

These take the form of the consumer saying, "If you hadn't done *this*, I would have done *that* instead". We're often looking at a situation where a consumer has relied on an action by their lawyer and it has led to them losing money. The consumer is saying they would have acted differently, if the lawyer had acted reasonably.

If we are satisfied, on the balance of the evidence, that the consumer would have acted differently, our starting point will be to look at what they would have done instead, calculate the difference, and then propose a full reimbursement of their loss.

The financial loss compensation tends to be all or nothing, as we will either decide that the consumer would have acted differently or that they wouldn't. We'll do more than purely taking one word over another, though; we'll look at the evidence we can gather and make a reasoned judgement.

Example 1

We find that Firm L failed to tell Ms J that her ex-husband had offered a 50/50 settlement in their divorce. She had been looking for an even split but her solicitor had advised her not to make the offer until hearing from her ex-husband's solicitor. A change in solicitors within Firm L coincided with the offer from the other side and it got missed in the handover. There was no contact between Ms J and her ex-husband, so all contact was through lawyers.

The negotiations broke up soon after and the case ended up in court, with a 45/55 settlement ultimately being agreed. It was only after the settlement that Ms J was informed by her ex-husband that she should have taken the even split. The difference of the 5% was £25,000.

Scenario 1: We look at the evidence and there's a record of an initial meeting with Ms J at the firm's office, where Ms J said that she wanted to stay in the house they had owned together and didn't want it to be sold. She described this as a "red line", according to the firm's notes.

Although there's no doubt that Firm L should have told Ms J about the offer, we know that the offer would have meant Ms J needing to sell the house, as she couldn't afford to take on the mortgage on her own. It seems to us that she wouldn't have accepted the offer on those terms, so the failing by the firm doesn't seem to us to have caused her to lose the £25,000. This means we don't direct that compensation.

Scenario 2: We saw that there wasn't any reason why Ms J wouldn't have accepted the offer. The practical arrangements would have been workable, and the split was what she had told her lawyers she was after. The only reason, then, that she didn't get a 50/50 split is because her lawyers failed to tell her the offer was on the table. On that basis, we would direct Firm L to pay her £25,000.

II. Where there is a third party involved

Some consumers tell us that they would have acted differently and avoided a loss, but whether this would have happened depends on someone else, too: a court or tribunal's ruling, the attitude of the other side to settling the claim, whether a landlord would be agreeable to extend a lease, and so on.

In those cases, there is generally some risk that, had the lawyer acted reasonably and had the consumer acted differently, circumstances beyond their control would still have meant the consumer didn't get what they want. Our view is it would rarely be fair for us to give compensation for all of the claimed loss, if we think there is an element of risk.

Our approach is to try to come to a view on what we believe is a fair estimate of the loss, which takes into account the chance of avoiding the loss, had the service been reasonable. Our compensation will be an appropriate percentage of the worst-case loss.

We can't always be exact, because we're dealing with hypothetical situations of what might have happened, but we'll always look to come to a fair and reasonable figure, and we'll always give the parties the chance to comment and provide evidence, before we make our decision.

Example 2

Miss V has a claim against a builder who did some work on her house. Her solicitors, Firm W, miss an important deadline for submitting documents to court and, as a result, the case is struck out, so Miss V can't recover anything and her claim for damages is lost. We decide there was a failing in the service, because the firm should have submitted the paperwork in time. Does Miss V get compensation?

Scenario 1: The claim was struck out at an early stage and the firm hadn't been able to get advice on the value of the claim, or on the prospects of success. We know that the firm thought that there was at least something in the case, because it was willing to take the case on, but it's now much harder for us to come to a confident view on the value of the claim or the value of the loss.

In that case, we might decide that we can't come to a figure and, if we can't come to a fair figure, we won't direct compensation for the loss.

Scenario 2: Miss V funded the claim through her home insurance. We know that insurers will generally only underwrite claims that have good prospects of success (usually above 50%), and there's nothing to indicate this was a special case. Now, say Firm W got a barrister's opinion on the case and the barrister's opinion was that the claim was worth £40,000, and that the evidence available made the claim "strong".

We know barristers understand the practical risks of trials, and no claim is certain to win in court, when the evidence is tested and both sides are arguing their position. So, whilst there would be no guarantee of success, the description of the case being "strong" is important. We also don't have anything in the evidence to suggest Firm W disagreed with that assessment and the contact between Firm W and Miss V seems to us to suggest Firm W believed this was a claim Miss V stood a good chance of winning.

We wouldn't say there was as high as a 100% chance of winning, because there was a risk of defeat in court. We also wouldn't say that there was as low as a 50% chance of winning, because the expert advice from the barrister – with which Firm W seemed willing to agree – was that the claim was "strong". Instead, we are likely to be somewhere in the middle, so around 75%. This might be adjusted, depending on what other evidence we can find, but let's say 75% in our case.

If Miss V had won, her claim was believed to be worth £40,000, and we now believe the chance of that happening was 75%. We'd then multiply that by value of the claim of £40,000, and that gives us £30,000, which is the financial loss we direct Firm W to pay.

III. Where the failing happened after the expense was incurred

Sometimes, a consumer will pay an amount that then gets rendered worthless by the failing that follows later. This could be a fee for a medical report in a personal injury case or for searches on a house purchase, for example. The expense had value at the time, but the failing by the lawyer meant it was now wasted.

In those cases, like with the first category, our starting point is compensation for the full amount. These tend to be all-or-nothing remedies.

Example 3

Mr B instructed Firm C to help him buy a house. He paid £900 for some searches. Over the next few weeks, Mr B experiences problems getting hold of his conveyancer and the seller contacts him directly, complaining that her lawyer is struggling to get hold of them, too.

Two months on, the seller pulls out of the transaction and Mr B's searches on a property he can't buy are a lost expense. He complains that this was down to Firm C's poor communication. We decide that there was poor communication from the firm, in its contact with both Mr B and the seller's lawyers, so should Mr B get his £900 back?

Scenario 1: We saw evidence that the seller and Mr B were in dispute about an issue with the legal title, and that this hadn't been resolved at the time the sale fell through. We saw that Firm C had written to Mr B a week beforehand and, in that letter, Firm C advised Mr B that he should be able to get an indemnity policy to cover any risks with this issue, but it would normally be the seller who paid for it. The seller wasn't willing to pay for it, with her solicitors claiming there was no problem.

In our view, whilst there was poor communication, it's not clear to us that the sale fell through because of that poor communication; there was at least one other issue and it seems to us the two sides couldn't agree on that. As such, because we aren't confident that the firm's actions caused the £900 to be a wasted expense, we don't direct Firm C to pay compensation on this.

Scenario 2: There aren't any obvious points of dispute between the parties. Say also that there was an exchange of messages between Mr B and the seller, where the seller said she's getting "fed up of the delays" and will pull out, if Mr B can't get his lawyers to engage. Mr B tried to keep the peace, but he got a text message on the day the sale fell through, saying "I've had enough. This has gone on for too long. I'm sorry, but I'm going to tell the estate agent to put it back on the market."

There is a chance that the transaction might have fallen through, even if Firm C had done a good job with its communication, but the balance of the evidence tells us that it's more likely than not that Mr B's £900 expense was wasted because of the firm's poor communication. We direct that Firm C pays Mr B £900 compensation.

2. Reduction or refund of costs

Sometimes, the best way to remedy the detriment caused by a failing is to reduce the lawyer's bill. Depending on whether the fees have been paid at this point, that will either mean the lawyer returns some of what has been paid, or the lawyer sends the consumer something to confirm the new amount owed, like an amended bill or a credit note.

This only applies to the fees of the lawyer or law firm we are investigating a complaint about. If a lawyer's bill includes other expenses (such as court fees, expert fees, search fees, even the fees of a barrister a solicitor instructed on the client's behalf), this remedy will be limited to the fees of the lawyer that is subject to the complaint. If we were to decide that the lawyer should also cover those expenses, that reduction would be classed as a financial loss, because we'd be making the lawyer responsible for someone else's bill.

We have three kinds of bill reduction:

- *Reductions of a certain amount:* this is usually where are removing the costs of a particular part of the work. An example of this might be because the lawyer has charged twice for the same thing.

- *Reductions to a certain amount:* we'll drag the costs back to a specific point in the work, or to a specific point in the costs. This might be where a lawyer should have stopped working after a certain point and avoided extra costs, or where the lawyer exceeded an estimate and the client had no reason to believe the costs would be any different to the last price given.

- *Reductions by a certain percentage:* these tend to reflect more general failings, but the principle is always that the failing has reduced the value of the work in some way. It might be a cost information failing, but not always: it could be that the legal work was done to a lower standard than it should have been and we believe that the consumer should not pay full price for it.

I. Reductions to a certain amount – estimate complaints

One of the most common areas of complaint in costs is that a lawyer has exceeded the estimate they told the client to expect to pay. In our publication An Ombudsman's View of Good Costs Service, we give guidance on estimates and what we expect to see, as part of a reasonable service.

We recognise that an estimate is intended to be a rough guide for the client, so we will generally give a little leeway on the estimate. A consumer who is given an estimate of £1,000 for the work should not be more surprised by a bill of £1,100 than by a bill of £900. The estimate, properly given, should help a consumer understand that the bill is expected to be "around £1,000".

We are aware that there is well-established case law on estimates, but we'll always look at the particular circumstances of each case to help us decide what is fair.

A good test on estimates is *What was this person reasonably expecting to pay?*

The answer won't always be the last estimate given, because the client might have been given fair reason to believe the last estimate is now out of date and the work is going to cost more. Whilst there might still be a failing, our focus will be on reaching a view on the price we believe the consumer should reasonably have expected to pay.

Example 4

Ms Q instructed Firm R to help her with a dispute with her neighbour about the boundary their properties share. The firm gave her an estimate early on of £2,500+VAT (so £3,000 in total), but, when the work was completed and the dispute resolved, Ms Q received a bill for £7,500+VAT (which is £9,000).

There's no doubt that the firm failed to give an updated estimate on the costs, and the last price quoted was the first one given. We consider that to be a failing in the service. A reduction of the fees seems natural, to reflect the failure to give updated information about the cost of the work.

Scenario 1: We look at the evidence and the initial letter that had the estimate in it includes an explanation of what work Firm R expected to have to do to get the job done. The firm said it would be about ten hours' worth of work, at £250 per hour. The section of the letter on costs finished "If your neighbour rejects our offer and provides his own evidence, we will need to revise our estimate, because that is going to take more work. We'll cross that bridge, if we come to it."

There was regular contact between Ms Q and Firm R, and we know that the neighbour did reject the offer and did provide his own evidence, and the firm met with Ms Q and discussed that new evidence in a two-hour meeting. Our reading of this situation is it should have been clear to Ms Q that the initial estimate was now out of date and the costs were going to be higher.

We have to come to our view of what is fair. The firm had plenty of chances to give Ms Q a new figure, but we don't believe it's fair to drag the costs all the way back to the estimate, when no

one should really have believed that still to be the price. Instead, we reduce the costs to £5,000+VAT (£6,000), which is a 50% reduction of the amount the firm exceeded its estimate by, reflecting an even share of the excess. We think this finds a fair balance, because Firm R charged more than it told Ms Q to expect, but Ms Q should have understood that she was going to pay more than the initial price.

Scenario 2: Firm R didn't give her any direction on what work was included in the initial estimate. Ms Q doesn't appear to have much experience in dealing with lawyers, so there's no fair reason for her to have any advanced knowledge of charging rates and the speed at which costs can escalate.

The evidence records her having regular contact with her lawyers and the discussion was consistently about the legal dispute. It appears to us that costs were very much not in the front of her mind, because her focus was on getting a just outcome.

In this case, we decide that Ms Q had no reason to believe the initial price was no longer realistic. There's no doubt that Firm R did a lot of good work, with a genuine desire to represent Ms Q's best interests, leading to the result she wanted in her case. But the price she paid for that was far more than she was told to expect and her lawyers never took any of the multiple opportunities they had to correct that.

We decide to drag the costs right back to the estimate, which means Firm R has to send Miss Q an amended bill of £3,000.

II. Reductions by a certain percentage

We sometimes see cases where the value of the work done has been undermined by one or more failings. This is similar to unhappy diners being offered a reduction on their restaurant bill.

It's very rare for us to waive a bill in its entirety. That is usually reserved for where the work had no value at all to the consumer. Much more often, there will be *some* value in the work, even if that value has been reduced by deficiencies in the service.

The failings might be cost-related (lawyers are required by their conduct rules to provide clear information about costs to their clients and sometimes to others involved in a case), but they don't have to be. A failure to tell the consumer something important, long delays, poor communication during the case, excessive changes of person handling the case, a series of minor mistakes that add up to something significant, poor advice and many other things can legitimately lead to us deciding the lawyer should not be charging full price for the work.

It's important to be clear that we might deal with the detriment caused to the consumer in other ways with our remedies, so a bill reduction might sometimes not be appropriate, if we're giving compensation for financial losses. Or we might reduce the bill by less than we would have done, so that we're not counting it twice and penalising the lawyer.

We'll need to decide whether the reduction should be on all or just part of the lawyer's fees. This will normally depend on whether the failing has been on all or part of the bill. A lawyer that does a good job to a certain point and then gives poor cost information for the next stage of the work would fairly challenge us for reducing the parts of the bill for work that was done well; we'd focus on the part that went wrong.

The percentages we decide on will generally be simple and easy to follow, because we know that reductions are inexact by their nature, and what we're trying to come to is a number that takes all the factors into account, and which is fair to both sides.

As a guide, we generally put our reductions into three broad categories:

- Modest reductions of up to 15% will reflect minor failings.
- Significant reductions of 20-33% will commonly reflect situations where there has been a significant failing or failings, but where the overall legal work has been of a reasonable standard. We don't want to go further than that and ignore that there has been work done of value, but we also believe that the lawyer charging full price for the work would be wrong.
- Substantial reductions of 50% or more tend to be for the really serious failings, where the value of the work is seriously undermined by what has gone wrong.

These percentages are designed to be a guide and there could be cases where a percentage that sits between the groups is fair. We'll always take these things on a case-by-case basis, but the key thing to remember is we're looking at the scale of the failing and what effect it has had on the value of the work done.

Example 5

Dr T instructed solicitors to help him with a claim against his uncle's estate. He'd been left a small amount of money in the will, but Dr T believed his uncle had always intended for him to stay living in the house they shared, and for him to receive a greater share of the estate assets.

The solicitors instructed Mr U, a barrister, to advise on what Dr T could be entitled to. Mr U's advice turned out to be flawed, meaning that Dr T agreed to a lower settlement than he should have done. Aside from the financial loss, should there be a reduction in Mr U's fees? It will come down to the effect of the bad advice.

Scenario 1: The advice was that Dr T had no claim at all and he should accept any offer made to him, but the evidence he could produce actually meant he had a good case to claim a significant amount. So, we're in a situation where the advice Dr T received had no real value to him. He got less than he might have and what he did get was no better than he would have achieved by asking either on his own or with the help of his solicitors. In that case, we're likely to decide the barrister's fees should be waived and Dr T shouldn't have to pay for that service.

Scenario 2: The advice was that he had some rights, and that Dr T could be entitled to some of what he wanted. However, the barrister missed one of the things off his advice, and it meant that, instead of getting everything he was entitled to, Dr T only got most of it. Dr T had believed he was getting everything, but found out later that the barrister had missed something off the list.

We look at the significance of the missing point. There could be a financial loss (probably in the second category of financial losses above, because any result would depend on the other side in the legal case, or on a court), but let's look at this purely from a bill reduction perspective, here.

If the missing point isn't the most important but it probably has made a noticeable difference to the overall settlement, we'd likely look at a reduction in the middle category and where it sat in the 20-33% bracket would depend on whether we were also giving compensation for a financial loss on the same point.

Alternatively, if the missing point is really small, such that we didn't think it would make much difference to the overall settlement, there's a good case for it being a reduction in the lowest category (up to 15%). If it's so small that we believe it didn't make any difference at all, we might decide no bill reduction is appropriate at all.

At the other end of the spectrum, what if it is a major point and it makes a huge difference to the strength of the claim Dr T is making? In that case, a substantial reduction might well be fair. Dr T has turned to Mr U to give him specialist advice, as an expert, and the failure to tell him something as important as this fatally undermines the value of the work. Why should Dr T pay Mr U for a job that had such a crucial mistake in it?

We do see cases where consumers tell us that their lawyer missed something important in advice. Sometimes, this is because another lawyer has since told them how they would have handled it instead, or because the client has been doing their own research.

It won't always be a failing in the service, though; lawyers are employed to have and share their own professional opinions with their clients, and two lawyers, on the same facts, might give different views on what was important. We see this as no different to two mechanics giving advice on what to do about a fault on a car: there will be some things which any professional should do and spot, but there will be other things that are down to individual interpretation. If it's just a difference of legitimate opinion, we won't find the lawyer to be at fault.

3. Non-financial remedies

These remedies don't involve compensation or reducing a lawyer's bill. Instead, they see the lawyer doing something specific to help resolve the complaint.

This could be apologising, putting something right at the lawyer's own expense or taking some particular action in the consumer's interest.

I. Apology

A meaningful, sincere apology can be a really good way of resolving a complaint, but there is a range. We find that an early apology is much more valuable than one given late on. And an apology a lawyer is willing to give is much more effective than one we tell the lawyer to make.

By the time a complaint comes to us, the lawyer will normally have had the chance to deal with the complaint directly, so, if they have not apologised by that point, they're unlikely to do so when the complaint is with us. Even if they do apologise, our experience is it can be harder for clients to accept, as the passage of time can make the parties more entrenched in their views.

Our Scheme Rule 5.21 says that an apology won't be treated as an admission of liability. Nevertheless, we recognise that some lawyers are concerned that their insurers won't want them to give any indication of responsibility, which could expose them to a legal claim.

We believe an apology has weight if it has these elements:

- An acknowledgement of the service failing;
- An acceptance of responsibility for the problem;
- An explanation of why it happened;
- An expression of regret for any detriment; and
- A brief explanation of what action (if any) is being taken to prevent the same thing happening again.

Bad apologies pass the blame on to others (including to the consumer) or doubt the detriment has been as the consumer describes. It's perfectly possible for a lawyer to be surprised at what they're told the effect has been, but to reflect that surprise in the apology itself is not a good way to come across as sincere.

II. Action at the lawyer's expense

This is one of the simplest remedies we provide, because it should be clear what has gone wrong and what needs doing to put it right.

If a lawyer has sent a court an application with the wrong address for the consumer, it's logical that the lawyer might contact the court, doing what's needed to fix the mistake. None of that work should be charged to the consumer, as the lawyer has caused the problem.

III. Action in the consumer's interest

This includes:

- Releasing papers, property or money held in the client account;
- Completing the instructed work within some agreed timescales;
- Changing the person working on the case;
- Giving an assurance of carrying out some internal training; and
- Putting procedures in place to prevent the problem happening again.

4. Compensation for the emotional effects

Although it is impossible to undo the emotional effects caused by poor service, a compensation payment can help to acknowledge the impact and the added worry, upset, distress or general inconvenience it has caused.

People sometimes use expressions like “distress and inconvenience” or “time and trouble”, but the best way to refer to an emotional effect is to use the words that most accurately describe what has happened. For example:

Alarm	Hassle	Disappointment	Annoyance
Confusion	Anger	Upset	Worry
Lingering doubt	Offence	Distress	Shock
Loss of faith	Inconvenience	Frustration	Embarrassment

Whilst many of the awards we make are where the detriment has been over a short period of time, we do sometimes deal with cases where there has been an intense and long-lasting consequence to the person complaining. The table below sets out the levels we use:

Modest award £50-£250	A modest payment might be appropriate if the impact of the poor service was short-lived and no longer exists. For example: • Minimal impact/disruption on the consumer’s daily life. • There were several individual minor incidents but when added together didn’t significantly affect the consumer’s overall experience.
Significant award £250-£750	A significant payment might be appropriate if there has been a serious, but not permanent effect on the consumer. For example: • The consumer has experienced significant inconvenience such as repeatedly chasing for information or correcting mistakes, taking time off work to deal with issues, or carrying out tasks their service provider should have dealt with. • The consumer had to complain multiple times about service issues which were not addressed. • The impact of the poor service was modest but was made worse by poor handling of the complaint. • A serious impact has been lessened by the actions of the lawyer or by part of the remedy, such as a significant costs reduction. • The poor service took place over a long period, but the effects are now at an end.
Serious award £750 and above	A serious payment might be appropriate if there has been a long-term or serious impact on the consumer’s wellbeing or life. For example: • The release of a confidential address to an abusive former partner. • Avoidable exposure to particularly stressful situations or financial liabilities.

Although the theoretical limit of our compensation for emotional effects is £50,000, awards above £1,000 are rare and awards above are £2,000 extremely rare.

Emotional effects differ from person to person, and we'll want to understand what the detriment has been for the consumer in any case we deal with:

- We'll ask the consumer to describe the effect or effects in their own words, then compare it to our guidance above.
- We'll sometimes want to see evidence to support what the consumer has told us, such as where they tell us they had to go out of their way to do something or had to cancel another engagement.
- If the consumer tells us they have particular vulnerabilities, which have made the effect on them more severe, we'll take that into account.
- We might also take the lawyer's handling of the complaint into account, because a really good first-tier process can help reduce the effects of any failings, and a really bad one can make things worse.

I. Calculating a remedy for emotional effects

The first thing we will always do is assess what the emotional effects have been of any failings in the service. Every remedy should reflect the detriment caused by a failing, so it's often helpful to set out the effects in detail as a first step.

Unlike compensation for financial losses – where there will be a separate award for each financial loss – an award for emotional effects will be a single amount, to reflect all of the emotional effects.

If we find there were two failings, we won't give £50 for one and £200 for the other; we'll look at what the combined effect of those two failings has been and then decide on a fair overall figure.

It might be helpful for people deciding on a figure to think first about which of the three categories fits best, then to look at whether the effects sit towards the higher end, the middle or the lower end. In doing so, it's essential that the particular circumstances of the client are considered, because it's never a case that a failing always results in the same award of compensation.

Example 6

Mrs M contacted Firm N and asked for her file. She had decided to try to find a new lawyer and Firm N had agreed to send her the file, so she could do so. Firm N took a month to send her the file and Mrs M complained to us about the delay. We agree that this was too long. She now has the file, so that isn't a problem any longer. All that remains is whether she should get compensation for the impact of the delay on her.

Scenario 1: Mrs M was out of the country when she contacted the firm and wasn't due back into the country for six weeks. The file arrived before she got home and there was no real

difference to her in practice. Yes, there was a failing, but the detriment was very minor. If Mrs M had to chase the firm a few times to get the file, it might warrant a small award for the hassle and frustration, but compensation will probably be in the **Modest** category.

Scenario 2: Mrs M was awaiting a court hearing and had six weeks to prepare for it, when she contacted the firm. The delay put a real strain on her ability to find new lawyers who were willing to represent her. The new lawyers she found were able to source some documents by contacting the other side and the court, but the delay was a genuine stressor for Mrs M, at an already stressful time. She had chased Firm N regularly for her file and been given assurances that it would be sorted that day, with the file only appearing much later.

This could be a case in our **Serious** category, with Mrs M being exposed to an intense period of genuine worry. If Firm N realised its error and took steps to limit the damage (perhaps when the Senior Partner found out what had happened), the good complaint-handling might mean that the effect was less severe. If so, an award in our **Significant** category is more likely.

Putting it all together

We commonly see cases where there are detriments of different types, and where we believe more than one type of remedy is appropriate.

We would not determine multiple awards for the same detriment, because we're here to provide fair redress for what's gone wrong and not to punish lawyers.

By way of example, if we decide a consumer has lost £10,000 as a result of their lawyer's failing, we will direct the lawyer to pay the consumer £10,000 compensation, but the consumer is surely also going to be upset about losing the money in the first place (possibly compensation for emotional impact) and they might legitimately question whether they should be paying full price for the work (a possible bill reduction).

What we'll do is take into account the consequence of the remedies we're directing. For example:

- By giving compensation for the financial loss, the consumer is no longer out of pocket. They are back in their rightful financial position. So, that part of the detriment is now at an end.
- A reduction of fees might still be appropriate, if the value of the work has been undermined, but we'd still want to recognise that the most important detriment has been addressed by the compensation.
- The action in compensating for the financial loss and any reduction of fees will commonly reduce the scale of the emotional effects. There generally won't be a fair call of having overpaid for the work. There will still be emotional effects, and they might have been intense, but the other action taken needs to be taken into account.

Resolving a complaint – be honest

We generally won't accept a complaint for investigation, unless the lawyer has had the chance to resolve it with the consumer directly. This stage of the process is really important and it's a valuable opportunity for the parties to be honest with each other about the service.

During our investigations, we sometimes see consumers telling us things they haven't told their lawyers, including the effect that failings have had on them. And we sometimes see lawyers explaining legal processes to us that they didn't explain to their consumers when they had the chance.

It's much better for these things to be discussed directly, at the earliest opportunity. When someone is honest with us, it's important to take the chance they're giving us to respond respectfully and to try to resolve the dispute. This applies both ways, as we see a significant number of complaints coming to us where all that's needed is better – more honest – conversation.

We know that being subject to a complaint can be upsetting for lawyers. No one likes being told they've done a bad job. Our role is never to punish; we're here to help two people resolve their complaint and move on. We often find ourselves asking one or both to put themselves in the other's shoes and to look for a realistic way of bringing the complaint to an end.

Our guidance can help provide a basis for an honest conversation about the effects of any failings in the service and, through that, a resolution to the complaint. We encourage anyone involved in a complaint to refer to this guidance directly in their communication, so that everyone involved can use it.

Further information

If you have any questions about the guidance provided in this document, or any feedback you'd like to share, please contact us: **https://www.legalombudsman.org.uk/contact-us/**

We have a Technical Advice service for lawyers, which includes responding to questions about how to handle a complaint. For more details, visit our website: **https://www.legalombudsman.org.uk/for-legal-service-providers/learning-resources/technical-advice-desk/**

Email: technical.advice@legalombudsman.org.uk