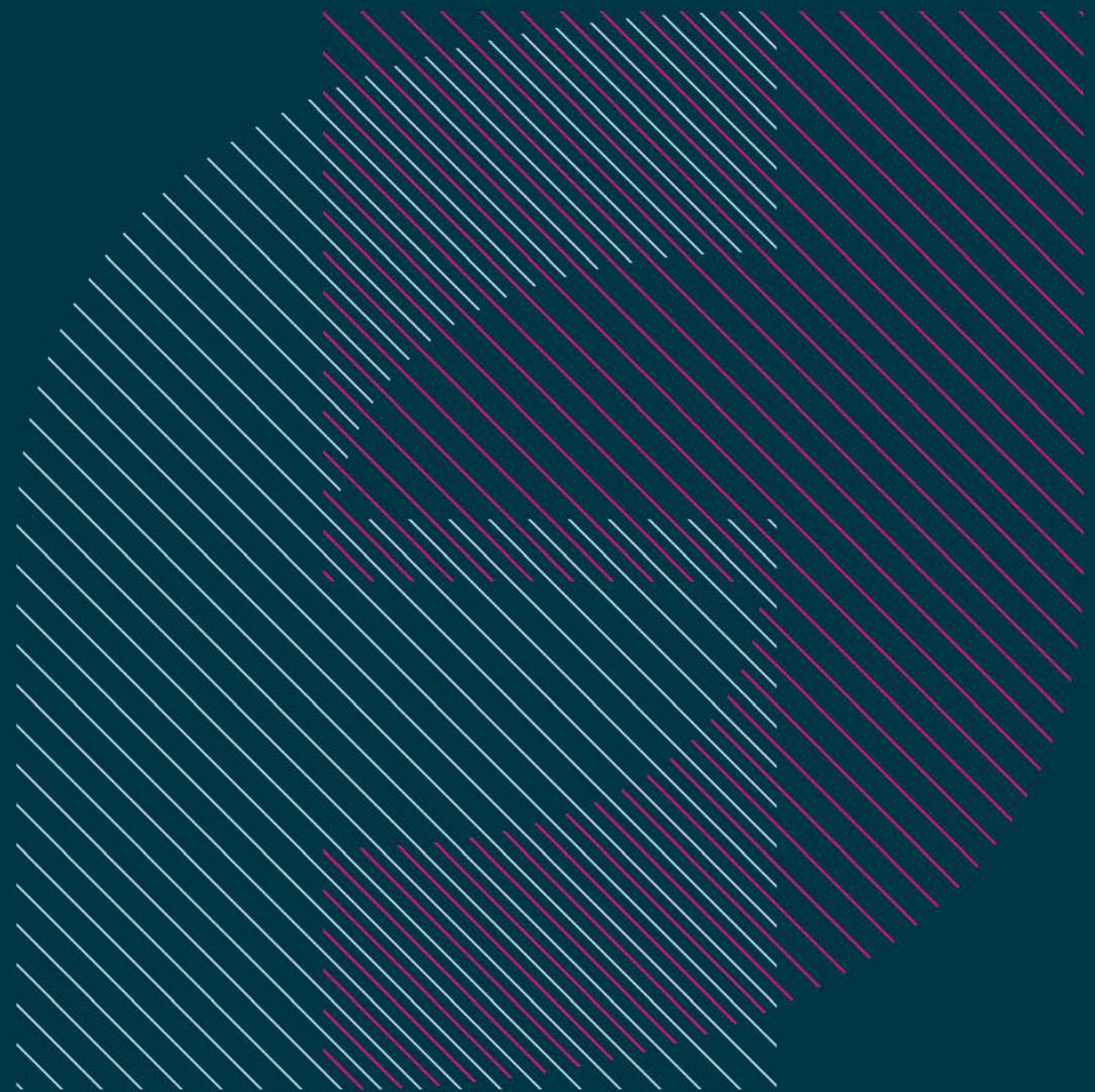


LEGAL
OMBUDSMAN

Guidance

**Putting things right: our
approach to remedies**



Summary

This factsheet sets out the Legal Ombudsman's approach to remedies. Any remedy will be based on the impact of the poor service and the individual circumstances of the complaint. 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.

Our preferred outcome is to achieve an informal resolution where the parties are able to jointly agree an outcome.

Our approach to putting things right

The purpose of a remedy should be, where possible, to put the customer back into the position which they would have been in had the poor service not occurred.

The key questions we ask are:

1. Has there been poor service?
2. If yes, has poor service led to any specific loss or disadvantage to the customer?
3. Has the poor service had an emotional impact on the individual?
4. Can we take steps that will put the customer back in the position they would have been in, had there been no poor service?
5. What remedy would be appropriate in the circumstances?

Poor service and impact on the customer

If we have identified poor service our next step is to see if the poor service has led directly to any loss or disadvantage to the customer. Examples of loss and disadvantage include:

- Financial loss, ie it has cost more than expected, they have incurred additional expenses or have lost money.
- Delay, ie avoidable delay caused by the lawyer such as progressing a case/dealing with a court hearing/purchasing a house.
- Inconvenience, ie as a result of the poor service, they have had to spend more time than expected following up with their service provider.
- Distress, worry or upset, ie the poor service has led to additional upset and worry.

If we decide there has been poor service then we consider the impact on the individual customer. Poor service can have a different impact on different customers depending on the particular circumstances of the case. The remedies we award are for the *loss, disadvantage or impact* of poor service, rather than for the poor service itself. There are situations where there has been poor service but it has not led to any disadvantage, financial loss or emotional impact to the customer and therefore no remedy is required.

Remedies we can award

1. Compensation for financial loss

The Legal Ombudsman can award compensation for financial losses. Financial losses are the expenses a customer has incurred, or money they have lost, as a result of a service provider's poor service. Generally, our awards do not cover any costs a customer may have incurred in making a complaint.

Did the poor service lead to financial loss?

Before we can award compensation for financial loss, we need to establish a direct link between the poor service and the financial loss.

Sometimes customers want to claim for a loss that either may occur in the future, or is something that could have occurred, as a result of a service provider's poor service. Remedies for a potential loss are made infrequently. As with all financial awards we need evidence that the loss has flowed from the poor service, and with these sorts of situations we will need to assess the remoteness of the loss.

Is there clear evidence of financial loss?

The next step is to assess the loss caused by the poor service. In order to award compensation for financial loss, we need clear evidence to demonstrate on the balance of probability the loss that has been, or will be, incurred.

Is the level of remedy appropriate?

We always seek to return customers to the position they would have been in prior to poor service being provided, we try to avoid remedies that put the customer in a better position than they otherwise would have been in.

2. Compensation for distress and inconvenience

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

The majority of compensation payments we make are for less than £250, however the following table sets out the levels we use. This is a guide only as our decisions will always be case and individual specific.

In all cases we will take the circumstances of the individual into account. For example a modest award for a series of minor incidents could become a significant award if the individual was vulnerable, and the incidents had led to more worry and anxiety.

As part of the specific circumstances of the case we will take into account how the complaint was handled at first tier. For example, if a lawyer has made reasonable attempts at the first tier to try and resolve the complaint or has already taken steps to try and resolve the situation, we may consider that a reasonable remedy has already been performed and that no further remedy is necessary. Conversely if a lawyer has not dealt with the complaint reasonably at first tier, we may direct a remedy to acknowledge that, depending on the specific circumstances of the case.

The table below shows the criteria and reasoning we use for compensation for distress and inconvenience payments up to £1,000. Payments are not limited to £1,000 as some circumstances could be so exceptional and require compensation above £1,000, but in practice awards above this amount are extremely rare.

<p>Modest award</p> <p>£50 - £250</p>	<p>A modest award will be made if the impact of the poor service was short-lived and no longer exists. For example:</p> <ul style="list-style-type: none"> • No impact/disruption on the customer's daily life. • There were several individual minor incidents but when added together didn't significantly affect the customer's experience.
<p>Significant award</p> <p>£250 - £750</p>	<p>A significant award will be made if there has been a serious, but not permanent effect on the customer. For example:</p> <ul style="list-style-type: none"> • The customer 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 customer had to complain multiple times about the service which were not addressed. • The impact of the poor service was modest but was exacerbated by poor complaints handling. • An exceptional impact has been mitigated by the actions of the service provider or by part of the remedy such as a significant costs reduction. • The poor service took place over a long period but has now been resolved.
<p>Serious award</p> <p>£750-£1,000</p>	<p>An exceptional award will be made if there has been a long-term impact on the customer's wellbeing or life. For example:</p> <ul style="list-style-type: none"> • The release of a confidential address to an abusive former partner. • A loss of liberty. • Avoidable exposure to particularly stressful situations or financial liabilities.

3. Refund or waiver of a service provider's costs

If we consider that the poor service has reduced the value of the work that has been completed we can decide to reduce or refund a service provider's costs to reflect that reduction in value to the customer. We will usually reduce costs by a specific amount or apply a percentage reduction. We will consider whether any interest should be paid on top of a costs based remedy.

In some circumstances, if the service has been of no benefit whatsoever to a customer, a full refund or waiver of a service provider's costs may be appropriate. Although each case will be considered on its own merits, we may consider this remedy:

- when the service provider's work was so poor it was of no value to the customer,
- where the customer did not receive what they'd paid for, or
- where we are satisfied that if the service provider had given the customer accurate information on costs then the customer would not have proceeded.

4. Non-financial remedies

An apology

In some cases an apology means more than a small financial payment. However, to be of value to a customer, an apology has to be meaningful. A sincere apology should, we would suggest, include the following elements: acknowledgement of the service failure; an acceptance of responsibility for the problem; an explanation for why the poor service happened; an expression of regret for an impact and a brief explanation of what action is being taken to prevent recurrence. *An apology is not an admission of liability*¹.

Completing or correcting work

Sometimes an appropriate remedy is for a service provider to complete further work or correct mistakes, for the customer free of charge, in order to put the customer back into the position they would have been in, if the poor service hadn't happened.

If we direct this, we will be clear about what is required and ask the service provider to either agree to undertake the remedy within a specified time or, if not, then bear the costs of someone else doing it (at the original service provider's expense).

Progressing a matter within a specific timeframe

In many cases, the outcome sought by the customer is simply that the work requested of the service provider should be completed within a reasonable timeframe. We can make a direction to that effect, with specific reference to what the work is that needs to be done and what a reasonable timeframe is.

Returning documents

Many customers come to us to ask for their file, and if appropriate, we can direct this. However, this may not be appropriate if the file is being held until outstanding payments are fully met by the customer. This may be a perfectly reasonable course of action for a service provider to take when a bill remains unpaid.

Further information

If you have any questions about the guidance provided in this document please contact
Email: enquiries@legalombudsman.org.uk
Tel: 0300 555 0333

¹ Scheme Rule 5.21 <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>