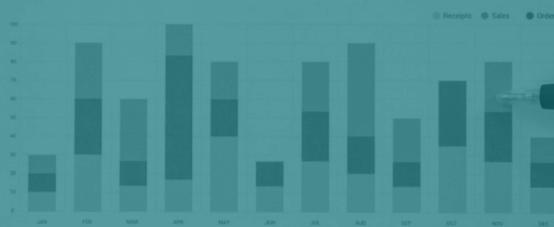


Our company



Business Items



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Overview of annual complaints data 2019/20



Introduction

Each year the Legal Ombudsman publishes a range of data about all the complaints we investigate, which is available on our [website](#).

This report focuses on the main areas of law we receive complaints about and the most common issues we see, including case studies and useful resources. The report also offers some insight into how to address these issues.

Although this summary focuses on data between 2019/20, the common themes and complaint types have remained fairly consistent over previous years. The amount of cases that require an ombudsman decision and the number of cases where we find unreasonable service have also remained largely consistent.

Data highlights - 2019/20

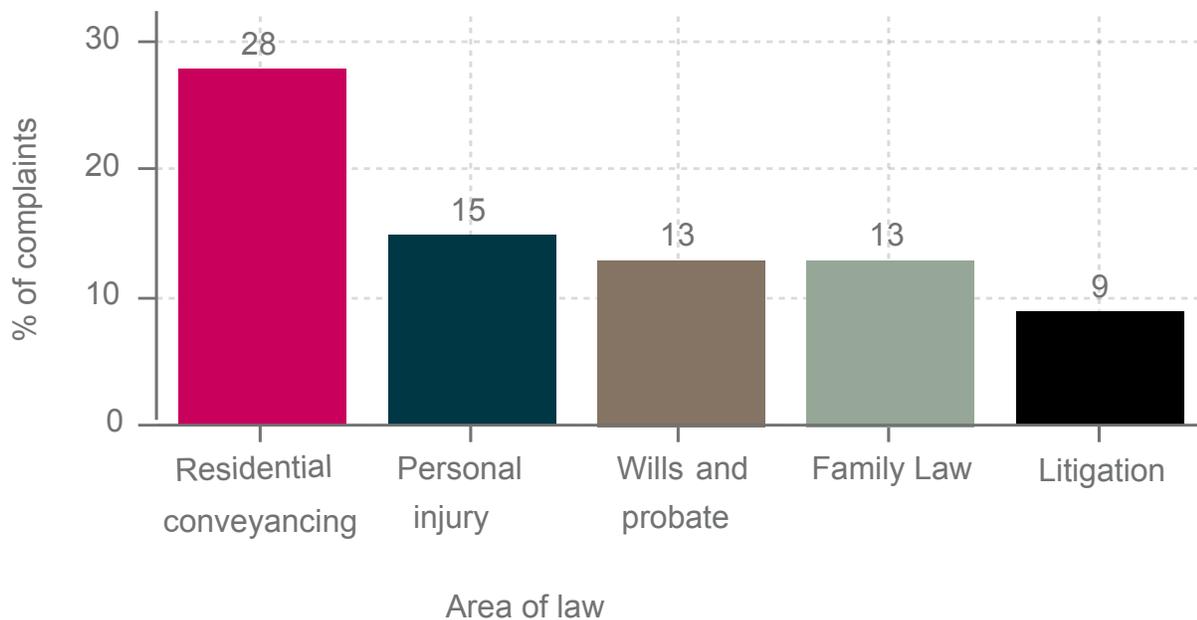
In 2019-20 we accepted **6,425** new cases and concluded **6,384**

Was the service reasonable?



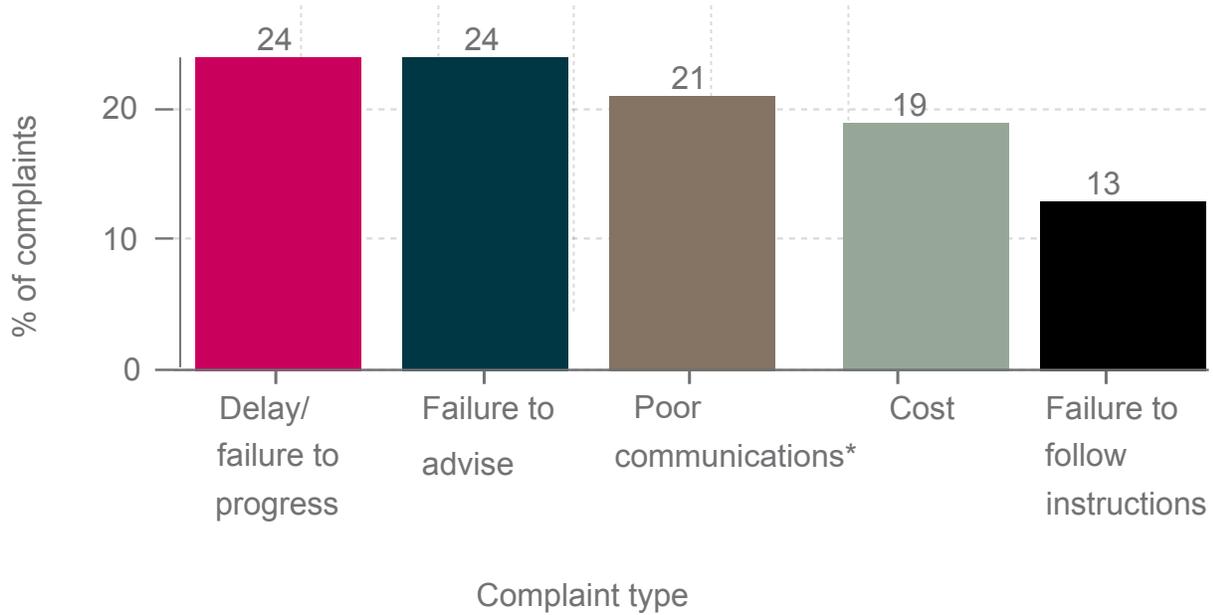
Our ombudsmen found unreasonable service in around half of cases (51%). They found reasonable service in 49%

What areas of law attracted the most complaints?

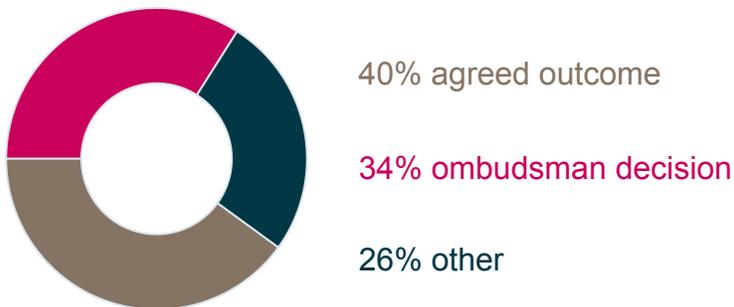


Data highlights - 2019/20

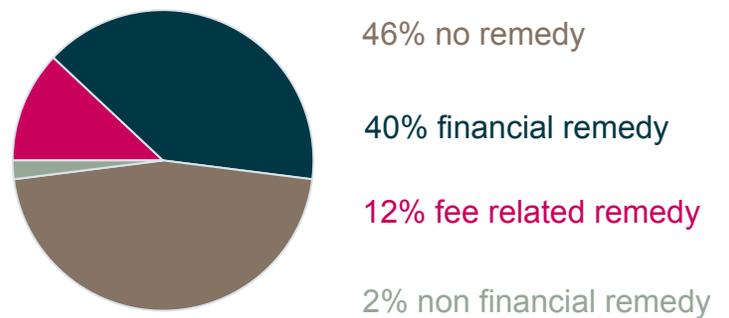
What did people complain about?



How did we resolve cases?

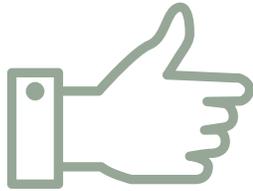


How did we put things right?



*In this report we have grouped failure to respond and failure to keep informed into poor communication – these stats have been published in our [Annual Report](#)

Are service providers handling complaints well?



Tier 1 complaints handling was **adequate** in 75% of cases we investigated



Tier 1 complaints handling was **inadequate** in 25% of cases we investigated

Our 2019-20 data shows us that there are still improvements to be made. In nearly a quarter of the complaints we investigated, we decided that the first-tier complaint handling was not satisfactory and this has been consistent for the last couple of years.

There is no one size fits all to complaints handling procedures, and these can vary from firm to firm. However, whatever the resources or approach we believe it is important that providers view complaints handling as an integral part of their business as it has an important bearing on people's perception of your service.

The most common reasons for finding inadequate tier one handling are: not responding to the complaint at all, not responding within the 8-week time limit, and not addressing all of the complaints raised. When service providers do respond, there are often issues within the responses that mean they are less likely to resolve matters in the initial stages.

In complaint responses, we see common issues reoccurring:

1 **Not taking the time to understand the complaint.** When it isn't clear what a complaint is about it may help the process and save time to try and clarify the issues.

2 **Too much narrative and not enough analysis.** For example, listing the whole chronology instead of focusing on the actual points raised. A clear concise response that focuses on the issues raised will make the consumer feel heard and address the issues at hand.

3 **Making promises and not keeping them.** Quite often we see service providers making promises in their initial responses to reply in a certain amount of days and then failing to meet this deadline. When a consumer is already dissatisfied, this failure to meet self-imposed deadlines can cause tension early on.

4 **Use of language.** Our [language of complaints research](#) highlights how the type of language used in the complaints process can affect customer decisions. Use of jargon and legalistic language can also be a barrier to resolving issues.

5 **Taking complaints personally.** Service providers should bear in mind that the purpose of the complaint's procedure is to try and resolve issues. The tone and method of responding should facilitate this rather than being defensive or dismissive.

Here is an example, from one service provider's response to a complaint, where the tone of voice is unlikely to help resolve the issue:

"You emailed us on 12 September asking for an update – given we had only been instructed for 3 weeks, your expectations here were unrealistic."

"If you wish to escalate this matter to the Legal Ombudsman, we are fully prepared to defend ourselves."

6

Not being willing to admit when things have gone wrong. Don't underestimate the power a genuine apology can have and an agreement to make changes that will support the consumer through the process. [1] An apology doesn't have to be an admittance of poor service, unless poor service has occurred.

'I apologise for the inconvenience this may have caused you. We assure you that customer satisfaction is a key priority for our firm.'

'I am sorry you had cause to complain but I would like to thank you for bringing these matters to our attention. We welcome comments and aim to improve our service.'

'I am sorry our service on this occasion, fell below our usual standards'

7

Not signposting consumers to the Legal Ombudsman. The Legal Services Board (LSB) first-tier complaints handling requirements [2] state that complaints should be dealt with in an eight-week period and that consumers should be signposted to the Legal Ombudsman at this point. Refer to our [signposting consumers to the Legal Ombudsman guidance](#) for more detailed information, including how and when to signpost.

[1] <https://www.legalombudsman.org.uk/wp-content/uploads/2019/03/Scheme-Rules-1-April-2019.pdf> Section 5.21

[2] https://lsbstaticwebsites.z33.web.core.windows.net/what_we_do/regulation/pdf/2016/201607_Version_2_Requirements_Guidance.pdf

Below is an example of a good complaint response because:

- it is simple, clear and jargon free
- it has a professional and courteous tone
- it leads with an apology (not necessarily an admission)
- it acknowledges feedback is a good thing and that the issue raised is valid
- it explains why there is no remedy required
- it ends with what will be done to improve the service

“I’m sorry that, on this occasion, our service did not meet your expectations. Feedback is very important to us as a company, and I appreciate the time you have taken to bring this to my attention....

I have reviewed the file and you are correct that there was a lack of regular updates between the file creation on 10 August 2017 and 18 October 2017. I do apologise for this lack of updates, and I acknowledge that this may have caused you some frustration. Please be assured however that this did not in any way hinder the progression of your transaction, and all work was progressed as soon as was possible. Nevertheless, this is not the standard of service I would have expected us to provide and for this I apologise.

I must balance this with the fact that you did not request an update during this time, or contact us to let us know that you were feeling frustrated. In the circumstances, whilst I do not consider that a remedy is appropriate in this matter, I would like to confirm that I have provided feedback to the staff involved, and going forward, we are looking into sending automated updates on cases where there has been little progress.”

Refer to our [top tips for responding to complaints](#) for more guidance.

It isn't always possible to resolve issues and some consumers may remain dissatisfied; however, we will look at whether the service provider took all reasonable steps under their complaints procedure to try to resolve the complaint. If we find that the provider has dealt with the complaint appropriately, then we may be able to waive the case fee.

Please refer to chapter 6 of our [Scheme Rules FAQs](#) for further information on case fees.

If a complaint can't be resolved at first tier and it comes to the Legal Ombudsman for investigation, it may be useful to read the following guidance:

- [Our approach to determining complaints](#) – this sets out our approach to deciding what is fair and reasonable and some common factors which may influence our decision.
- [Our approach to putting things right](#) – this guidance looks at our approach to remedies when the service provided hasn't been of a reasonable standard.

Key themes

The images below show the most common reasons for complaints across all areas of law. We can see that delay, failure to progress, and poor communication are at the heart of the majority of complaints we receive.



Delay/failure to
progress



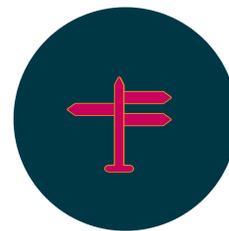
Failure to advise



Poor
communications



Costs



Failure to follow
instructions

Delay and failure to progress is consistently one of the top issues we see. This can be down to an actual delay for various reasons, but quite often we find it can be a perceived delay. This may be because the consumer is expecting something to be done faster because their expectations haven't been managed around how long the process should take, or sometimes due to not being updated during periods of inactivity. Poor communication underlies many of the complaints we see.

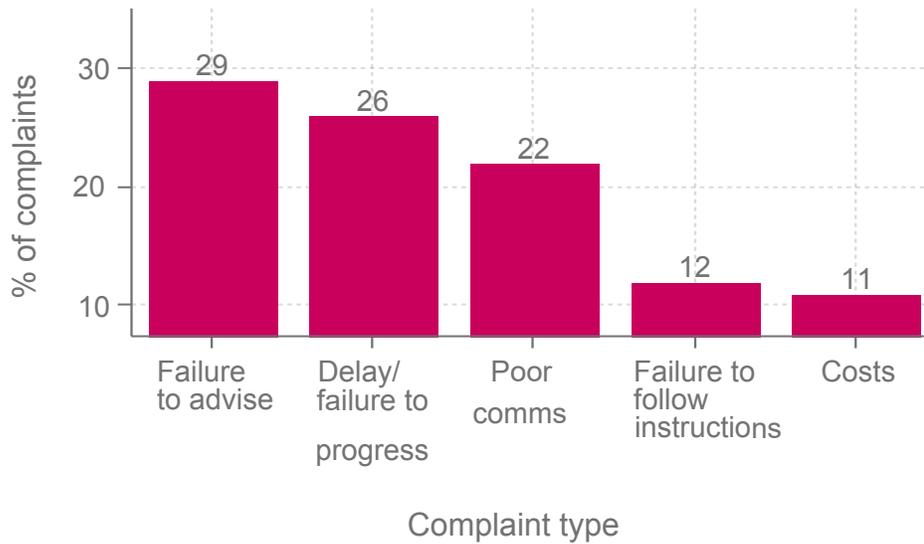
Areas of law

Residential conveyancing

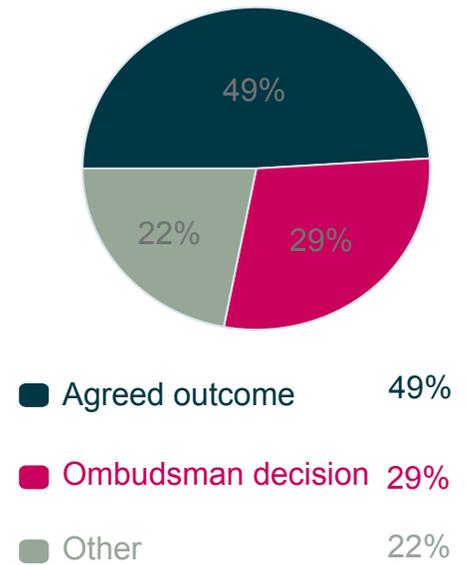


In 2019-20 **28%** of complaints made were in relation to residential conveyancing. From the cases that had an ombudsman decision made, **56%** showed evidence of poor service.

What did people complain about?



How did we resolve cases?



This is consistently the area of law that we receive the highest number of complaints about. This isn't surprising given that most people at some point in their life will have some involvement in a conveyancing transaction, however there are some common issues we see time and time again.

Common complaints in residential conveyancing

Failure to advise: When we resolve residential conveyancing complaints this is one of the key complaint types our investigators and ombudsman uphold. This could be related to an issue with the property or grounds which comes to light many years later. For example, the consumer may be made aware of a restrictive covenant in the deeds or have a boundary dispute and they expected the service provider to have informed them of this issue at the time of purchase.

When we make a decision, we will determine if the service provider should have reasonably known about any issues at the time of purchase. We will look for evidence that the provider made appropriate enquiries and completed the proper searches at the time of purchase. We will expect any issues to be flagged to the consumer to enable them to make an informed decision.

Key pieces of evidence:

- Search results
- Property information form
- Additional enquiries raised and responses from the seller
- Title documentation
- Report on title
- Evidence of discussions around any issues a consumer should be aware of

23%

of all upheld complaint types in residential conveyancing were failure to advise

Delay or failure to progress: Delays do unfortunately happen in conveyancing transactions and sometimes this can be out of the service provider's control. Sometimes these delays can be a regular part of the conveyancing process, however while they are not out of the ordinary for a provider they can be worrying to a consumer and can lead to frustrations if they are not updated.

15%

of all upheld complaint types in residential conveyancing were delay/failure to progress

We would expect to see regular updates and clear timescales outlined to the consumer throughout the transaction, especially if outside factors are causing a delay.

Key pieces of evidence:

- Client care letter/terms of business
- Emails, letters, attendance notes that show conversations took place around timescales
- Evidence to show when it was agreed exchange would take place
- Updates on any delays or revised estimates in respect of timescales

Poor communication: As we've already mentioned keeping consumers informed and updated is a key part of the process. While buying a house is one of the most common legal transactions that people are likely to be involved in, many people do not fully understand the process and may have unrealistic expectations of how quickly things should be moving. A clear discussion around the process involved could help.

We expect to see service providers provide regular updates and respond to communication from consumers in line with their service principles. In a conveyancing matter, updates near to exchange and completion may be more important than in the early stages. A service provider should be able to evidence that they have provided reasonable updates.

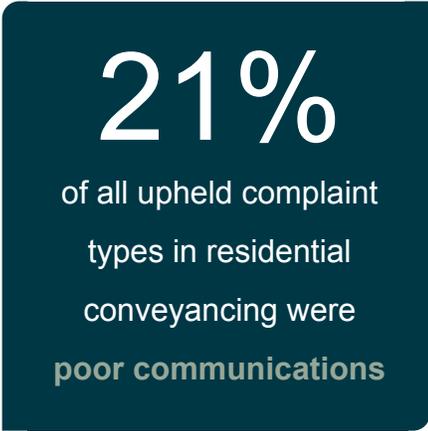
Key pieces of evidence:

- Client care letter/terms of business
- Updates via email, letter, attendance notes
- Evidence of responses to requests for information

Summary:

The legal services market for residential conveyancing is usually based on a fixed price and is a competitive market. As a result, it can be very process driven and because of this, anything out of the blue that isn't part of the regular transactions can cause issues.

It is important to remember that it can be a complex area of law for consumers; some people may have bought and sold many houses, but for others it is a rare or first-time transaction and the most important transaction of their life. Ensuring that a consumer is updated regularly and has a clear understanding of costs and timescales involved will help alleviate a lot of concerns.



Case study - residential conveyancing

Failure to advise

Mr B instructed a firm in January 2017 to purchase a property. The property information form from the sellers stated that the sewage was disposed of via a septic tank.

New rules and regulations from the Environment Agency in respect of septic tanks and their drainage had come into force back in January 2015. This included needing to replace or update any septic tank that discharged into a watercourse (river, stream, ditch etc) before 1 January 2020, or at the point of selling a property with a septic tank before that date. Mr B was not advised of these rules and regulations at the point of purchase.

Following completion, Mr B was contacted by the Environment Agency. They said that, depending on how the septic tank operated, he could be illegally discharging untreated sewage water into a watercourse from the septic tank on his property. After further investigations it became apparent that the septic tank was not in compliance with regulations and needed replacing at a cost of £7,904.

Mr B complained that:

- the firm failed to identify and advise of issues with the septic tank before completion of the purchase.
- when the firm became aware it failed to take action to rectify the situation.

Our investigation found that the firm had provided unreasonable service because they failed to advise Mr B and to keep him fully informed.

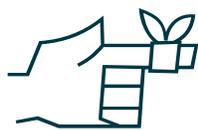
The Property Information Form received from the sellers confirmed that sewerage for the property was provided by a septic tank, rather than being connected to mains sewerage or being provided by a sewerage treatment plant. We concluded that the firm should have raised additional enquiries about the discharge method, as we would expect them to be fully aware of the potential impact of the updated rules and regulations from the Environment Agency. Knowing that there was a septic tank on the property should have prompted the firm to satisfy themselves in respect of the drainage, enabling them to be in a position to fully advise Mr B of any potential issues and implications.

While the firm did advise Mr B to seek a survey, they did not properly advise him on the relevant regulations. This meant Mr B was unable to fully understand the issues highlighted in the survey.

Although the firm did take steps to rectify the situation, they failed to keep Mr B informed over a four-month period. Mr B was left in an exposed position and the distress was exacerbated by the firm's lack of updates.

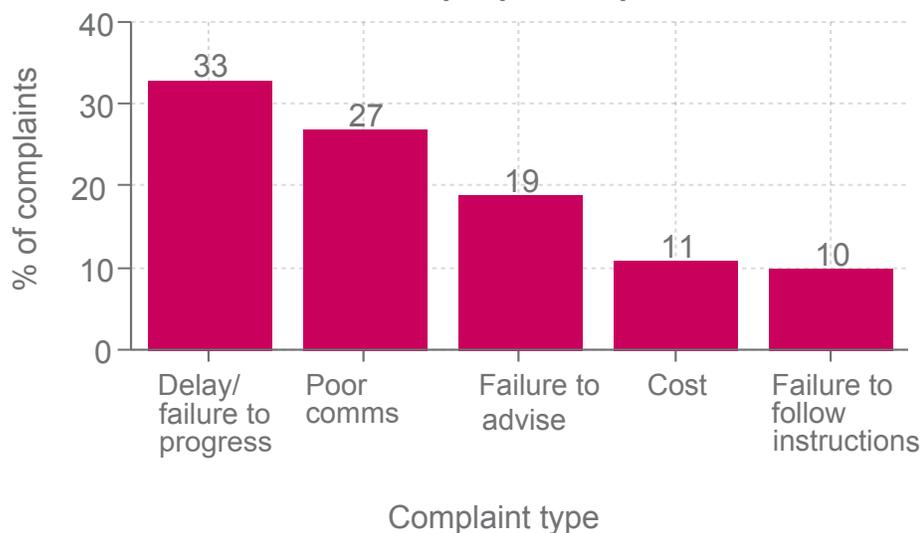
A financial remedy of £4,452.00 was awarded - £3,952.00 for a loss of opportunity to re-negotiate with the seller to rectify the issue with the septic tank and £500 for distress and inconvenience caused by the unreasonable service provided.

Personal injury

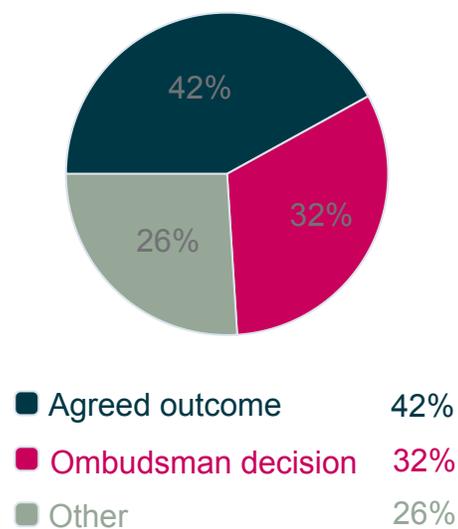


In 2019-20 **15%** of complaints made were in relation to personal injury. From the cases that had an ombudsman decision made, **50%** showed evidence of poor service.

What did people complain about?



How did we resolve cases?



Common complaints in personal injury

Delay/Failure to progress: Delays in progressing a case, obtaining evidence, securing settlement or responding to enquiries in a timely manner are frequent complaints raised in connection with personal injury cases. These types of complaints are especially common because of the length of time it can take to complete these cases and consumers aren't always aware of the process involved. The issues are often seen prior to the commencement of court proceedings, after which there is a timetable fixed by the courts.

A common issue which can affect the progress of a case can be obtaining expert reports, for example medical evidence. Many practices outsource this work, which adds another layer in the process. Engaging with a variety of Trusts, GP practices and experts who all work differently is a common source of delay.

Assessing whether the service has been reasonable is based on several factors, including but not limited to, the service provider's terms of service, what is accepted practice within the profession and the relevant code of conduct.

We consider what the consumer was told at the start of the retainer as to how often the service provider would update them. In personal injury cases, there can be long periods of inactivity, for example at the outset where the other party has time to consider their position on a claim.

What is important is that the service provider inform the consumer of what is happening in the case, how long an action will take and when they can expect the next contact from the provider. Clear communication, ideally by letter or email, is key.

Key pieces of evidence:

- *Client care letter/terms of business*
- *Evidence of discussions that took place about timescales or delay (emails, letters, attendance notes)*
- *Details of deadlines in place and that these were adhered to*
- *Evidence that the service provider took steps to protect a client's interest in the event of a missed deadline*

25%

of all upheld complaint
types in personal injury
were

delay/failure to progress

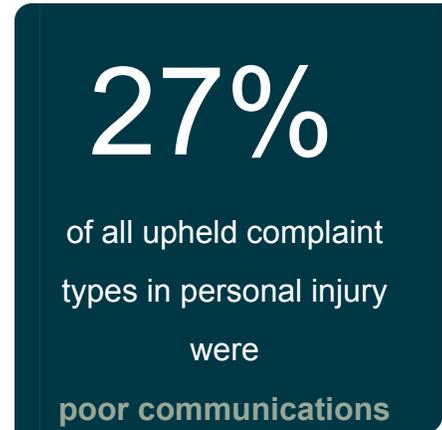
Poor communication: Over a long personal injury case lack of communication is a key driver of complaints. This can range from providing clear information about the overall process, changing information about the prospects of success due to new information or evidence, or helping someone to understand the range of options when a part 36 offer is made. We also see a considerable number of complaints where a caseworker has changed due to legitimate reasons, but the consumer has not been informed.

We will look for evidence that the service provider updated the consumer in the way they agreed to at the outset and responded to queries in a timely manner. We will also look for evidence that costs were clearly outlined at the start of the retainer and updated if circumstances changed. It is especially important that the consumer is made aware of any costs they may be liable for.

Key pieces of evidence:

- Client care letter/terms of business/customer service principles
- Evidence of updates given (letters, emails, attendance notes)
- Evidence of requests for information responded to

Failure to advise: As referred to earlier the failure to communicate in a clear and timely manner is generally the cause of most complaints. This is especially pertinent in the assessment of the merits or prospects of success for a claim, both at the start and throughout the retainer when new evidence or further information has been provided. It is important that a consumer is clearly made aware of their options so, for example they understand the risks of proceeding with court action as opposed to settling a claim at an earlier stage.



It is especially important to explain the impact this may have with consumers as soon as possible, such as any change to funding, implications under a CFA or DBA or personal cost implication, so that the consumer has an opportunity to consider their options in a timely manner before any key hearing or determination of the claim.

This is particularly important with Part 36 offers and the cost implications of these depending which way the court rules. A consumer should be made aware that if they refuse an offer to settle before court, they could be liable for the costs of court proceedings if the court rules against them. Another key area of complaint is the management of expectations around medical examinations and reports. This should include a discussion around what is within the service providers role and what is for expert opinion. A trail of clear communication, records, emails, telephone notes and follow up letters will help support evidence of clear communication and advice.

Key pieces of evidence:

- *A copy of advice given (letters, emails, attendance notes)*

Summary

Communication is key and clear communication throughout the course of a retainer will alleviate a lot of misunderstandings. Consumers are unlikely to understand the full process involved in a personal injury claim or how many different resources/experts/evidence are involved in making the claim successful. While providers undoubtedly provide information about the terms of a CFA and cost implications at the outset of a matter, in our experience many consumers do not understand it, and often believe that “no win, no fee” is always correct.

It is important to make sure the consumer is fully aware of any implications or changes to a claim.

It is always good practice to keep records on file and to follow up any key advice in writing.

Case study - personal injury

Failure to advise

Mrs C instructed a firm to pursue a personal injury claim on her behalf and they agreed to act under a conditional fee agreement. After 12 months Mrs C fell ill and decided she could not go on with the claim.

While the firm advised Mrs C they were disappointed and felt she had good prospects of success, they agreed to put forward a 'drop hands offer' to the other side so that both parties could walk away at no cost. This was accepted and the firm filed a notice of discontinuance. Mrs C did not hear from the firm again until nine months later when they sent her a bill for their fees amounting to £9,000.

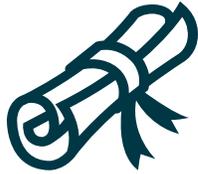
The Legal Ombudsman found that the firm's service had not been reasonable.

When Mrs C's circumstances changed, she wanted to be able to stop, and walk away. The firm advised that the case had strong prospects of success, but ultimately, followed her instructions.

While they followed correct procedure to make sure she wasn't liable to the other side for anything, they had not advised her what it meant in terms of her own cost liabilities. It was set out in the terms of the CFA but this information had been provided more than 18 months ago. Advice needs to be provided at the point where it is required so that Mrs C had the right information in order to make a decision.

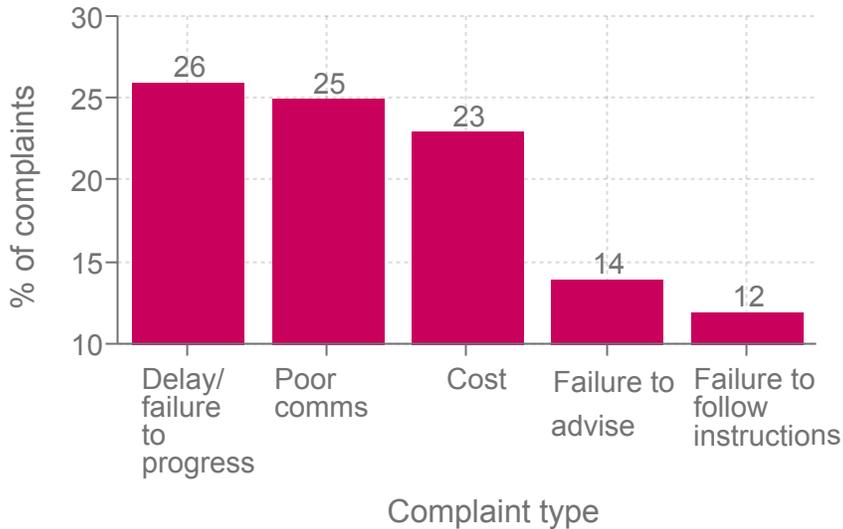
Mrs C did not know that by walking away she would be liable for fees or how much they were, and had the firm told her that then it is highly likely she would have carried on in light of the firm's advice that she had good prospect of winning.

Wills and probate

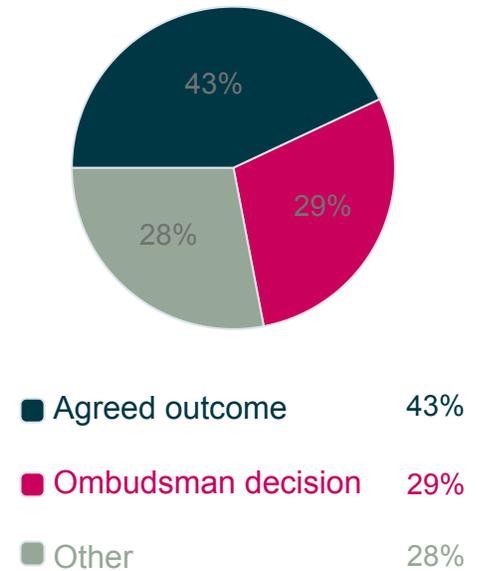


In 2019-20 **13%** of complaints made were in relation to wills and probate. From the cases that had an ombudsman decision made, **65%** showed evidence of poor service.

What did people complain about?



How did we resolve cases?



Probate complaints are different to other categories of complaint we receive because complaints can be raised by individuals who are not clients of the service provider (beneficiaries[3]). When we investigate these complaints we will carefully consider who the complaint is from and the appropriate standard of service. Remedies are also viewed slightly differently as we are usually aiming to put the estate back in the position it would have been, rather than the individual beneficiary.

[3] <https://www.legalombudsman.org.uk/wp-content/uploads/2019/03/Scheme-Rules-1-April-2019.pdf> S 2.1

Common complaints in wills and probate

Delay or failure to progress: delays can occur when sorting out inheritance tax issues, contacting the beneficiaries of an estate or pulling together the estate accounts at the end of the process. Sometimes service providers set unrealistic timescales or fail to update consumers when delays occur that are outside of their control.

We would expect a service provider to progress the administration in a timely manner, and in line with any estimates they provided at the start of the retainer. We'd also expect a service provider to keep the executor updated in respect of any delays and provide revised estimates in terms of the various stages of the estate administration. Delays do unfortunately happen and we would need to consider whether these delays were as a result of the service provider's actions or matters that were outside of their control.

We would expect the service provider to have acted as quickly as possible in paying the inheritance tax or deciding if it needed to be paid in installments.

To minimise delays with the estate accounts, it can be good practice to keep the estate accounts as a living document throughout the process and update as things progress.

We'd also expect the service provider to write to any beneficiaries early on to make them aware of their claim.

Key pieces of evidence:

- *Client care letter/terms of business*
- *Evidence of conversations that took place about timescales and delay (emails, letters, attendance notes)*
- *Evidence of what caused the delay*
- *Evidence that the service provider took steps to protect the client's interest in the event of a missed deadline*

20%

of all upheld complaint types
in wills and probate were
delay/failure to progress

Poor communications: we often see cases where the service provider has failed to update the executor or beneficiaries on the amount of work necessary to complete the estate. This can sometimes be a lengthy process, particularly if it involves any complications, such as assets abroad, which can take time to track down or value. Service providers have a responsibility to manage expectations on how long things will take and what progress has been made.

25%

of all upheld complaint types
in wills and probate were
poor communications

We would expect a service provider to keep an executor updated about the progress of the administration of the estate at appropriate stages, and in line with their own customer service principles. We would also expect service providers to respond to communication from the executor within a reasonable timeframe, if it is appropriate to do so. If a beneficiary requests information, then we'd expect the service provider to respond to these, but a beneficiary may not be entitled to the same level of information.

Key pieces of evidence:

- Client care letter/terms of business/customer service principles
- Evidence of updates given (emails, letters, attendance notes)
- Evidence of the legal process being explained to the client
- Evidence of responses to queries raised

Cost: a common complaint is around costs being excessive or the cost information being poor. Beneficiaries have a vested interest in the cost as the higher the costs, the more their share of an estate depletes. When dealing with the administration of an estate, it is not unusual for a service provider to charge a percentage of the overall value of the estate; known as a value element. If a provider intends to charge in this way, it should be clearly outlined to a consumer.

Information we'd expect to see shared depends on whether the consumer is the executor or beneficiary. If the executor is a lay person, we wouldn't always expect the service provider to inform the beneficiary of all costs incurred or to be charged, however if the service provider is acting as executor then we would expect beneficiaries to be notified. If a beneficiary asks for information or queries a charge, then we'd expect the provider to respond to this in a timely manner.

Costs can increase for valid reasons, but it is important that, where appropriate, executors/beneficiaries are notified. It is good practice for solicitors to provide residuary beneficiaries with relevant client care information at the outset, as well as costs estimates.

If unexpected expenses arise, the best possible information about them should be provided at the earliest opportunity. We would be looking to see what should have reasonably been shared with the executor and beneficiaries.

Key pieces of evidence:

- *Client care letter/terms of business*
- *Copies of all cost information, including any explanation of the value element*
- *Letters, attendance notes, emails of any discussions of cost and updates*
- *Invoices/time recording ledger of the estate accounts*

Summary

Communication is key as these types of cases can be very emotive for consumers and it may be the first time someone has had to instruct a lawyer. Service providers should update consumers regularly throughout this process.

24%

of all upheld complaint types
in wills and probate were
costs

Case study - wills and probate

Poor costs information

Mrs B instructed the firm to draw up her will, and a partner of the firm was named as Mrs B's executor. They told her they estimated it would take around 10 hours to complete the administration of the estate at the hourly rate at the time.

When Mrs B passed away, the partner who was the executor instructed another member of staff to complete the administration. The firm wrote to the residuary beneficiaries with their details of the estimated costs at the outset.

The final costs far exceeded the estimate provided, but the firm had not given any updates to the beneficiaries – only to the executor (who was a partner of the firm).

Our investigation found that it was not poor service for the costs to have risen. The estimate was based on the information that was available at the outset, and the administration of the estate swiftly became far more complex than anticipated – not least because the validity of the will was challenged.

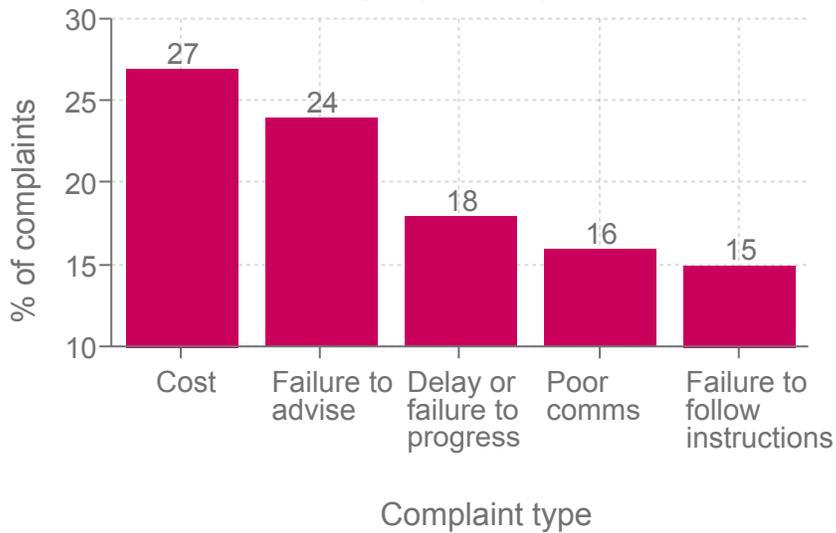
However, it was unreasonable that in a situation where there were no lay executors, the firm did not update the residuary beneficiaries in relation to the costs being incurred.

Family Law

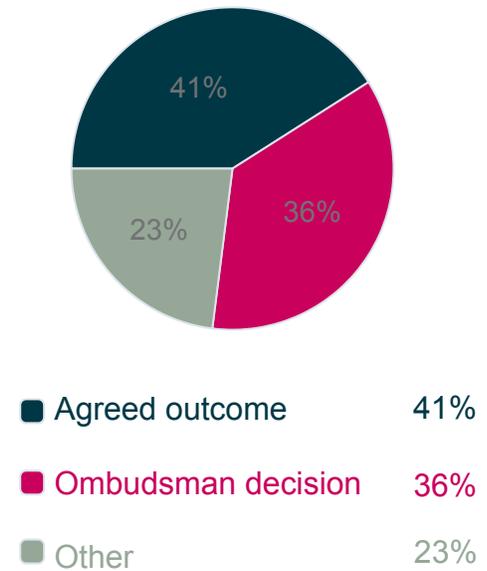


In 2019-20 **13%** of complaints made were in relation to family law. From the cases that had an ombudsman decision made, **52%** showed evidence of poor service.

What did people complain about?



How did we resolve cases?



Common complaints in family law

Cost: In family law the largest area of complaints we uphold are in relation to costs. This is often because consumers are not updated when costs increase or don't have the costs clearly set out from the outset. When a service provider is instructed to deal with a divorce, the costs associated with this can be quite straight forward, however when finances and child access are also included, providers often fail to break the costs down for consumers. These three areas: divorce, finances and child access, are separate elements and will have separate costs and estimates associated with them. Also, additional disbursements may be required which may not be known at the outset, these are not always shared with consumers at the earliest opportunity.

Costs can increase for very valid reasons, but it is important service providers update consumers when this happens. We would expect to see costs broken down per retainer and clear costs in respect of each aspect of the work being undertaken to be outlined to consumers. We'd also expect updates to be sent showing any additional disbursements incurred.

Key pieces of evidence:

- *Client care letter / terms of business*
- *Copies of all cost estimates and any updates*
- *Evidence of discussions about costs (emails, letters, attendance notes)*
- *Copies of invoices/time recording ledger*
- *Evidence of an explanation from the service provider about their billing*
- *Copies of invoices which show disbursements incurred (maybe barrister fees/court fees/expert costs)*



Failure to advise: complaints about a failure to advise or follow instructions can stem from poor communication and a lack of understanding about the legal process and what to expect from court proceedings. In our experience many re-visit the decisions they have made at court, and (with the benefit of hindsight) feel that the wrong decision was made and that they weren't fully advised.

Many consumers say that they feel unprepared for the approach taken by courts, and the matter of fact way decisions are made. We also see lack of clarity about the service providers role in providing technical advice on issues such as pensions and tax implications, these can often be a specialist area. While larger service providers may have in-house expertise to effectively advise on these areas, the challenge can arise when providers have a general awareness of the issues but lack the specialist knowledge to advise correctly.

11%

of all upheld complaint
types in family law were
failure to advise

We would expect to see the nature of the retainer to be clearly set out and anything that the service provider are unable to assist with, where third party advice is required or encouraged, should be made clear.

We'd also expect court proceedings to be clearly outlined, this may be the first time a consumer has had to go through this and legal jargon on court proceedings can be a barrier. We'd expect providers to check consumers understanding of the process they are about to go through.

Key pieces of evidence:

- *Client care letter/terms of business*
- *Any correspondence (emails, letters or attendance notes) that show the conversations that took place about what to expect*
- *Evidence that advice was given appropriately or independent advice was sought*

Delay or failure to progress: in the complaints we investigate we often see issues with gathering the financial disclosure information in a timely manner and progressing matters in line with court timeframes. While it can be the service provider who has caused a delay, it can often be outside of the service providers control if the other side are failing to cooperate.

This can also be an area where both parties come into dispute about the details of the separation. When we uphold complaints in this area it is often because a provider has not managed expectations, let the consumer know that they are following up or (if especially parties are in dispute) set out the different options and implications of the course of action.

We would expect to see the service provider progressing matters in line with the timeframes they've outlined themselves and with court-imposed timeframes. There are occasions where delays are out of the service providers control, however we'd expect to see evidence that the provider has chased progress and has updated a consumer accordingly. What may appear to be a straightforward delay to a provider is unlikely to be to a customer. A quick update to let the consumer know the reasons for the delay and when they would chase and provide a further update could prevent a consumer making a complaint.

14%
of all upheld complaint
types in family law were
**delay/failure to
progress**

Key pieces of evidence:

- *Client care letter/terms of business*
- *Any correspondence (emails, letters or attendance notes) that show the conversations that took place about timescales or delay*
- *Any evidence to show what the cause of the delay was*
- *Details of deadlines that were set*
- *Any evidence that the service provider took steps to protect the client's interest in the event of a missed deadline*
- *Any evidence to show the steps taken by the service provider in respect of the delays (may be correspondence with the other side or updates to the complainant)*

Summary:

In our experience family law complaints are some of the most challenging to resolve informally. Not only can instructing a family law provider be expensive, but people are also dealing with highly emotional and stressful issues surrounding the ending of a relationship, future care of children and dependants as well as trying to ensure their future financial security.

The ombudsman experience shows that these issues underpin nearly every complaint we receive in this area and add an extra dynamic and challenge to providing reasonable customer service.

Case studies - family law

Poor communication

Ms V had obtained an Islamic divorce from her husband in another country, but, as she had lived with her husband in the UK also needed to follow the official process in the UK.

The ombudsman found that there was poor service in this case as the firm had not kept Ms V up to date with the reasons for delays in the case. The delays were in fact not the fault of the firm, but because her husband was not replying to correspondence. However, without any update from the firm Ms V was under the impression that no work was taking place.

A modest remedy of £250 was put in place to recognise this, and the fact that Ms V's complaint was not dealt with.

Poor costs information

Mr W had previously worked for a family law firm in their costs department and did have a good understanding of both billing and how costs were incurred in a case. When he was going through his own divorce, his firm relied on this fact to justify why they had not provided revised cost estimates.

Mr W received three estimates for work on the divorce, finance and children. In respect of financial matters, the firm estimated that costs were "likely to exceed" £20,000 plus VAT if the case went to a final contested hearing. Costs for financial matters had risen to over £40,000 before the case had reached a final hearing.

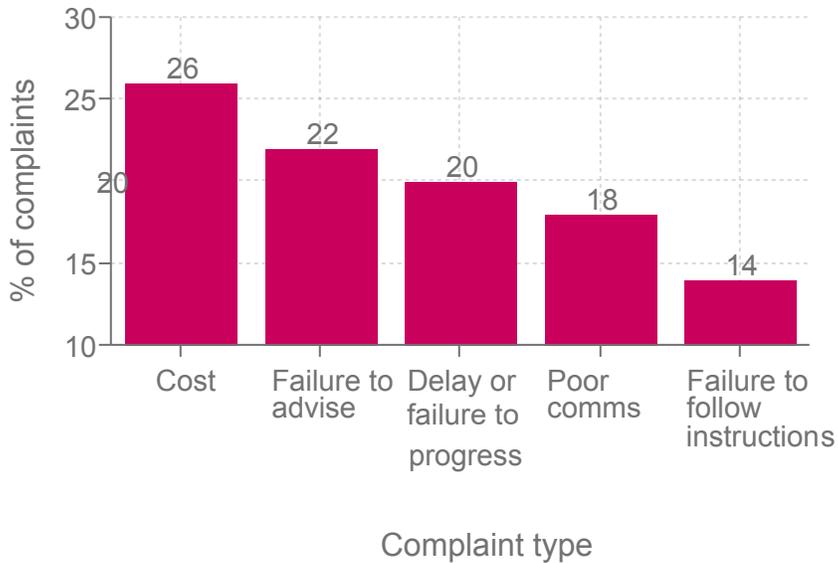
When the ombudsman looked at the case, they concluded that Mr W knew that costs would be more than £20,000. The initial estimate and subsequent discussions indicated that higher costs were discussed. Mr W would also have known from the work taking place and his understanding of how costs are calculated that it would be significantly higher. However, knowing that costs were going to be higher, is not the same as receiving clear information about costs. He should still have been given a reasonable service by being given updated cost information which placed him in the best position to understand the overall cost. In this case, a refund of 25% of the costs was awarded.

Litigation

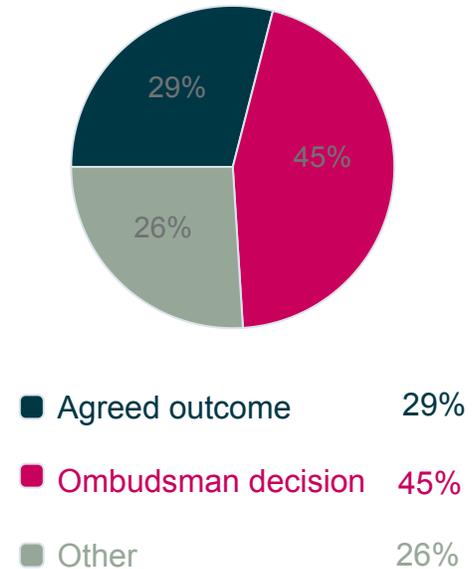


In 2019-20 **9%** of complaints made were in relation to litigation. From the cases that had an ombudsman decision made, **48%** showed evidence of poor service.

What did people complain about?



How did we resolve cases?



Common complaints in litigation

Costs: not unsurprisingly, costs are the biggest complaint made by consumers and upheld by the ombudsman in litigation. The changing nature of litigation means that instructions can expand and court hearings can take longer than expected, all of which has an impact on the costs in a case. We still see many cases where a cost estimate isn't provided at the beginning of an instruction or updated as we'd expect when costs overrun or the situation changes.

We expect providers to give the best costs information based on the information that is available at the time. In a simpler case this may mean giving an estimate for the whole instruction with variations depending on whether it goes to court. For a more complex case it may mean providing an initial estimate to do the exploratory stage of the work to determine prospects of success.

We expect service providers to provide enough information so that the consumer can make an informed choice on how to proceed. A cost benefit analysis is important in showing the likely value of a claim in comparison to their own likely costs. We also expect a service provider to regularly update a consumer should anything change that may impact their claim or the costs involved.

Key pieces of evidence:

- *Client care letter/terms of business*
- *Copy of funding agreement entered into*
- *Evidence in email, letter, attendance notes of discussions that took place in respect of funding and the circumstances in which the consumer may have to pay the service provider*
- *Evidence which shows the terms of settlement and what this means for the consumer*
- *Evidence of the sum that was received and what was passed onto the consumer*

19%

of all upheld complaint
types in litigation were

costs

Failure to advise: this can often stem from a failure to communicate in a clear way the pros and cons of court proceedings. It is important to discuss with consumers the prospects of success for a claim and the implications of this and information around plea deals and rights to appeal following it.

14%

of all upheld complaint
types in litigation were

failure to advise

If the service provider fails to advise on the cost/benefit of a claim, we will usually consider this to be poor service. A cost benefit analysis is key here. It is important that a consumer is not left in a worse financial position going through a court process than they would have been settling a claim early on. If the claim is only worth £1,000 a service provider should advise on whether the likely overall costs of mediation or a court case will exceed this.

Key pieces of evidence:

- A copy of advice given (letters, emails, attendance notes)

Delay or failure to progress: when we investigate litigation complaints we often up-hold issues (such as failure to respond) in relation to the time it takes to secure a settlement or respond to correspondence, or dealing with areas such as preparing disclosures and statements. Missing key court deadlines can have a significant impact on litigation. We also see issues when consumers are not given enough time to read and sign witness statements.

We would look for evidence of regular updates and compliance with court-imposed deadlines and deadlines from the other side.

Key pieces of evidence:

- Client care letter/terms of business
- Evidence of discussions that took place about timescales or delay (emails, letters, attendance notes)
- Details of deadlines in place and that these were adhered to
- Evidence that the service provider took steps to protect a client's interest in the event of a missed deadline

21%

of all upheld complaint
types in litigation were

delay/failure to progress

Summary:

The data highlights that litigation complaints are much more likely to be resolved by ombudsman decision rather than agreed outcome. In our experience those who bring complaints in this area are often unable to separate the outcome from the service provided. This combined with the financial and emotional investment in the litigation and the complaint mean that they can be more challenging to resolve, and the like-lihood of finding an outcome that both agree to informally is much less.

Case study - litigation

Failure to advise

Mr J instructed the firm to act on his behalf in recovering a debt owed to him by a business associate. The firm exchanged a lot of correspondence with the other side trying to resolve the issue, but ultimately it became clear that the other party was not in a position to be able to pay off the debt immediately. Following discussions between the parties, Mr J signed an agreement setting out the terms for repayment to be made in a number of installments. However, the other party did not keep to the agreed payment terms.

Mr J complained that he was pressured into signing the agreement – he said he hadn't understood what he was signing, and that if he'd known his business associate would not abide by the terms, he would have pressed ahead with the recovery through the court. He also complained that the firm failed to advise him what would happen if payments were not made.

Our investigation found that the firm had acted reasonably. The firm's correspondence clearly explained the options available to Mr J, which included continuing the matter through court, but reflected that his primary concern was to receive the money back. This letter explained that the outcome of litigation is never certain, and asked Mr J to let them know which option he wanted to pursue. The firm also provided a detailed telephone attendance note which recorded that, after they had sent this letter, they spoke to Mr J and explained that if the other side failed to pay, he would still be able to pursue the debt. Mr J then wrote to the firm and confirmed that he had decided to proceed with the agreement.

There was no evidence to suggest that any pressure had been placed on Mr J, and the firm had provided appropriate advice on the available options.

In this case we found no poor service.

New trends

The work of the ombudsman can be viewed as an indicator of what is taking place in the legal market. We keep an eye on emerging trends and there are two areas where we are seeing a pattern of complaints emerging:

Holiday sickness claims:

We are continuing to see complaints about the way service providers are handling these matters and some of these concerns relate to issues that the SRA specifically warned about in the following notice: <https://www.sra.org.uk/solicitors/guidance/warning-notices/holiday-sickness-claims--warning-notice/>

Of particular concern to us is the involvement of claims management companies [4] (CMCs) at the early stages of the claim and some of the practices applied:

- cold-calling individuals to obtain business
- getting individuals to sign important documents such as CFAs
- not carrying out assessments of the chances of success at the point of signing contracts
- no assessment of the risks of the claim

In some cases, service providers are submitting the claims without verifying the version of events obtained by the CMC. This can lead to mistakes which are harder to rectify later on and can lead to allegations that the claims are fraudulent. Generally, we are holding the service provider responsible for any poor service by the CMC.

Cypriot property/banks claims:

These complaints usually relate to the purchase of properties in Cyprus and the mis-selling of mortgages with huge mortgage repayments. Over the years we have had a number of these cases, and they have picked up again in recent months. The issues in these cases tend to relate to:

- service providers overcharging or not completing work that has been paid for;
- service providers over-promising at the outset on what they will likely be able to achieve as a settlement
- service providers not being upfront with consumers about the court actions and what is happening

[4] Claims management companies can fall under our jurisdiction if regulated by the Solicitors Regulation Authority

Best practice and useful resources:

[A guide to good complaint handling](#)

[Signposting guidance](#)

[Ombudsman's guide to good costs service](#)

[Our approach to determining complaints](#)

[Our approach to putting things right](#)

[Scheme Rules FAQs](#)