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A guide for lawyers

An ombudsman's view of good costs service

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Introduction

When I speak to groups of lawyers, I am often asked why they should concern themselves about the occasional consumer complaint. My habitual response is: are you sure you can afford to ignore them?

The market is changing. Two decades ago there was largely one model of legal service provision and one model of legal service costing. This is no longer the case. Consumers have an increasing level of choice about how they buy their legal services and what they can get for their money. New competitors are offering increasingly flexible and bespoke models of legal services to meet demands for ease of access, fixed or lower prices and innovative uses of technology. If a lawyer doesn't meet the expectations of an increasingly knowledgeable and demanding consumer base, they are likely to lose their business to a provider that can. The report by the Legal Services Consumer Panel about price comparison websites shows that consumers are demanding to be better informed when choosing legal services.

I'm not saying every lawyer needs to rush out and develop an online legal services website, or try to compete with the big brands by increasing their range and models of services. In my role as ombudsman, I take no position about what model is right. We see complaints about those offering newer models and about more traditional providers. But it makes sense for every lawyer to think about what consumers want and how they can realistically improve their offer to attract new customers and retain current business.

Complaints matter

And that's why complaints matter. Complaints are a rich source of information. Through illustrating what consumers feel they aren't getting, they tell you what consumers want.

And consumers care about cost. Cost is one of the biggest themes of consumer complaint to the Legal Ombudsman. It is true that I occasionally see complaints from consumers who just want to pay as little as possible for the service they have received. More often though, the issues at the heart of a cost complaint are fairness and clarity: have I been charged a fair amount for the service I received? I don't understand the costs information I have been given – or I haven't been given any costs information – so how can I be confident that the cost is fair?

And when consumers cannot get what they regard as satisfactory answers from the lawyer, they come to us at the Legal Ombudsman. We formulate our response by looking at the facts of their case, provided by both complainant and lawyer, and judging whether or not the service provided was reasonable.

By itself, the word 'reasonable' is vague and its meaning is open to wide interpretation. The 'fair and reasonable' test by which all ombudsman schemes operate doesn't give lawyers practical advice to help improve their service. So, the intention behind this guide is to give a greater level of specificity to the ombudsman's approach to looking at complaints about costs. It outlines the criteria we use and the type of questions we ask about costs complaints to make our decisions. The guide also includes examples of the sorts of complaints we have received, and our decisions about them, to help illustrate our approach.

How to use this guide

The guide follows a broadly linear path through the life span of a legal service and shows the sort of features we normally expect to see present in a lawyer's approach to charging for their services. It is important to say that we are not regulators and are not seeking – or entitled to seek – to lay down rules which lawyers must follow. If a lawyer has what we regard as a good reason for departing from these assumptions, that will be enough to satisfy us.

However, throughout our work we will look to see that lawyers have complied with what we regard as some of the key components of good customer service: transparency, accuracy, fairness and informed choice.

The list of features is illustrative, not exhaustive, and should not be used as a mechanical checklist for all cases. After all, each case is different. But used wisely, it could help you to reduce the risk of criticism from my office, develop your service and increase customer satisfaction.


Adam Sampson
Chief Ombudsman

Pre – engagement

(before a consumer becomes a customer)

1 Providing information


The root of a legal service starts before a consumer formally engages a lawyer. A lawyer's website or marketing material may provide information that could be relevant to a complaint, so it is important that the information is clear and doesn't mislead consumers into paying for a different service than the one they asked for.

 Was the general information/marketing material accurate and consistent with the service the lawyer provided?

Case study: Mr B went onto firm N's website to get an online estimate for his house purchase. The website advertised a price match offer if another firm provided a lower quote. Mr B found a quote from another firm for £995. He sent this to firm N expecting to benefit from their price match offer. Firm N completed his house purchase but sent him a bill for £1,500. When we looked into the case we felt that the information on firm N's website had been misleading and the firm agreed to informally resolve the complaint and reduce the price to fulfil their price match offer.

② Initial consultation meeting


Some firms offer free initial consultation meetings. It is reasonable for a lawyer to charge an initial consultation fee if they wish to, but they must make any charges and conditions clear to a consumer before the appointment is made. The charge made must be reasonable. The consumer should know where they stand when they walk through the door and not hear of any charge, if there is one, at the consultation.

 Did the lawyer make any charges or conditions for an initial consultation clear before the appointment was made?

Case study: Mr G approached firm H for an initial consultation. At no time did the firm discuss costs with him, so he thought it was free. After the meeting, Mr G received an invoice for £400. We investigated the complaint and firm H confirmed they had not told Mr G he would be charged for the consultation because they felt it was obvious as Mr G was receiving a professional service. However, we concluded that as many lawyers provide a free initial consultation, Mr G's assumption was reasonable. Even if it was obvious, there would be no way that he could have been properly informed about the actual charging rate if he wasn't told. Firm H agreed to informally resolve the complaint and waived their fees for the meeting.

③ Charging structure

A customer should never be surprised by the bill he or she receives from a lawyer. However, it is clear that some customers who come to the Legal Ombudsman have failed to understand the basis on which they were billed. This is not helped by the different sorts of charging structures lawyers currently offer: fixed fee, hourly rate, conditional fee and so on. Each of these is different and each has advantages and disadvantages from the customer (and lawyer) perspective. Whatever charging structure a lawyer uses, we would expect the lawyer to explain how it works and what it does and doesn't include. It must be crystal clear.


 Was the charging structure clearly explained?

Case study: Miss K instructed a firm to represent her in a tribunal. The firm was instructed at the last minute and agreed to represent her for a fixed fee. However, the judge adjourned the tribunal hearing as the other side had not prepared the correct paperwork. When the work was complete, the firm invoiced Miss K for the fixed fee plus a further cost for the later hearing. They felt the additional amount was necessary because they had turned up for the initial hearing. We decided the firm should halve their fee for the final hearing. We accepted that they had carried out a substantial amount of work, but we felt the firm should have told Miss K they would need to charge an additional amount for their attendance.

4 Service and case options

There are various ways that a case can be progressed. Each of these ways has advantages and disadvantages and each has potential cost implications. Lawyers have a responsibility to give consumers the best possible information and advice so they can choose the way of dealing with their case that suits their needs.

We expect lawyers to advise consumers about their options, by providing a cost benefits analysis, so they understand the choices available to them. It will allow them to make informed decisions about whether it is in their best interest to continue with a case and if so, how they should proceed. Although consumers are often making a guided choice, it is important they understand why the lawyer is recommending one particular course of action and what the costs implications are. This should happen before any work starts and it should be updated, when appropriate, as the case progresses. Good recording of what has been agreed often resolves disputes before they become a major disagreement.


 Were all reasonable options given and properly explained? Was a comprehensive cost benefit analysis provided?

Case study: Mr Q approached a solicitor to provide him with advice in an employment case. He paid £1,000 and the solicitor said he would advise him if the costs increased. The final invoice was for £5,000 but he only received £2,000 compensation from his employer. Mr Q had paid invoices on a monthly basis but there was no evidence the solicitor had given a clear idea of what his costs might come to, or what level of compensation he could expect. We felt the firm had not managed Mr Q's expectations or given him enough information to decide whether his case was worth pursuing.

5 Reasonable estimates

Consumers will almost always want to know what the total cost of their case is likely to be. A lawyer should use their best judgement to provide an estimate. We recognise that in cases where litigation is likely, it may not be easy to give a precise answer. However, we believe it's important to manage customers' expectations about the possible cost range. We will ask whether an estimate, however cautious, was given. We would expect that estimate to give the customer the best information and take into account information and conditions specific to the case.

We know an estimate differs from a fixed fee, but not all customers understand this distinction. We therefore look for evidence that this has been explained. An estimate being exceeded would not necessarily constitute poor service, but we would normally expect to see reasons for this and look for evidence that the customer had been warned beforehand that this would happen. We would expect lawyers to know the estimate is being reached and advise the customer accordingly as they may want to change instructions on how to proceed in light of the information.

 Did the lawyer give a clear and reasonable estimate of the costs involved in a case? Was the status of this estimate explained?


Case study: Miss F instructed firm E to do the conveyancing on a leasehold property. The firm provided a client care letter and estimate of £700. The instruction later changed as Miss F wanted the firm to negotiate the sale of the freehold instead. The firm mentioned in an email that the new work would cost £1,750 but they did not specify what this would cover and did not issue an updated client care letter. The negotiations became protracted and Miss F eventually decided to swap firms. Firm E sent her an invoice for £2,750.

We decided that although the firm had done substantial work, there was poor service as they had not been clear what the estimate would cover. Firm E agreed to reduce their fees to £2,300.

6 Disbursements and additional costs

A major cause for complaint is the additional costs which are charged in connection with a case. These are usually referred to as 'disbursements' which means almost nothing to anyone other than lawyers. Clear, unambiguous language must be used so the customer knows what these items might be. The estimate given before a case begins should include all the costs which are likely to be incurred. If it does not, we will ask why.

Sometimes it is not a question of language, but how reasonable the additional costs are. We would not consider it sufficient to see an estimate which just said 'disbursements' with an overall cost against it, nor would we necessarily expect every individual disbursement to be itemised. What we would want to see is some meaningful breakdown. We would also expect some costs, such as photocopying, to form part of the usual service cost.

 Did the lawyer explain what disbursements would be incurred as part of the case?


Case study: Mr J instructed firm H to deal with the purchase of his house. He received an online estimate for £500 which included the firm's fees and disbursements such as land registry costs. When the sale completed he received an invoice for £700. The additional £200 was for electronic transfer fees and some additional searches that had not been included in the original estimate.

While these were fees were reasonable we decided that there was no reason why the firm could not have made Mr J aware of these in the estimate. The firm agreed to pay £100 to informally resolve the complaint.

7 Case funding arrangements

Some customers will be able to fund their own cases. Others will require different funding arrangements. Many of the complaints we see arise out of difficulties customers have in meeting the cost of their service.

To avoid such difficulties, funding arrangements should be fully discussed before the service begins. We will look for evidence that the lawyer has discussed funding options such as insurance, unions and legal aid (even if in the latter case, the lawyer in question isn't registered to provide the service and by doing so they may potentially lose business). We will also want to know if any potential affordability issues have been identified and what options the lawyer has discussed to give the customer greater control of their costs.

 Did the lawyer explain and discuss funding options?

Example: In cases where a customer is bringing litigation against another party we would expect their lawyer to advise them to check insurance policies to see if they have any legal cover.

Example: If a lawyer has carried out work privately while a customer's application for legal aid was going through, we would expect there to be good reasons why the lawyer didn't delay work until the results of the application were known. We would also look for evidence that the lawyer had consulted the customer about proceeding with the service privately.


Engagement (when a customer chooses to work with a lawyer)

⑧ Client care letter

Once a consumer has decided to engage a lawyer, both parties need to understand the terms of engagement – what will be provided and on what basis. With the exception of barristers, this will usually be in the form of a client care letter. This is one of the key pieces of evidence we rely on to make decisions, so it is important to get it right. The letter needs to be framed for the needs of the individual customer too.

To make the letter explicit about services offered and costs, it should include information on:

- why the customer has decided to engage the lawyer;
- the course of action the customer has chosen;
- what work will (and won't) be carried out;
- the standards and timescales for the work;
- the likely costs of the case based on the information within the letter.

 After reading the client care letter, would the customer have a clear understanding of the likely course of their case, what service would be provided, and how much it would cost?

The case study on the next page exemplifies good service in relation to the client care letter.

Case study: Mrs P asked firm O to represent her in the sale of her home and the purchase of a new house.

Firm O sent a client care letter for each instruction setting out their fees, how much they would charge at each stage if the transaction did not complete, and explained what disbursements she was likely to be charged.

Mrs P paid a deposit which the firm said would be used to cover the disbursements.

Unfortunately, the sale and purchase fell through and the firm sent Mrs P invoices for the aborted transactions. Mrs P complained because she thought that the deposit she had paid should have covered the majority of her costs.

We felt, following our investigation, that the firm's letters had been reasonable as they clearly outlined their fees and explained what disbursements were. We could not have expected the firm to do more in this situation and no remedy was required.

9 Terms and conditions

A lawyer may provide their terms and conditions as part of their client care letter or as a separate document. We would normally check that lawyers have drawn attention to any key issues customers need to be aware of affecting the service they provide. In particular, we would want lawyers to be explicit about any conditions they are attaching to their service or any risk or liability for costs customers may incur in the future.

In our work, we have seen many examples of terms and conditions which are difficult to understand. Information should be presented in a clear way, using simple language, proportionate to the complexity of the case.

If a customer may have difficulties understanding the technical detail, we want to see evidence that the lawyer has taken the time to explain the document. If there's something in small print that should have been expressly covered, we are liable to consider this neither a fair or reasonable term.

Were terms and conditions expressed clearly?

Case study: Mr T instructed a firm on a conditional fee agreement to obtain a work visa for the UK. The terms and conditions said that a fee of £750 would only be charged if the application was successful, unless inaccurate information had been provided.

Mr T could not complete the application and the firm used another part of the terms and conditions to say, that as he had withdrawn his application, he had to pay their fees.


We decided that the difference between the two terms was quite subtle and it was not reasonable to expect Mr T to understand the distinction. The firm should have done more to ensure Mr T understood. We concluded that the firm should reduce their fees by £250, as we also felt that Mr T was aware of the risks with his application.

Delivery of service

10 Managing cost changes

It is not enough for a lawyer to agree the possible cost of a service at the outset. Many complaints arise because lawyers have not updated the customer about the cost of the case as it progresses and, all too often, lawyers fail to give customers the opportunity to try and control their costs during the lifetime of the service.

In these cases, we will look for evidence that the lawyer has kept a customer properly informed about the cost of the case on a regular basis. We will also want to see evidence that lawyers have consulted their customers on how to manage potential cost increases or what course to take if new options become available. We would expect the lawyer to clearly explain the change, any service options, and provide (estimated or real) costs for them. We would also want to see that the lawyer has asked for instructions on how to proceed. Even if the lawyer feels that there is only one reasonable option for the customer to follow, they should not make that assumption on the customer's behalf.


 Did the lawyer consult the customer on any changes to the case that may incur additional costs?

Example: If a case becomes more complex and the lawyer feels a barrister's advice is needed the customer should be told what has changed and how much that advice will cost.

Example: If an offer has been made to settle a contested case, the lawyer should ensure the customer is clear what this entails and what their costs will be if they decide to refuse and continue to fight the case.

① Price caps and managing affordability

If a customer and lawyer agree that once the price reaches a certain amount agreement needs to be sought to proceed further, we would expect this to be followed by the lawyer. We would also expect a lawyer to discuss cost control options if a customer identifies difficulties in affording the cost of the case as it develops.

 If a price cap agreement was made, did the lawyer follow it?

Example: If a fixed fee or price cap agreement is put in place, the lawyer needs to ensure that they tell the customer what this will cover. If circumstances in the case change, the lawyer should tell the customer, in good time, what has changed and why and the impact that this has on the initial agreement.


Example: Circumstances can easily change and cases can become more protracted and expensive than originally expected. In these situations it is not unusual for a customer to begin to struggle to pay the bills. If a customer raises concerns it is helpful to see if there are ways to manage the costs – is there a lower fee earner who can take on some work? Can payments be spread over a period of time?

Post – delivery

12 Overall costs

One of the major areas for complaint is overall service cost. We don't do detailed cost analysis, but if a complainant wants detailed forensic bill analysis, we will usually refer them to the Senior Courts Costs Office. Usually, however, the complaint is that the bill was excessive. In those cases, we will judge if, overall, costs were reasonable. If something is questionable, such as unrelated, duplicated or disproportionate costs, then we will ask the lawyer to explain. We'd also ask for an explanation if the estimate and overall costs were different, and question why they were allowed to increase without this being explained.

In some cases, we recognise that cost increases will be due to an unexpected development in the case or the customer's own behaviour (such as asking for more work to be done than predicted or increasing the scope of the work). Here too, we would look for evidence that the lawyer addressed these issues with the customer during the case and, where possible, gave the customer options to manage the costs.

 Was the final overall cost fair and transparent for the service received?

Case study: Mr B asked firm A to represent him to evict tenants from one of his properties. Mr B did not receive a client care letter or an initial estimate at the beginning of the case, although he was later told that his costs would be around £10,000. Shortly before the trial he was told that the costs were likely to be £15,000 for the firm's fees and barrister's costs. His final costs were £20,000, but he had never received anything in writing from the firm.


The firm agreed that they had not provided Mr B with any clear information about the costs in his case and they offered to reduce their fees to their first estimate of £10,000 plus VAT. We agreed that this was a reasonable remedy.

13 Billing

One of the common reasons for complaint – and ombudsman criticism – is the transparency of costs, which could be avoided by better billing. If we have difficulty understanding the basis and meaning of the eventual bill, it would not be surprising that we may find this to be poor service.

We look for evidence that the costs identified were actually incurred during the lifetime of the case. We would want to know what the nature of the work was and ask the lawyer to produce clear evidence to support the bill. The explanation that work was done unbilled and unrecorded over evenings and weekends does not always convince us that the billing was fair. It is the lawyer's responsibility to properly account for items charged or set out in the bill.


Finally, we would look to tie back the billing to the terms and conditions identified at the beginning of the service. If the bill contains additional costs which were not identified before the service began, it may be that we would consider that it was unreasonable to charge them at the end of the case.

 Was the bill clear and transparent?

Example: If a lawyer produces a bill which says 'work done between the 24 July and 18 August' and doesn't provide any further detail, we would consider this vague. We would want to know what the nature of the work was and ask the lawyer to produce his or her ledgers as evidence that it had been done.

14 Payment

On occasion, disputes arise about payments made (or alleged to have been made) by the customer to the lawyer. It is not unusual for the Legal Ombudsman to be told that money had been paid in cash without a receipt or that money had been taken on account against the promise of later service. In cases such as these, we would usually consider that the onus is on lawyers to demonstrate that they have properly recorded any such transactions and have kept the appropriate records. In the absence of such records, lawyers may be in a vulnerable position when responding to our enquiries.


 Was the customer given confirmation of their payment? Were proper records kept of all relevant financial transactions?

Case study: Firm B were acting for Mrs C in an immigration case. Mrs C was told that it would cost £1,000 and that a deposit of £400 had to be paid. Mrs C paid the deposit and got a receipt from the firm as confirmation. When the work was finished, Firm B asked Mrs C to pay a balance of £800 and insisted this was correct. We found that the firm did not have a clear record of the fees that had been paid. On balance we concluded that receipt from the firm was correct and therefore the outstanding balance was £600.

15 Enforcement

We recognise that there are cases where it appears that the customer is unreasonably seeking to delay paying the bill for the service they have received. In cases like this, a lawyer may want to move to enforce the bill rather than wait for the outcome of the ombudsman process.

We understand that a firm has the right to seek enforcement of an unpaid bill. However, if a bill remains unpaid, firms should give reasonable notice that they intend to seek enforcement, and should make them aware of the complaints process so they have an opportunity to raise any concerns. The Ombudsman cannot, and will not, interfere in a lawyer's decision to enforce a bill while a complaint is ongoing. However, where we consider that any action was unreasonable, it will be reflected in the decision we make and any remedy we order.

 Were any actions the lawyer took to enforce payment of an unpaid bill reasonable?

Case study: Mrs A had instructed a law firm. She told the firm that she had not received their client care letter, but they did not re-send it. They also did not send her regular bills during the course of the work. The firm began proceedings against Mrs A. However, they only sent a final bill at the same time as the letter about court proceedings. The firm agreed to stop proceedings and give Mrs A time to pay the bill.

When we receive a complaint about costs, as well as looking at the complaint itself, we also look at the way in which the lawyer dealt with the complaint, both through their in-house complaint handling service and through how they cooperated with our investigation. You can find information on how to manage complaints in our Guide to Good Complaints Handling - http://www.legalombudsman.org.uk/downloads/documents/publications/LeO_GGCH_v1.pdf