

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2014

Public Authority: Legal Ombudsman
Address: PO Box 6806
Wolverhampton
WV1 9WJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the Legal Ombudsman's (LO) guidelines for ensuring investigations into complaints made against lawyers are investigated fairly as well as information on the remedies that are available to ombudsmen.
2. The Commissioner's decision is that LO did respond to the request within the statutory deadline of 20 working days provided by section 10 of FOIA.
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 5 September 2013, the complainant wrote to the LO and requested information in the following terms:

"1. What are the guidelines as a policy matter that the Legal Ombudsman's investigators investigating complaints against lawyers are under binding/statutory obligation to follow and must follow in the interest of justice, fairness, impartiality and transparency to all concerned in relation to the 'service failures' by the lawyers when they must find such service failures:-

- (1) mere upset and inconvenience meriting 'monetary recognition' between £50 & £250;
- (2) more than mere upset and inconvenience; and
- (3) meriting more than 'monetary recognition'

2. What are the guidelines as a policy matter that the Legal Ombudsman's investigators investigating complaints against lawyers are under binding/statutory obligation to follow and must follow in the interest of justice, fairness, impartiality and transparency to all concerned in relation to '**remedy for service failures meriting more than mere monetary recognition**'

3. Under what law/remedy the Legal Ombudsman allows the investigators define 'remedy for service failure' as mere 'monetary recognition' but not compensation or punitive whilst any failure amounts to breach of contract that the clients have with the lawyers impliedly and expressly and any breach of contract including 'service failure' merits compensation available under the terms of Contract Laws.

4. Please let me have a copy of the policy document in relation to the guidelines in relation to breaches stated in paragraphs 1-3 above disclosing full extent of the guidelines and recommended remedies in each case."

5. This request followed an earlier one made on 19 August 2013 for similar information. The LO's handling of the earlier request is the subject of a separate decision notice.
6. The LO has explained that it sent the complainant a response to both requests on 19 September 2013. However the complainant did not receive this response.

Scope of the case

7. The complainant originally contacted the Commissioner on 25 September 2013 to complain that he had not received a response to either his request of the 5 September 2013 or his earlier request.
8. On receiving the complaint the Commissioner contacted the LO by telephone. Once it was made aware that the complainant had not received the response the LO sent him a copy of the original response. The complainant maintains that this was the first response he received

to his requests. He believes that the LO simply failed to respond to his requests when they were first received and that rather than being a copy of the LO's original response, the letter he was sent on the 25 October 2013 was only drafted later, in response to the Commissioner's telephone call informing it of the complaint.

9. Having now received a response to his requests the complainant has raised concerns about the content of that response. However the Commissioner will not consider any complaint about the substance of that response until the complainant has first raised those matters with the LO and gone through its internal review procedure.
10. The Commissioner considers that the issue to be decided is whether the LO did send the complainant a response to his request of 5 September 2013 on the 19 September 2013.

Reasons for decision

11. Section 10 of FOIA states that a public authority should comply with a request no later than the twentieth working day following its receipt.
12. A public authority will be deemed to have responded to a request on the date on which it sends out its response. In this case it is understood that the LO sends its responses by Royal Mail. Therefore if the LO posted its response by last post on the twentieth working day following receipt of the request, it will have complied with the deadline set out in section 10.
13. The LO has informed the Commissioner that the 5 September 2013 request was received on 11 September 2013. Therefore the twenty working days start from 12 September 2013. The twenty working days obviously excludes weekends. This means the LO was required to respond to the request by 3 October 2013.
14. The Commissioner accepts that the complainant did not receive a response. However a public authority is entitled to be able to rely on whichever delivery service it uses when responding to a request so long as it is reasonable to consider that the chosen delivery service is a reliable one. Therefore irrespective of whether the response was successfully delivered to the complainant, the Commissioner will accept that the LO has complied with section 10 if the LO can satisfy him that the response was sent out within the twenty working days.
15. In the absence of absolute proof of when the response was sent out, the Commissioner will decide whether the LO sent the complainant a response on the 19 September 2013 as it claims, on the balance of probabilities.

16. The LO has explained its procedures for handling requests. When one is received the applicant is normally sent an acknowledgement within five days. Unfortunately this did not happen in this particular case. The details of the request are recorded on a management spreadsheet which details the deadlines for responding. The actual request is recorded electronically on what the LO describes as the "Compliance Team storage site". In effect these are folders set up on the computer for each request. These folders hold all the documents relevant to the handling of that request including the responses to those requests and any subsequent correspondence about the request.
17. The LO has provided the Commissioner with a screen print of the folder set up to deal with the complainant's requests of the 19 August 2013 and 5 September 2013. These show when those requests were added to the system and this supports the LO's account of when the requests were received. The folder also contains a document labelled "130919 OUT final response". The LO has explained that this document is the letter it produced in response to the complainant's requests dated 19 September 2013. The naming convention for these documents contains the date on which the response was sent out in the following format, year, month, day. As far the Commissioner is aware the system relies on those adding the documents to the folder to name their documents correctly.
18. The screen shot also reveals that the folder shows when a document was created and when it was modified. If the document is not modified at a later date, these two dates are shown as being the same. The LO has informed the Commissioner that the system records these dates automatically and cannot be manually altered. They can therefore be regarded as a reliable record of when documents were created and if they were later amended.
19. The LO's final response is shown as being created on the 19/09/2013 at 10:08, which is the same as the modified date, ie, showing that the document was not amended at a later date. The Commissioner notes that when the document was re-sent to the complainant on the 25 October 2013 following his intervention, the LO simply printed off a copy of this letter and annotated it to show that it was being re-sent on the 25 October 2013. Therefore there would not have been any need to amend the letter at that time.
20. The Commissioner is satisfied that the LO produced a response which was ready to send out on the twentieth working day in compliance with section 10. The LO has advised the Commissioner that once the letter has been drafted the remaining process is manual. That is the letter is printed off, signed and placed in an envelope before that envelope is

franked by the LO's own post room and sent out. As such there is no audit trail for this part of the process.

21. However it appears completely plausible that once the response of the 19 September 2013 was completed it would have been sent out the same day by the process described above.
22. The complainant has argued that it is unlikely that the LO could respond to a request, which he estimates it could not have received before the 9 September 2013, by the 19 September 2013. The Commissioner has considered this point. The request is actually recorded as being received on 11 September 2013, leaving the LO only six full working days if it was to respond by the 19 September 2013. However the Commissioner can understand that the LO may have considered it expedient to deal with both of the complainant's requests in one piece of correspondence. The two requests concern similar issues in that they both relate to the policies or guidelines used by the LO's staff when investigating complaints against lawyers. In light of this it is feasible that the response provided in respect of the 5 September 2013 request could have been produced within those six working days.
23. It is clear that the complainant does not believe the LO's version of events and remains of the view that they did not send out a response on the 19 September 2013. However the Commissioner is not persuaded by the complainant's arguments and finds that there are no grounds for finding that the LO has not provided an accurate account of its handling of the request. In light of this the Commissioner is satisfied that on the balance of probabilities the LO did originally send the complainant a response to his request within the twenty working days permitted by section 10 of the FOIA.

Right of appeal

24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF