

Topic guide

Updated 25 November 2019

Competence and Standard of Service

Background

This guidance focuses on our approach to investigating individuals and firms when the level of competence and standard of service falls below what we would expect.

Our approach to enforcement

Matters of poor service are generally investigated by the Legal Ombudsman [<https://www.legalombudsman.org.uk/>] (LeO). They are able to take certain action we cannot – for example, award compensation, reduce a bill or make a solicitor or firm take a specific course of action in relation to a matter.

Further, we will not consider mere negligence to be a regulatory matter, and this is normally dealt with by the courts.

However, negligent acts and omissions that are particularly serious may indicate a serious failure by a regulated person. This could be:

- not acting within the boundaries of their competence
- not acting in the best interests of their client
- not providing a proper standard of service (for which, meeting the competences set out in our Competence Statement [</solicitors/resources/cpd/competence-statement/>] - made up of a statement of solicitor competence, threshold standard and statement of legal knowledge - is an integral part).

Further, the Code of Conduct [</solicitors/standards-regulations-resources/>] requires both individuals and firms to keep themselves and those working for them up-to-date and fit to practise, and to supervise work for clients effectively.

So therefore, notwithstanding any involvement of LeO or the courts, we will investigate competence or service issues where these are particularly serious or suggest multiple failures or repeated or persistent poor conduct.

Indicative sanctions guidelines

In considering what action we need to take, if any, we will consider any mitigating and aggravating factors, including those set out below.

Mitigating features	Aggravating features
The matter solely relates to a poor outcome, or a genuine mistake	The regulated person knowingly or recklessly acted outside their competence
Client informed about the matters that have gone wrong, and the potential consequences and advised to take independent legal advice	Failure to handle complaint in a manner that is open, fair and free of cost, and/or to inform clients of right to complain to LeO
	The client, the court or a third party has

	been misled about something that has gone wrong
	The firm or individual puts their own interest in limiting their liability above the best interests of the client
There has been minimal impact on clients or third parties	The impact on clients or third parties is high
It is an isolated incident	It is a regular failure demonstrating a pattern of behaviour
	There is a failure to co-operate with the LeO, SRA or other investigations or inquiries into the events
Robust systems of supervision of work	There is a failure to properly supervise work
The person has reflected on development and training needs and undertaken – or implemented – appropriate continuing professional development activities	The person has failed to consider or address training and development needs.
Steps have been taken to put matters right and to ensure likelihood of repetition is low	Failure to take appropriate steps to put matters right or reduce likelihood of repetition

We generally do not act where someone makes a genuine mistake. We want to encourage a culture of learning from mistakes and improving standards.

Strong mitigating factors will generally result in us engaging with firms and individuals to improve standards. This may involve:

- agreeing or imposing conditions or controls to prevent the individual or firm from providing certain services, if we do not consider they can do so safely and effectively
- making sure that appropriate training, remediation or systems of supervision are put in place.

We will impose serious sanctions where the misconduct involves aggravating features, such as where:

- the person has acted knowingly or recklessly outside the boundaries of their competence
- serious harm has arisen from the person's action which would tend to undermine public confidence in the profession
- action has been taken to cover up a problem, or a client or third party has been misled
- the person has shown a failure to address clear training and development needs
- a firm or individual puts their interests above their clients'
- the concerning conduct or behaviour is repeated or persistent.