LEGAL OMBUDSMAN

Thematic report: Immigration

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Introduction

This report focuses on the lessons which can be learned from the immigration and asylum complaints the Legal Ombudsman has investigated, and the most common types and causes of those complaints.

We developed this report to both share learning from our work and to assess the extent to which our investigations corroborate research in this field. Our data shows that we receive a relatively small number of complaints in this area. However, whilst we recognise the number of complaints is small, it is important that the sector is made aware of the poor service that customers experience and, in the case of immigration law in particular, the potential for far-reaching personal consequences.

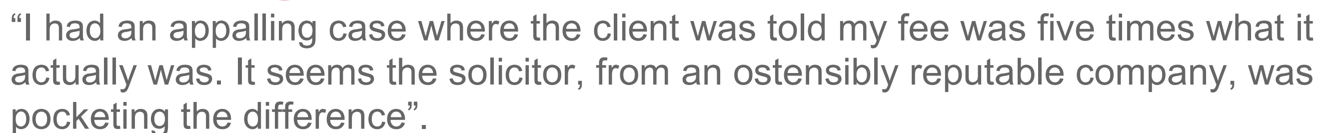
Our experience, and the case studies highlighted in the report, lead us to be concerned about the nature of the advice which is provided to customers. In addition to this, our experience highlights occasions where a lack of supervision can lead to arrangements whereby cash is paid over without receipt, and where service providers have no knowledge of the supposed relationship with the customer.

We acknowledge the professionalism of most service providers in the sector and the support they provide to customers going through challenging immigration and asylum situations. We are mindful of the fact that we only see a small proportion of cases where a customer has received poor service. It is likely that there are many more who simply are unaware of the Legal Ombudsman Scheme or have a fear of raising their concerns with a professional body

Background information

The Immigration and Asylum Act 1999 makes it a criminal offence for someone to provide immigration advice and services unless they are regulated by the Office of the Immigration Services Commissioner (OISC), or are a member of an approved professional body, such as a solicitor, barrister or chartered legal executive. Data from OISC[1] highlights that during 2019/20 they secured seven criminal convictions against individuals providing immigration advice and services illegally and ten new criminal prosecutions are awaiting trial, indicating that there may be a number of consumers using unqualified advisers.

The JUSTICE report, 'Immigration and Asylum Appeals – a Fresh Look'[2], referred to instances of poor quality and exploitative representation with a member of the working party reflecting on one of his own experiences:



"I had an appalling case where the client was told my fee was five times what it actually was. It seems the solicitor, from an ostensibly reputable company, was pocketing the difference".

In 2016, the Solicitors Regulation Authority commissioned a report to look at the quality of legal service provided to asylum seekers. The research looked at all stages of the legal process and while it noted that the overall picture was positive there was "scope for improvement and areas of concern." The report highlighted issues such as the referral arrangements, adapting the service to ensure it meets a customer's specific needs, providing accurate and up to date information about costs, the standard of service they should expect to receive and what to do if they need to make a complaint.

According to the Legal Services Consumer Panel Tracker Survey 2020[3] immigration is one of the least accessed areas of law. The 2020 report states that immigration accounted for just 4% of those surveyed who had used a legal service. The number of complaints the Legal Ombudsman receives about immigration and asylum services is low compared to other areas of law we see. In 2019/20 we accepted 230 complaints about immigration and asylum services, which accounted for 3.58% of all cases accepted for investigation. Whilst this is lower than other areas of law, the data shows us that it is comparable to the use of service in this area.

While the numbers of complaints are relatively low, the cases we see show that when things go wrong, the impact on the people involved can be severe. We have seen people lose their homes, lose their jobs and be told to leave the UK, often separated from their families, through no fault of their own. This is sometimes due to an avoidable mistake on the service provider's part, but can also be a result of incompetence and dishonest conduct.

1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901104/OISC_Annual_Report_and_Accounts_2019-20_WEB.pdf

2 https://justice.org.uk/wp-content/uploads/2018/06/JUSTICE-Immigration-and-Asylum-Appeals-Report.pdf (2 July 2018)

3 https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2020/08/LSCP_Tracker_2020_Legal_Services_Users_v1.0.xlsx

The case studies in this report highlight the issues that we have seen in the provision of immigration and asylum services that both customers and service providers should be aware of. A number of the case studies show that the relationship between customer and service provider can be relatively informal, for example meeting outside of the office, payments in cash, or correspondence via text. This is more prevalent in immigration and asylum services than in other areas of law we investigate. These methods of communication may be useful and may suit the parties involved but service providers should consider how this contact is recorded in their files. Service providers should also consider whether such working practices provide the correct level of supervision.

The case studies also highlight the levels of knowledge of service providers and where they have simply got the law and process wrong. Therefore it is vital that service providers have processes in place to make sure they remain up to date. In addition we have seen cases where we have been concerned that applications are knowingly completed incorrectly.

Our case studies show the severe impact that poor service can have on consumers. In these cases consumers took steps to complain and access redress. Those who have used a solicitor, barrister or legal executive have access to redress through our scheme should something go wrong. However, research commissioned by the SRA and our office in 2016 into the quality of legal services for asylum seekers found that a significant proportion of interviewees did not know they could complain or how to go about doing so. This is reflected by the relatively low number of complaints we receive in this area and mirrors the findings of our own research[4] that generally people become aware of our scheme through their own efforts rather than because they were signposted by their service provider.

Legal Ombudsman research into complaints handling shows that all consumers experience barriers when it comes to making complaints about a legal service provider. Barriers range from lack of knowledge, finding the process confusing and intimidating, concern about the impact on the legal case and believing that service providers won't do anything about the complaint.

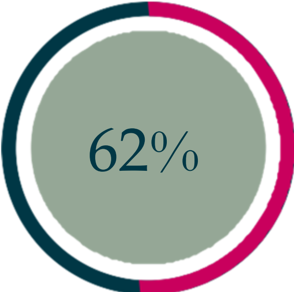
In our experience consumers accessing immigration providers face a wider range of barriers: fearing the impact on their case particularly if it relates to remaining in the UK and also language barriers. They believe it may impact the outcome of any pending application or that we, or the service provider will tell the Home Office where they are living.

[4] https://www.legalombudsman.org.uk/media/avtn4lrm/part-b-premature-complaints-report-yougov-180912-fnal.pdf

Data - immigration and asylum services

During 2019-20 we accepted 230 complaints about immigration and asylum services and resolved 231

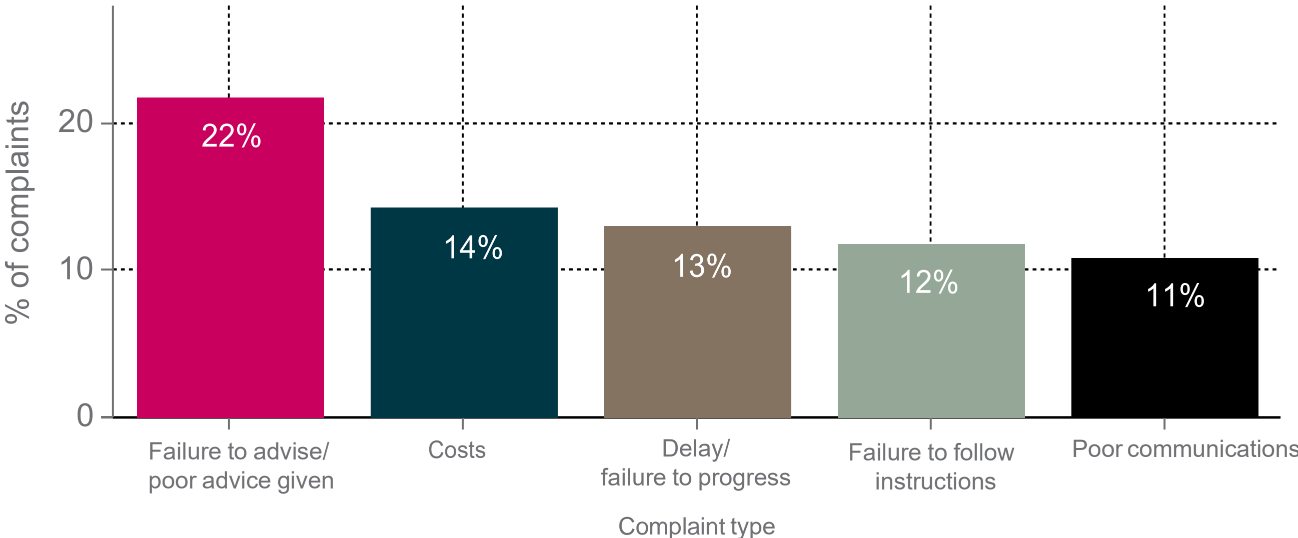
Was the service reasonable?



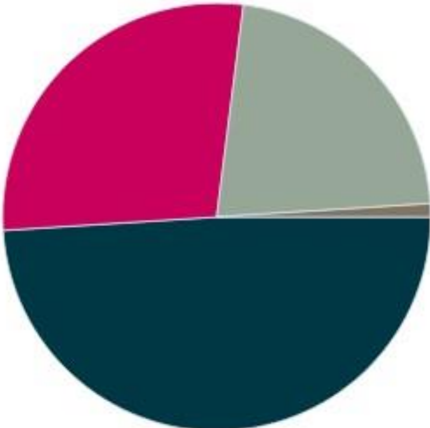
Our ombudsmen found **unreasonable service in 62%** of the immigration and asylum cases resolved by ombudsman decision.

What did people complain about?

What did people complain about?



How did we put things right?



49% Financial remedy

28 % No remedy

22% Fee related remedy

1% Non financial remedy

Issues and case studies

Costs

Complaints about costs account for

14%

of the immigration cases we investigated

Complaints about costs accounted for 14% of the immigration cases that we investigated. In many cases immigration service providers act on a fixed fee basis and are good at telling consumers at the outset how much the service will cost, including telling them about any expenses they will have to pay such as Home Office fees and healthcare surcharges.

However, there can be disputes over exactly how much the customer has paid towards the service provder's fees due to the method of payment and a lack of receipts. We see a number of cases where:

- Customers are encouraged to make large payments in cash, often exceeding £1,000, which their service provider doesn't acknowledge or provide a receipt for;
- Payments have been made directly to the service provider's personal bank account;
- Fees are paid by third parties, such as friends or family members, and not acknowledged; and
- Payments are made to a third party who introduced the customer to the service provider, in the belief the third party paid the money to the service provider.

The Legal Ombudsman expects service providers to follow their regulatory and legal obligations in relation to accepting cash payments and properly accounting for those payments. But consumers are generally not aware of these obligations and are unlikely to challenge a service provider if they are asked to do something out of the ordinary.

Both research[5] and our own experience highlight that cultural differences and a lack of knowledge and understanding about what to expect mean that consumers often hold service providers in extremely high regard and trust them implicitly. This is more likely when the service provider speaks the same language as the customer, is of the same nationality, knows members of their family or are from the same local community.

Therefore, when a service provider asks them to make a payment directly to their personal bank account or to hand over a large sum of cash in a local cafe, they do not regard this with any suspicion, especially if these arrangements are similar to how a service provider would handle matters in their home country.

The following case studies highlight these issues, and emphasise how important it is for service providers to handle client money in accordance with their regulatory requirements. If they do not and a complaint is made about how much has been paid, they are at risk of being ordered to provide redress to a customer and the case being reported to their regulator.

[5] https://www.barstandardsboard.org.uk/uploads/assets/cd3602ac-a0bb-4e35-bb591368f07c80f9/immigrationthematicreviewreportmay2016.pdf

Case study

Mrs A instructed a firm to submit her application to the Home Office. She was asked to pay £1,250 to cover their fees. She arranged to meet her solicitor, who was the same nationality as her and spoke the same language, at a café where she handed over the full amount in cash along with original documents to support her application. Mrs A asked her original solicitor for a receipt a number of times but did not receive one.

While Mrs A's application was pending, her solicitor left the firm and her case was passed to someone else to deal with. She asked again for a receipt and the firm said they had no record of receiving any money.

Mrs A complained to us that the firm were refusing to accept responsibility for the missing money and asked her to pay the money again.

We asked Mrs A why she handed over a large sum of money to the solicitor. She explained this was usual where she had lived previously. She also said that in her culture solicitors are held in very high regard and considered to be trustworthy.

Mrs A's bank statements showed that she withdrew £250 from her account each day in the five days leading up to her meeting with the solicitor. The last withdrawal was on the day of the meeting at an ATM next door to the café.

Mrs A was able to provide text messages she had exchanged with the solicitor showing the agreement to meet at the café and her repeated requests for a receipt for the money and original documents she had handed over.

Case study

When the Home Office shortened **Ms B's** student visa, she approached the solicitor who had submitted her previous application. She also knew him personally having worked with his ex-wife.

The solicitor asked Ms B to sign a form of authority for the firm he was working for and provided her with a business card and compliments slip. Ms B never met anyone at the firm and never attended the offices. All communication went through the solicitor, including the fees which were paid directly to his personal bank account. However, all correspondence exchanged between the solicitor and the Home Office was sent and received at the firm's address on their headed paper.

Ms B complained about the quality of the advice she was given and our investigation found that she was poorly advised about her immigration status. We concluded that the fees she paid should be refunded. Ms B said she had paid £2,700, but the solicitor said she had only ever paid £500. Ms B provided bank statements showing transfers to the solicitor's personal bank account in the amounts requested from the solicitor in text messages he had sent to her. These totalled £2,700 over a 13 month period.

Although none of these payments made it to the firm's accounts and they had no knowledge of Ms B or her case, they were responsible for the failings in service in this case as Scheme Rule 2.6(a) says:

"an act/omission by an employee is usually treated also as an act/omission by their employer, whether or not the employer knew or approved."

Providing advice

Complaints about advice accounted for 22% of the immigration complaints we received. The rules and procedures surrounding immigration and asylum law are complex, change regularly and are difficult for consumers to access and understand.

Consumers seek legal advice to help them navigate this complex area and expect their service provider to know what information is required.

Complaints about advice account for

22%

of the immigration cases we investigated

A person's immigration history can be complicated and is likely to impact on the options available to them. It is therefore essential that detailed information is taken about the customer's background as well as understanding what they want to achieve. This means full advice can be provided about the options open to them, the costs involved and the chances of success so they can make an informed choice about their situation. It is also important that service providers consider whether or not their customer requires an interpreter so they can fully understand those choices.

Good practice case study:

When **Mr C** approached a firm for advice, he had overstayed his previous visa and wanted advice on how he could stay in the UK indefinitely. The firm took a detailed account of his immigration history and reviewed his documents before advising him. They spoke to him, and set out in writing, the options available to him, the chances of success of those options and the costs and timescales involved.

The options took into account the applications Mr C was eligible to make and the impact his poor immigration history would have, especially as Mr C told the firm he wanted to be able to stay in the UK indefinitely. Our investigation concluded that Mr C was able to make a fully informed decision about how to proceed.

Case study

Mr D was granted discretionary leave to remain for three years in 2010 and then in 2013. A month before his visa was due to expire in 2016 Mr D met with the firm, who acted for him in 2013, to discuss submitting his next application.

Mr D asked the firm whether he was eligible for indefinite leave to remain or whether he had to apply for another extension, as by this point he had been in the UK for 18 years. The firm asked Mr D how long his current visa was for and he confirmed it was for three years. The firm advised him that he would have to apply for another extension before becoming eligible for indefinite leave to remain.

A few days before his visa expired the firm made an appointment for Mr D to visit them, sign the application and hand over his supporting documents for submission to the Home Office.

Our investigation revealed that the firm had not retrieved their file from the archives for the first meeting with Mr D. He had not been asked to take any documents with him and the firm did not ask for his immigration history apart from the length of his current visa. The firm only reviewed his documents at the second meeting, days before his visa expired. At this point they realised he was in fact eligible for indefinite leave to remain. However, by this point, the earliest he could sit the Life in the UK test was two days after his visa expired.

The firm told Mr D not to worry as he had a 28 day grace period[6] to submit his application. Mr D sat his test and the firm submitted his application within the 28 days. However, several weeks later Mr D lost his job, as his employer had used the Home Office employer checking service and was told that as Mr D's application was submitted late, his leave was not extended under section 3C of the Immigration Act 1971 and he no longer had the right to work while his application was pending. Mr D was granted leave to remain several months later and was able to work again.

The Ombudsman found that the firm had given Mr D advice about his options when they were not in full possession of the facts. They had failed to fully advise him about the consequences of submitting the application after his current visa had expired or that he would lose the right to work, even if his application was submitted within the grace period. Mr D had lost out on wages of more than £8,000 which the Ombudsman directed the firm to pay along with compensation of £1,000 to reflect the significant level of distress and financial difficulty they placed Mr D in whilst he was out of work.

[6] The above mentioned grace period was reduced to 14 days in 2016.

Case study - incorrect advice

In approximately a fifth of the immigration complaints we see, a service provider told their customer to submit an application they were not eligible for or that had no chance of succeeding, at significant cost.

Mrs E approached a firm to submit a derivative rights of residence application, which meant she had a right of residence on the basis she was the primary carer of a British citizen. However, it was clear from Mrs E's instructions that the person she cared for was not a British citizen, and in response to the question on the application form which asked "Do they hold British citizenship?" the firm ticked no.

On the form the firm also ticked that Mrs E was the legal guardian of the person she cared for. However, it was clear she was not and the firm did not submit any evidence in support of this claim. When the Home Office refused Mrs E's application, she approached another firm to assist her with successfully obtaining leave to remain in the UK under a category she was eligible for.

When we investigated, the firm could not explain why they advised Mrs E to submit an application on the basis she was a primary carer. They said the solicitor with conduct of the case had left and there were very few attendance notes in the file.

We decided that the firm's work had not been of any value to Mrs E, and had actually caused her significant and avoidable worry. In our decision we said that the firm were not entitled to their fees, should reimburse the Home Office fee and pay her compensation of £500.

Clear communication

It is not just the initial advice that we receive complaints about, but also the options open to the customer should their application be refused. We have seen many examples of service providers advising their clients to lodge appeals and judicial review applications which have no merit, something which was recently explored in Ip v SRA [2018] EWHC 957. By the time these clients have exhausted their appeal rights and applied for judicial review, their legal costs sometimes exceed £10,000.

It is these types of cases that led to the introduction of the Hamid principle following the case of R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin) which has seen a number of solicitors being sanctioned by the Solicitor Disciplinary Tribunal[7].

Where we find that a service provider has embarked on spurious applications that have no merit, we will often direct them to reimburse or waive all of their fees and pay compensation for any financial losses or distress suffered by a customer.

It is therefore vital that service providers keep accurate and timely records of the advice provided to customers; setting out the options and, if possible, in writing, before any decisions on how to proceed are made. Service providers should also ensure they have a full understanding of a customer's immigration history and status before providing advice.

[7] SRA v Malik Mohammed Nazeer and Malik Mohammed Saleem (2017)

Case study

Miss F approached a firm for advice on her options after the Home Office had refused her application for leave to remain, granting her an out of country appeal. The firm advised Miss F to apply for permission to lodge a judicial review application against the Home Office's decision. However, they did not document the reasons why they felt this was the best approach and nor did they document what advice they gave Miss F about her chances of success or whether there were other options available to her.

The Home Office had originally refused Miss F's application as they suspected she had fraudulently obtained an English language test certificate. The firm did not address this in their grounds for judicial review or argue that the Home Office had incorrectly reached this conclusion. Instead they focused on arguing that Miss F had established a private life.

The court refused to grant permission and even went as far as to certify the application as being totally without merit. They directed that Miss F pay the Home Office costs of £270.

After this, the firm advised Miss F to submit an application on the basis of her long residency. In order to qualify for long residency, Miss F was required to have been in the UK lawfully for at least ten years. It was clear from her immigration history, which the firm were aware of, that Miss F had only been in the UK lawfully for just under eight years, and so did not qualify. On this basis the Home Office refused the application.

The ombudsman found that the firm's service fell below a reasonable standard. They filed two applications on Miss F's behalf which had no merit, wasting both her time and money. The ombudsman directed that the firm pay compensation of £2,161.50 for the expenses Miss F had incurred pursuing these applications, refund fees of £2,950, waive outstanding fees of £450 and pay her £1,500 for the significant distress and worry the firm caused Miss F, as well as the impact the refusals had on her immigration history.

Delay

Delay or failure to progress cases accounted for 13% of the complaints we received. There are strict rules in this area of work which dictate how and when applications can be submitted so delays can have serious implications for customers.

Complaints about delay account for

13%

of the immigration cases we investigated

It is good practice for those already in the UK on a visa to submit their application before their current visa expires. The consequences of not doing so can be devastating. The applicant will overstay their leave to remain, and lose whatever rights they enjoyed under their visa such as the right to work, to rent and to drive, while their next application is being dealt with. They could also be subject to a re-entry ban if they are later required to leave the UK.

It is clear from the cases we have seen that customers do not always know or understand the consequences of submitting a late application. In addition service providers have often misadvised them, especially since the concept of a grace period was first introduced into the Immigration Rules in 2012.

The grace period[8] allows the Home Office to disregard any period of overstay of up to 14 days when making decisions on applications. However, we have seen service providers misadvise customers that applications submitted within the grace period, would not impact on their right to continue working due to section 3C of the Immigration Act 1971, while their current application was pending. The reality is that, applications submitted after a visa has expired, even if within the grace period, would not benefit from section 3C.

8 Before 2016 the grace period was 28 days. It was reduced to 14 days in 2016 and an additional 'good reason' requirement was brought in. This meant that applicants would no longer automatically benefit from the grace period, and had to show 'good reason' beyond their control why the application could not be made in-time. This applies to all applications made on or after 24 November 2016.

Case study

Mr G approached a solicitor's firm in June 2015 to renew his student visa which was due to expire in the August. The firm advised Mr G that he was in fact eligible for indefinite leave to remain based on his long residency as he had been in the UK lawfully since August 2005. The firm advised him to apply on that basis rather than as a student. After sitting the Life in the UK test, Mr G attended the firm three weeks before his visa was due to expire to provide them with all the documents they had asked for in support of the application and to sign the forms. The firm told Mr G they would submit his application the following day and would contact him as soon as they had received the letter from the Home Office asking him to submit his biometric information.

After not hearing from the firm, Mr G contacted them in September 2015 to ask if they had heard anything from the Home Office to which the firm said they had not but they would chase it up. Mr G contacted the firm again throughout October and November but each time they said they were chasing it up and he was not to worry as there were often delays at the Home Office. By December 2015 Mr G became worried and contacted the Home Office himself to ask for an update on his application. On 7 January 2016 Mr G received a response from the Home Office confirming no application had been submitted on his behalf by the firm.

The following day Mr G attended at the firm unannounced and demanded the return of his documents, which were handed over to him. After leaving the firm Mr G was stopped by the police and arrested upon suspicion of driving without insurance. That issue was resolved at the police station, however, Mr G was detained as he had overstayed his leave to remain in the UK. Mr G lodged the application for indefinite leave to remain himself but, unsurprisingly, this was refused as he had overstayed his visa and now had a gap between his valid leave expiring and the date he submitted his application. After exhausting all of his appeal rights and applying for judicial review without any success, Mr G was removed from the UK and given a two year re-entry ban.

Our investigation found that the firm's service had been unreasonable and the consequences of their failure to submit the application on Mr G's behalf were devastating for him. After establishing a life in the UK and being in the country legally for ten years, Mr G suddenly found himself being detained and having to leave under unfavourable circumstances through no fault of his own. Furthermore, the firm led Mr G to believe he had an application pending with the Home Office when he did not. The firm were unable to offer a suitable explanation for what had happened and said that his application had simply been overlooked.

We were unable to put Mr G in the position he would have been in had the firm's service been reasonable; which would have been for the Home Office to consider his application as if it had been made in time. Instead all we could to was award compensation to reflect the fact Mr G had been considerably let down by the firm he had trusted to look after his best interests. The exceptional circumstances in this case led to an award of compensation to Mr G of £3,000 for the emotional impact alone, in addition to a refund of the firm's fees and Home Office application fees.

Case study

Earlier we looked at the experience of **Mr D**. The firm only realised days before his visa expired that he was eligible for indefinite leave to remain, but at this point the earliest date he could sit the Life in the UK test was two days after his visa expired on 10 July 2016. Mr D was told not to worry as he had 28 days[9] from that date to submit his application. While the firm were referring to the grace period that was in place at that time, they did not explain this to Mr D or its effect on his right work. This meant he was unable to make a fully informed decision about whether to continue with the application for indefinite leave to remain, or submit the application for further leave to remain instead, for which he did not have to sit the Life in the UK test.

Mr D sat the test and the firm submitted his application on 27 July 2016. Six weeks later, Mr D lost his job because he no longer had the right to work.

The Home Office granted Mr D indefinite leave to remain in January 2017 which meant he could work again. The ombudsman was satisfied that Mr D would have chosen to extend his visa and retain his right to work rather than apply for indefinite leave to remain. They considered Mr D had lost out on wages totaling more than £8,000 which the firm were directed to pay along with compensation of £1,000 to reflect the significant distress and financial difficulty they placed Mr D in during the period he was out of work.

Cases such as this highlight the importance of ensuring applications are submitted on time. Service providers may find they are directed to pay compensation to their customer for any losses that have happened as a result of their delays.

[9] The above mentioned grace period was reduced to 14 days in 2016.

However, we have also seen cases where the service provider did everything within their power to try and ensure the application was submitted on time but due to the actions of the customer, or other external factors, they were unable to do so.

Case study

Mr H approached a legal service provider two months before his visa was due to expire and was given full advice about the application he needed to submit to extend his stay in the UK. The firm told Mr H, both during the meeting and in the client care letter, what documents he needed to submit in support of the application and what their own fees and the Home Office fees would be along with the deadline for submitting his application. An appointment was made for Mr H to return to the firm with all the relevant documents and the right fees 28 days before his visa expired, but he did not attend.

The firm tried to telephone Mr H and when they could not reach him they sent him emails and letters explaining the deadline for submitting the application and warning him of the potential consequences of missing the deadline and urging him to get in touch as soon as possible. They continued to try and contact Mr H every week up until his visa expired but did not receive any response.

Mr H contacted the firm six weeks after his visa expired. When he realised the situation he felt the firm was at fault. Our investigation found that the firm had done everything they reasonably could to highlight the deadline and consequences to Mr H.

Submitting a valid application

As well as ensuring the application is submitted on time, it is also important to ensure the application is correct – that means using the right form, paying the right fee and submitting the right supporting documents, including any biometric information.

While this may seem simple on the face of it, we see cases where this has not happened and where the consequences can be severe on the people involved. Here are a couple of examples where simple mistakes were made by service providers which had very significant impacts on individuals, and led to service providers paying significant remedies.

Case study

In 2013 **Mr and Mrs I** were granted 30 months discretionary leave to remain along with their two children, on the basis of a ten year parent route to settlement.

They approached the firm in 2016 to extend their leave but the firm failed to advise Mr and Mrs I that they needed to submit up to date passport photographs with their application. The Home Office wrote to the firm asking them to provide the photographs within ten days or the application would be rejected as invalid. The firm misread the Home Office's letter and only asked for photographs from Mrs I. The application was rejected as invalid as photographs for Mr I had not been provided.

Within a few weeks the firm resubmitted the application with up to date photographs for both Mr and Mrs I. However, by this time, their visa had expired and consequently, they both lost their jobs.

Six months later Mr and Mrs I were granted discretionary leave to remain and they were able to take up employment again. However, due to the break in their immigration status, they had to start the 10 year route to settlement from the beginning. Mr and Mrs I's financial losses amounted £28,311.12 which the firm were directed to pay along with £3,000 compensation for the exceptional stress, worry and upset caused. The firm were also ordered to reimburse half of their fees.

Case study

Ms J approached the firm for advice about applying for permanent residence, four months before her and her son's residence cards were due to expire. The firm used an out of date application form and therefore paid the wrong fee when submitting her application. The Home Office wrote to the firm advising them that the forms and fees had been updated in April 2016 and gave them ten days to submit a valid application. The firm resubmitted the application but again used the wrong form and did not pay the right fee. The application was rejected as invalid. By this time Ms J's residence card had expired and, as a direct consequence, Ms J lost her job.

The ombudsman directed that the firm pay compensation of £3,579.84 for Ms J's lost wages, waive outstanding fees of £500, reimburse fees of £1,000 and pay compensation of £1,000 to reflect the distress and inconvenience caused to Ms J.

However, not all cases that we see relate to errors made by service providers.

Case study

In **Ms K's** case, the Home Office said her application was invalid as the firm had paid the wrong fee. However, the firm provided evidence to show this was not the case. They challenged the Home Office who eventually admitted they had made a mistake.

The firm in this instance acted reasonably. They made sure Ms K knew the consequences of the Home Office error, that her immigration status and her right to continue working under section 3C of the Immigration Act 1971 would be precarious whilst the issue was resolved, and that they could not guarantee a favourable outcome. The firm supported Ms K to resolve the issue and get her losses reimbursed by the Home Office.

Ms K later complained about the level of the firm’s fees but an ombudsman concluded that the level of fees was appropriate when the level and complexity of work was taken into account.

In order to prevent issues such as those seen in the cases of Mr and Mrs I and Ms J, it is important that service providers ensure they are using the most up to date application form, that they pay the right fee and they ensure the customer has provided all relevant documents in support of the application.

Supervision

When the Legal Ombudsman investigates immigration complaints it is common to find that the work was mainly undertaken by someone who is unqualified, but working under the supervision of a solicitor. It is a criminal offence for someone to provide immigration advice or services unless they are qualified to do so, however the Immigration and Asylum Act 1999 allows unqualified people to work on immigration and asylum cases as long as they are supervised by someone authorised under the Act.

Supervision allows trainees to develop their knowledge and skills and provides consumers with the reassurance that the work will be done to a reasonable standard. However, some of the cases we see raise questions about the levels of supervision of unqualified staff.

Case study

Mr L approached a firm in September 2015 to apply for retained rights of residence after his marriage to an EEA national came to an end. He was assigned an unqualified caseworker. Mr L handed over his documents along with £355 to cover the firm's fee and the Home Office fee. Over the next 18 months Mr L chased the caseworker for updates and received copies of emails, seeming to be from the Home Office, which confirmed receipt of the application.

When his emails and text messages to the caseworker went unanswered, he contacted the Home Office who confirmed they had never received his application. By this time the firm had terminated the caseworker's employment as they had discovered a number of issues in their cases. Mr L visited the firm who went through the file with him and sat at the very top was the draft application form and his original documents that had never been submitted to the Home Office. The emails the caseworker sent to Mr L, claiming to be from the Home Office, had been made up, and they had taken £300 of Mr L's fees.

During our investigation the firm claimed to have been supervising the caseworker and said that the file showed work was being done. Our investigation disagreed. If the supervision had been appropriate they would have noticed the unsent application form and supporting documents sitting on the file. As a result the firm were required to refund the £355 Mr L had paid in relation to the application and pay him compensation of £1,000 to reflect the shock and anger felt by him when he realised he had been misled for two years by the caseworker and he would have to start again.

We actually received a large number of complaints about this caseworker which followed the same pattern. The caseworker had fabricated documents on other files to cover up the fact no work had been done and kept the money given by customers. The caseworker had been doing this for 18 months before the firm realised, which indicated that there was a serious problem with the supervision requirements.

This isn't the only service provider we have dealt with recently where 'rogue' employees have generated high numbers of complaints and significant remedies. And it is not always unqualified staff members who cause these complaints.

Case study

A similar lack of supervision appeared in the earlier case of **Ms B**. Ms B was introduced to the firm by a registered foreign lawyer, regulated by the Solicitors Regulation Authority (SRA). Although letters to and from the Home Office went to the firm, a file was never opened for Ms B and none of the £2,700 she paid made it to the firm's client account.

The firm explained that the lawyer only worked for them for a short amount of time as they had concerns about their work. The firm also explained that they had never carried out immigration work before employing this lawyer. As the firm had no knowledge of immigration law they had left the lawyer to manage the work.

As a result of our investigation, the firm were directed to refund fees of £2,700 and pay compensation to Ms B of £750 for the distress and inconvenience caused to her.

These cases highlight the importance of having rigorous supervision procedures in place. This particularly applies to unqualified and newly qualified members of staff, but should also apply to all fee earners.

Under the Legal Services Act 2007, service providers are responsible for the acts and omissions of their employees, whether or not they knew or approved of what they were doing. It is therefore important that service providers have robust processes in place to vet those they employ and that they comply with their statutory requirements to supervise immigration work. If service providers do not, they run the risk of being held responsible for the impact on their customers just as the service providers were in Ms B's and Mr L's cases.

Keeping records

As part of our investigations we ask service providers for evidence from their files to support their version of events. This can include copies of letters and emails along with any attendance notes of discussions they had with their customer and the advice they gave.

We often come across cases where a service provider has not kept a record of the discussions they had with their customer throughout the case or confirmed the advice given during meetings or over the telephone in writing.

We know that some customers' circumstances mean written correspondence can be difficult, particularly when English is not their first language. However, if advice and instructions are given verbally, it is important that it is recorded in an attendance note or a letter to the customer. Where evidence isn't provided our Scheme Rules[10] allow us to draw inferences and to make decisions on the basis of what is available.

Case study

Earlier in this report we looked at **Mr C's** case. The service provider demonstrated the advice they provided to Mr C through their detailed attendance notes and letters. This was particularly important as it demonstrated that the approach Mr C took was from a fully informed position and was against the advice provided. Because of this the service provider asked Mr C to sign the attendance note to confirm its accuracy and also confirmed their position in writing. We used this evidence to decide that Mr C had received a more than reasonable level of service from the service provider.

We know there will be situations where customers have reasons for proceeding with an application which, on the face of it, looks unlikely to be successful. When this happens it is good practice to confirm this and the advice that was given in writing, especially as it is not always possible to ask customers to sign attendance notes to confirm their accuracy.

More and more we see discussions between service providers and their customers via text message, WhatsApp, or Facebook messenger. Customers may prefer to communicate this way. It is quick and simple and someone can read it to them if they require assistance with English. However, more often than not, records of such conversations are not added to their file. We can obtain copies of these from the customer if needed for our investigation but service providers should take into account that these discussions may be more difficult to record. If a complaint happens, then service providers may be missing important information to respond to the complaint under their own processes.

[10] https://www.legalombudsman.org.uk/media/mvzfqf0a/scheme-rules-april-2019.pdf

Conclusion

This report highlights the types of complaints we see that cause the most serious detriment to customers. While we can direct service providers to pay compensation for any financial losses, refund fees and return papers, there is often another detriment that we can't assist with. That is to undo the negative effects poor service has had on the person's immigration status or assist them in resolving any ongoing issues they are having with their status that have been caused by the service provider.

More often than not, customers are left to pick up the pieces themselves and the thought of having to instruct another service provider to help them, after their trust and confidence in the legal system has been destroyed, leaves them feeling anxious and scared. Some are successful in putting their cases back on track, but for others the detriment is a permanent one.

We have seen cases where customers have been forced to leave the UK, often split up from their family and loved ones, as a direct result of unreasonable service received from a service provider or immigration advisor. It is unfortunately often the case that our involvement in a complaint at a later date is simply too late to remedy the detriment caused.

Meanwhile the service providers involved often face no consequences and instead carry on providing advice to others, often moving from firm to firm, before the implications of their behaviour start to catch up with them.

This gap could be addressed and better understood through improved communication between our office, OISC, service providers, the regulators, the Home Office and the Tribunals. Consumers need to know we exist and that they have nothing to fear by bringing a complaint to us or OISC. Service providers can help here by referring customers to us if they have been instructed to pick up the pieces of another lawyer's poor advice. Even if the customer does not want to contact us, service providers can make referrals to the OISC and their regulator without having to involve the customer.

We acknowledge that problems are often as a result of a genuine mistake, rather than dishonesty, as was the case with Mr and Mrs I, mentioned above. We would urge lawyers and immigration advisors to deal with these mistakes as soon as they are identified, particularly as this may be an opportunity to limit the detriment caused. In Mr and Mrs I's case, while the service provider eventually admitted their error, they did not take seriously the impact it had on them. Had they done so and had they made an effort to resolve the issue at first tier, it may not have escalated to our office. They had the opportunity to put right the mistake and rebuild their customer's trust, but instead caused further upset by failing to acknowledge the significance of the issue.

We therefore ask lawyers and immigration advisors to treat complaints seriously, admit if they have made a mistake or if their service was poor and remedy any detriment caused to their customer, even if this means paying them a significant sum of money to put things right. In doing so they can restore some of the confidence that was lost and prevent complaints from reaching this office or OISC.

Further information

We publish a range of guidance on our website which might be useful to refer to:

A guide to good complaint handling

Signposting guidance

An ombudsman's guide to good costs service

Our approach to determining complaints

Our approach to putting things right

Scheme Rules FAQs

Contact us

We are open Monday to Friday between 8.30am and 5.30pm. If you are calling from overseas, please call +44 121 245 3050. For our minicom call 0300 555 1777.

You can call us on 0300 555 0333 (Calls to the Legal Ombudsman cost the same as a normal 01 or 02 landline number, even from a mobile phone, and are recorded for training and monitoring purposes).

You can also email us at support@legalombudsman.org.uk

If you want to find out more about us and what we do, please visit www.legalombudsman.org.uk

If you prefer, you can write to us at:

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PO Box 6167
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If you need information in another language or in large print, Braille or on audio CD, please get in touch.