

# **Mapping potential consumer confusion in a changing legal market**

- report for the Legal Ombudsman

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## Executive summary

The legal services market in England and Wales has been revolutionised following the Clementi Report 2005 and the subsequent Legal Services Act 2007. The Act provided a new regulatory framework, with an overarching regulator, the Legal Services Board (LSB), overseeing the work of Front Line Regulators (FLRs) such as the Solicitors Regulatory Authority, and eliminated some of the regulatory obstacles to collaboration between solicitors, barristers and other parties through the proposals for Alternative Business Structures (ABSs) and Multi-Disciplinary Partnerships (MDPs). As well as the changes brought about by the Legal Services Act, the market has been developing rapidly, with new business models such as the creation of bundled corporate offerings of legal and other services, and the emergence of on-line providers of legal documentation and legal services. An important question is how well the new regulatory structure, particularly the redress framework, fits with the significant developments taking place in the market. This was identified as a problem in the Legal Ombudsman's Annual Report for 2010-11 which highlighted a small but significant minority of cases reaching the Legal Ombudsman where there were difficulties in deciding whether or not such cases fell within the Legal Ombudsman's jurisdiction.

The aims of the study are to:

- Map the current avenues that consumers have for redress in relation to legal services
- Identify the hurdles and obstacles that may be placed in the way of their obtaining effective redress, and
- Provide recommendations for improvements in the redress system for legal services so that consumers have access to clear, efficient and effective processes.

Five areas were focused on: will writing, conveyancing, claims management, family law and Citizens Advice.

The Legal Ombudsman's jurisdiction is limited to complaints about lawyers (more precisely, authorised persons) and there are a limited number of activities ("reserved legal activities") which may only be carried out by lawyers. Lawyers carry out both reserved legal activities and provide other legal services. The market has developed so that legal services, outside reserved legal activities, are often being provided by non-lawyers. This leads to confusion for consumers because although they may expect that a service is a legal service, and therefore ultimately there will be recourse to the Legal Ombudsman, if that service is provided by a non-lawyer, this will be outside the Legal Ombudsman's remit.

The critical point of concern is that consumer rights to complain and pursue redress will vary depending upon the type of organisation that they choose, even though the service which is being offered is substantially similar. This problem is illustrated with the construction of a hypothetical, but realistic, scenario, which is explained in Appendix A.

### *Will writing*

This point is well illustrated by will writing. For services provided by solicitors, there is a clear complaints procedure, culminating in the Legal Ombudsman. If a bank or a trade union or a charity's services are used to draw up a will, they may involve a solicitor. Again, in these circumstances the consumer will ultimately have recourse to the Legal Ombudsman, although this may be less obvious at the outset. For will packs or online providers, there is no avenue of recourse, assuming that the online providers do not use a solicitor in the background. Even where a solicitor is involved, this may not be obvious to the consumer. For a will writing company which is not a member of either of the trade associations, again there is no recourse. For those will writing companies which are members of trade associations, there are redress provisions but they are less effective than those offered by the Legal Ombudsman.

### *Conveyancing*

Although conveyancing is a reserved legal activity which can only be carried out by an authorised person, consumer confusion may arise because there is an increasing tendency to bundle house buying services, for example, it is quite common for a mortgage arrangement to include surveying and conveyancing being carried out by firms recommended by the mortgage provider or, indeed, sometimes this could be done in-house. The issues are, therefore, whether consumers are clear about the appropriate route for complaints, and whether or not complaint handling procedures are effective. Research for the LSB by YouGov suggests that there is a *"clear gap between what is expected to happen under the regulatory framework and what is actually happening."*<sup>1</sup>

### *Family law*

Where solicitors are involved in family disputes, the routes for redress are clear. It is much less clear what the routes for redress are in relation to online services which generate legal documentation, such as divorce petitions, cohabitation agreements and pre-nuptial agreements.

### *Claims management*

There is significant scope for consumer confusion here because claims management companies may often offer legal services. Indeed, some claims management companies include the word "Law" or variants in their titles. Even where they are simply referring a case to a solicitor, there may be scope for confusion over when the case has been referred and what the solicitor has agreed to do. There is some evidence of consumers wrongly approaching the Legal Ombudsman in relation to these sorts of cases. Although there is a regulatory scheme, operated by the Ministry of Justice, for claims management companies, the powers of redress available to the Ministry are more limited than those available to the Legal Ombudsman.

### *Citizens Advice Service*

The Citizens Advice Service (CA) is the largest not-for-profit provider of legal advice in the UK. The CA Service has an internal complaint handling procedure but the ultimate route to redress depends on who provided the advice.

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<sup>1</sup> . para 2.1.4

## Conclusions

In a number of areas covered by this study, consumer rights to complain and pursue redress vary depending upon the type of organisation that they choose, even though the service offered is substantially similar. Firms' business models may mean that some complaints can be pursued through the Legal Ombudsman whereas others may not.

There are other forms of business models which may also lead to consumer confusion about redress when things go wrong. The provision of legal and non-legal services may be bundled together and, although the division may be clear within the organisation, it may not be readily apparent to consumers. The position of online services may also be problematic when it is not made clear how to make a complaint and what type of person, if any, is involved in the provision of the service.

These problems are likely to get worse given the developments in the market, especially as regards the introduction of Alternative Business Structures. There is also a question about what to do regarding the regulation and redress mechanisms for not for profit legal service providers, such as Citizens Advice.

## Recommendations

### *Review of redress in legal services*

- The existing framework for redress in legal services contains gaps and anomalies which raise serious concerns about whether it is fit for purpose, particularly in light of the developments that are taking place in this market. The LSB and the Ministry of Justice should conduct a review of the redress framework, and consult on possible options to ensure that future redress arrangements are sufficiently comprehensive, streamlined and robust to meet consumers' needs.

### *Recording of complaints and contacts*

- There needs to be systematic recording by the Legal Ombudsman of complaints that it is unable to handle. There need to be clear records on what sort of body is being complained about and where the complainant has been signposted to. If it turns out that there are areas of significant confusion, the Legal Ombudsman should explore the possibility of direct transfer of complainants to the relevant body.

### *Will writing*

- There seems to be a consensus forming amongst the stakeholders in this area that will writing should become a reserved legal activity and subject to regulation. The Scottish experience in regulating will writing is instructive. It appears that the Scottish process will have taken three years to put a regulatory system in place. Given the preliminary nature of discussion in England on this topic at present, it is likely to take some time to produce a regulatory scheme for will writing.

We would recommend, therefore, that the Legal Ombudsman pursue the possibility of creating a voluntary jurisdiction for complaints about will writers who are not authorised persons under s. 164 of the Legal Services Act.

### *Claims management*

- This is an area which requires further consideration and research. It is clear from our interviews that the Ministry of Justice sees handling complaints about CMCs as an integral part of its approach to their regulation.

It is anomalous that the Ministry of Justice powers in relation to complaints are more limited than the Legal Ombudsman's, in particular with regard to compensation and this is likely to give rise to consumer detriment. The Ministry of Justice may wish to explore and consult on this issue as a matter of urgency, particularly given the rise in the numbers of complaints.

### *Not-for-profit sector*

- The non-for-profit sector or, as the Legal Services Act puts it, "special bodies", is anomalous in its regulatory arrangements. There is no immediate prospect of dealing with the regulatory issues which the LSB is only beginning to address. CA, for one, recognises that there is a need for some form of independent adjudication for dissatisfied clients.

We would also recommend that the Legal Ombudsman have discussions with the not-for-profit sector and the Ministry of Justice over the possibility of creating some form of voluntary jurisdiction for complaints regarding legal services provided by this sector.

### *Consumer information*

- It is crucial that consumers have easy access to clear and comprehensible information about their rights to redress in legal services and what routes are available, including the various factors that determine whether and how they can pursue redress. The Ombudsman community should consider producing fact sheets which explain how consumers can pursue unresolved complaints, including both complaints that potentially fall within their remit and those that are outside their jurisdiction.

These should be published on its website and also made available to Citizens Advice Bureaux (CABx) and other advice agencies, in various formats and languages.

### *Third party complaints*

- Given that this seems to represent a gap in redress arrangements, when compared to the position in Scotland, we think that the Legal Ombudsman could usefully re-visit this issue.

# 1. Introduction

## Context

The legal services market in England and Wales has been revolutionised following the Clementi Report and the subsequent Legal Services Act 2007. The aim of these initiatives was to address the 'regulatory maze' which was perceived as a factor which prevented the needs of the consumers' being met by the market, at a fair price. The Act provided a new regulatory framework, with an overarching regulator, the LSB, overseeing the work of Front Line Regulators (FLRs) such as the Solicitors Regulatory Authority, and eliminated some of the regulatory obstacles to collaboration between solicitors, barristers and other parties through the proposals for Alternative Business Structures (ABSs) and Multi-Disciplinary Partnerships (MDPs). These developments were designed to set the foundation for opening up the sector to greater competition and capital investment by interested corporations (such as insurance companies, banks or supermarkets), hence the concept being dubbed 'Tesco Law'. The explicit goal of the reform was to encourage the rationalisation of legal services, the introduction of economies of scale, and through competition, lower the price and raise the quality of legal services. The Legal Ombudsman was created as part of this new regulatory framework with the aim, among other things, of providing an independent, efficient and effective form of consumer redress regarding unresolved complaints about legal services.

As well as the changes brought about by the Legal Services Act 2007, the market has been developing rapidly, with new business models such as the creation of bundled corporate offerings of legal and other services, and the emergence of on-line providers of legal documentation and legal services. An important question is how well the new regulatory structure, particularly the redress framework, fits with the significant developments taking place in the market. This was identified as a problem in the Legal Ombudsman's Annual Report for 2010-11 which highlighted a small but significant minority of cases reaching the Legal Ombudsman where there were difficulties in deciding whether or not such cases fell within the Legal Ombudsman's jurisdiction.

The problem arises because legal services are increasingly delivered in complex ways, involving teams of people and networks of relationships, some of which may fall within the new regulatory system and others which may not. These structures and relationships may not be made clear to the consumer and have the potential to cause problems for a consumer trying to pursue a complaint if the company does not signpost routes to redress, where it is available, adequately. These cases reveal a mismatch between consumer expectations of what constitutes a 'legal service' - which consumers clearly assume implies access to a proper system of regulation and redress - and the reality of the diverse market providing such services.

In addition, consumers' expectations of what constitutes a legal service and therefore falls within the regulatory and redress system may well go beyond the scope of the current statutory framework. Moreover, the recent introduction of Alternative Business Structures (under which businesses owned by non-lawyers will be authorised to provide legal, and

other services) is likely to increase the complexity of the legal services landscape, and may potentially increase consumer confusion about legal services and routes to redress. In order to illustrate the problems which may arise, we have constructed a hypothetical, but realistic, scenario of consumer confusion which is explained in Appendix A.

## Aims and coverage

The Centre for Consumers and Essential Services was commissioned by the Legal Ombudsman to explore the implications of this changing legal landscape on consumers' right to redress and the challenges facing consumers in this regard.

The aims of the study are to:

- Map the current avenues that consumers have for redress in relation to legal services
- Identify the hurdles and obstacles that may be placed in the way of their obtaining effective redress, and
- Provide recommendations for improvements in the redress system for legal services so that consumers have access to clear, efficient and effective processes.

For the purposes of this project we took a broad view of legal services, along the lines of that proposed by the Civil and Social Justice Survey<sup>2</sup> given that there is no obvious rationale for the reserved activities listed in the Legal Services Act 2007.<sup>3</sup> Our investigation focused in particular on five areas which illustrate different routes that currently exist for consumer redress and also potential consumer confusion:

1. **Will writing:** This is an area where there has been significant growth in provision which is carried out in a variety of ways<sup>4</sup> and there is currently debate about the regulation of will writing services; for example it is due to become a regulated activity in Scotland.<sup>5</sup> It is also an area where potential problems with the service are not likely to arise until some time after it has been provided. We included the provision of probate services under this heading.
2. **Conveyancing:** This was selected because it is an area that is dominated by authorised persons and forms a significant part of workload of the Legal

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<sup>2</sup> . Pleasence, P, Balmer, N, Patel A and Denvir, C (2009) *Civil Justice in England and Wales 2009* available at: <http://webarchive.nationalarchives.gov.uk/20110216140603/http://lsr.org.uk/publications/2010CSJSAAnnualReport.pdf>

<sup>3</sup> . Legal Services Board *Enhancing consumer protection, reducing regulatory restrictions* (2011), Legal Services Institute *The Regulation of Legal Services: Reserved Legal Activities – History And Rationale* (2010, London, Legal Services Institute).

<sup>4</sup> . Legal Services Consumer Panel *Regulating Will Writing* (2011) available at: [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ConsumerPanel\\_WillwritingReport\\_Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf), Legal Services Board (2011) *Enhancing consumer protection, reducing regulatory restrictions*.

<sup>5</sup> . Legal Services Board (2011) *Understanding the Consumer Experience of Will Writing Services*, Legal Services Institute (2011), *The Regulation of Legal Services: What is the case for reservation?* (London, Legal Services Institute).



Ombudsman. Research by YouGov for the LSB has revealed, however, that there are a number of issues with first tier complaint handling.<sup>6</sup>

3. **Family law:** This is another area which forms a significant part of the workload of the Legal Ombudsman. There are also important implications arising from government policy to increase the use of mediation, as well as on-line provision of advice on divorce.
4. **Claims management:** This is an area in which business activity has increased rapidly over the past few years, although it now shows some signs of slowing down. Although largely focused on personal injuries claims, there is also significant activity carried out in relation to financial services claims. The industry is regulated by the Ministry of Justice but there is considerable scope for confusion for consumers regarding aspects of the services and their rights to redress.
5. **Citizens Advice (CA):** CA is one of the largest not-for-profit providers of legal services in the UK, in particular to disadvantaged consumers. Consequently it is useful to consider what routes to redress are available for dissatisfied CA clients. CA is just one example of non-for-profit bodies which provide legal services, and the Legal Services Act 2007 has provisions for a specific transitional licensing regime for such bodies.<sup>7</sup> CA is therefore a good example of an important area of legal services provision.

Our work is not a complete review of the legal services market. In particular, we have not looked in detail at the potentially significant overlap between legal services and financial services and we have not examined the regulation of immigration services.

## Methodology

We undertook a review of the existing literature on complaint handling in the UK legal services market, as well as research material emanating from Australia. In addition we carried out semi-structured interviews with the following organisations: Citizens Advice, Financial Ombudsman Service, LSB, Legal Services Consumer Panel, Legal Ombudsman, Ministry of Justice, and Which?. We are very grateful to the people within these organisations who took time out of their busy schedules to talk to us.

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<sup>6</sup> . Legal Services Board *First Tier Complaints Handling* (2011).

<sup>7</sup> . See Legal Services Board *Understanding the supply of legal services by 'special bodies'* (2011).

## 2. The redress framework and market developments

### 2.1 Introduction

Complaint handling for consumers can be divided into systems which are internal to the company or organisation providing the service, and those which are external to the company or organisation providing the service. This report focuses on the transition from an internal complaint to an external complaint. Although there is a great deal of literature regarding the sort of criteria that external redress schemes should meet,<sup>8</sup> there is little that explicitly addresses the question of transition, largely because discussions of criteria for external redress schemes focus on the criteria for approval of a specific scheme.

All the commentary agrees that external redress schemes should be, in the first instance, accessible to consumers, that is, they should be informed about their existence and which is the appropriate one to address their complaint. It also is a general feature of regulatory rules on complaint handling that they require the organisation complained against to inform the consumer of further avenues of redress. Following on from this, there are additional criteria relating to the availability of appropriate redress, fairness, effectiveness of operation, independence etc.

In an ideal system for consumers, the routes to redress would be obvious and well known, the companies complained against would provide clear guidance about external redress and, if there were difficulties, there would be good referral mechanisms between the external redress schemes. The more difficult it is to find a route to an external redress scheme, the more likely it is that consumers will abandon their complaint. Aside from creating a pool of potentially frustrated consumers, this has wider consequences because it means that the external redress bodies and regulators are not getting accurate information about the types of difficulties and grievances that are arising.

In order to explore this issue, we begin by examining the jurisdiction of the Legal Ombudsman and then look at the implications for this of changes in the legal services market. We then look, briefly, at each of the five areas to identify whether or not there is potential for consumer confusion over redress routes and, if there is, how serious the problem may be.

### 2.2 The jurisdiction of the Legal Ombudsman

The Legal Ombudsman is a statutory body set up by the Legal Services Act 2007 so its powers and jurisdiction are limited to those provided by the Act. In broad terms, the Legal Ombudsman deals with complaints by consumers against the actions of persons or bodies

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<sup>8</sup>. See, for example: *BSI ISO 10003:2007 Guidelines for dispute resolution external to organisations*; British and Irish Ombudsman Association membership criteria available at: <http://www.bioa.org.uk/criteria.php>; Which? (2006) *The Right to Redress: A model ombudsman system* Campaign Briefing, London Consumers' Association, Department of Industry, Science and Tourism (1997) *Benchmarks for industry based customer dispute resolution schemes* Canberra, Australia. Available at: <http://www.anzoa.com.au/National%20Benchmarks.pdf>.

who are regulated by the approved regulators, that is, those regulatory bodies supervised by the LSB.

It is, however, necessary to look at the issue of jurisdiction in more detail. The starting point is s.128 of the Act which says that a complaint is within the Legal Ombudsman's jurisdiction if the person complained against is an authorised person in relation to a reserved legal activity, whether or not the act or omission complained about relates to a reserved activity. Authorised persons are those who have been authorised by a relevant approved regulator to carry out reserved legal activities. There are currently six main authorised regulators: the Solicitors Regulation Authority, the Bar Standards Board, the Institute of Legal Executives Professional Standards Board, the Council for Licensed Conveyancers, the Intellectual Property Regulation Board (covering patent and trade mark attorneys) and the Costs Lawyers Standards Board.<sup>9</sup> For the purposes of this report, authorised persons are referred to as "lawyers".

In order to fully understand the jurisdiction of the Legal Ombudsman, a discussion of reserved legal activities is needed because it is only these activities which must be carried out by lawyers. Reserved legal activities are defined in s. 12 of the Act and expanded on in Schedule 2, and they consist of the following six activities:

- (a) the exercise of a right of audience;
- (b) the conduct of litigation;
- (c) reserved instrument activities;
- (d) probate activities;
- (e) notarial activities;
- (f) the administration of oaths.

It is a criminal offence to carry out reserved legal activities if you are not entitled to (s. 14 of the Act). There are, however, some exclusions from the definition of reserved legal activities which are not obvious and are relevant to the subject matter of this report. First, the exercise of the rights of audience relates to rights to appear before a court – this does not include a tribunal, such as an Employment Tribunal. Secondly, "reserved instrument activities" means, in essence, preparing documents for the transfer of land or for court proceedings. It does not include the making of wills. Thirdly, probate activities is limited to preparing probate papers, ie, papers on which to found or oppose a grant of probate or a grant of letters of administration. Finally, mediation does not fall within the definition of a reserved legal activity.

The existing definition of reserved legal activities raises some important issues. First, the definition is very narrow and it is generally accepted that there is no rationale regarding

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<sup>9</sup> . Notaries are covered by the Master of the Faculties and for certain reserved probate activities the Association of Chartered Certified Accountants and the Institute of Chartered Accountants in Scotland are recognised as regulatory bodies.

which activities are ‘reserved’ and which are not; they are simply an historical hangover.<sup>10</sup> As the Legal Services Consumer Panel has commented:

*“Few areas of legal advice are reserved to the traditional branches of the legal profession with the professional titles that consumers recognise as guaranteeing quality. This is confusing for consumers where legal advice can be offered by either regulated or unregulated firms, as is the case with will writing.”<sup>11</sup>*

Secondly, the LSB has power to recommend the extension of the definition of reserved legal activities and it has recently issued a discussion paper addressing this issue. It commented that, as a result of the narrow definition, *“there is no specific legal services regulation of people who neither have a protected title nor offer any of the reserved activities”*.<sup>12</sup>

In summary, the Legal Ombudsman is limited to dealing with complaints about the conduct of lawyers (authorised persons) from people to whom the lawyers provided the services, regardless of whether or not the complaint relates to a reserved legal activity.

### **Implications for legal services and redress**

The problem that the above limitation on the Legal Ombudsman’s jurisdiction creates is that the market for legal services is wider than the definition of reserved legal activities. We have not included a detailed discussion about the definition of “legal services”. The reason for this is that, for the purposes of this report, the key issue is what consumers perceive to be legal services and it seems clear that this is wider than the formal definition of reserved legal activities.

To take a couple of examples, will writing is perceived as a legal service and so would be the provision of representation before a tribunal, for example, the Employment Tribunal or a tribunal in the social security area, although in both cases neither is a reserved legal activity. Citizens Advice is another good example: it is estimated that ninety five per cent of advice provided by Citizens Advice Bureaux (CABx) is legal advice, and over 50% of CABx currently have contracts with the Legal Services Commission.<sup>13</sup> However, the only reserved activities currently provided by some CABx consist of representation in court and litigation, which is done by solicitors.

## **2.3 Developments in the legal services market**

Significant changes have taken place in the legal services market which have implications for consumers’ understanding of the types of services being provided and of routes to redress.

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<sup>10</sup> Legal Services Institute (2010) *The Regulation of Legal Services: Reserved Legal Activities – History And Rationale* (London, Legal Services Institute).

<sup>11</sup> Legal Services Consumer Panel (2010) *Quality in Legal Services*.

<sup>12</sup> LSB *Enhancing consumer protection, reducing regulatory burdens* (2011) at para 3.

<sup>13</sup> *Understanding the supply of legal services by ‘special bodies’*, a report for the Legal Services Board by Frontier Economics (2011).

First, a number of organisations have developed business models which offer legal services without the use of lawyers. Thus, for example, there are a number of will writing companies or practices which offer this service without employing lawyers. In addition, claims management companies offer to manage potential claims (for example, regarding personal injury), again without using lawyers.

At the same time, online services have emerged using software which allows the generation of legal documents without the intervention of a lawyer.<sup>14</sup> Higher priced online services may also be offered where a lawyer is involved but their involvement may not be apparent to the consumer. Consequently, the consumer may not be clear about their route for taking forward a complaint.

We now turn to organisations that offer a service which is substantially performed by non-lawyers but where certain steps may be contracted out to lawyers. An example would be a firm which provides probate services, most of which do not involve the use of a lawyer, except for the grant of probate, when they would contract out the work to a lawyer. Some of these organisations are regulated, such as claims management companies, others are not.

Furthermore, there are organisations which may use a mix of lawyers and non-lawyers in house to provide legal services, and it may not be apparent to the consumer which type of person is providing the service. This model may be combined with contracting out for certain issues, which increases the complexity of the relationship from the consumer point of view.

The critical point of concern is that consumer rights to complain and pursue redress will vary depending upon the type of organisation that they choose, even though the service which is being offered is substantially similar.

## **2.4 Jurisdictional problems**

The arrangements about jurisdiction create some overlap between different bodies. The clearest example is the relationship between the Legal Ombudsman and FOS. The Legal Ombudsman deal with complaints against a category of people (authorised persons), regardless of the activity they are undertaking. FOS deals with an activity (financial services) which can be carried out by a variety of people, some of whom fall within the Legal Ombudsman's jurisdiction. This has the potential to create confusion for consumers. There seem to be around 70 solicitors' firms that are dual regulated by the Financial Services Authority and the Solicitors Regulation Authority and FOS refers some legal expenses insurance claims to the Legal Ombudsman when they are about the legal services provided.<sup>15</sup>

In addition, it seems to be the case that a number of consumers think that they have been supplied with legal services which fall under the Legal Ombudsman's remit, when this is not the case. In terms of its initial experience, the Legal Ombudsman has estimated that around

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<sup>14</sup> . For example, <http://www.quickie-divorce.com/>

<sup>15</sup> . Interview with Financial Ombudsman Service.

9% of the contacts which it signposts to other organisations are referred specifically to the Claims Management Regulator and to the professional bodies for will writers. A significant number are also redirected to other organisations (such as CABx) that may be able to help those with complaints about unregulated legal activities who fall outside the Legal Ombudsman's jurisdiction. It is difficult to be more precise, because the Legal Ombudsman's systems are not organised to record complaints which are outside its jurisdiction, so it isn't easy to get an accurate picture. It also seems to be the case that other regulators, such as the Ministry of Justice, do not have clear data about how many complaints they have received because the complainant has been referred by another complaint handling body.

There are rules which make it an offence to pretend to be entitled to carry out reserved activities or to pretend to be an authorised person.<sup>16</sup> It might be assumed that this should make it obvious whether or not an organisation falls within the Legal Ombudsman's remit. There are, however, some subtleties and limitation on the rules which means that consumers may be confused even when firms are complying with them. To take one example, Quality Solicitors are actually a claims management company, regulated by the Ministry of Justice, despite the name potentially implying that they are regulated by the Solicitors Regulation Authority. Furthermore, there is no limitation on the use of the words "law" or "legal", which do appear in the title of a number of claims management companies.

It is therefore critical that consumers receive accurate and clear information about the availability of external redress and which route to follow at engagement. Equally important is that there is a speedy and helpful referral service available for consumers when they first contact an external redress system.

## **2.5 Consumers' perceptions of legal services**

Recent qualitative research for the Solicitors Regulation Authority (among 40 consumers who had either recently purchased legal services, or were intending to purchase them) found that there was a poor understanding of what is involved in the provision of legal services, and the expertise required.<sup>17</sup>

Other findings included the following:

- Consumers do not generally find it easy to decide which providers of legal services have the required experience and qualifications. Company names with 'solicitor' or 'lawyer' in the title tended to be considered better qualified and more trustworthy.
- Consumers know less about other types of legal professionals apart from solicitors, but feel that they are all qualified to do their jobs.
- There appears to be a general assumption that all providers employ appropriately qualified staff, and employ solicitors to some extent.

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<sup>16</sup> . For example, Legal Services Act ss. 17 and 181.

<sup>17</sup> . GfK NOP Social Research (2010) *Research on Consumers' Attitudes towards the Purchase of Legal Services: A research report for: Solicitors Regulation Authority*; and Solicitors Regulation Authority (2011) *Consumer attitudes towards the purchase of legal services An overview of SRA research findings*.

- Consumers were generally surprised and concerned to learn that some legal services were not regulated. They were not aware of how to tell the difference between an unregulated and regulated provider.
- There was little awareness about how to complain if something went wrong with a legal service provider. However, consumers generally thought they would first complain to the provider, then to the appropriate professional body, although they were unsure who this body would be.

This report for the SRA concluded that;

*“Consumers are not aware that both regulated and non-regulated providers will be offering the same service. There is therefore a risk of consumers choosing a non-regulated provider unwittingly, and assuming that they have the same level of regulation and protection as with any other provider. There are also indications that consumers may be making false assumptions about levels of expertise and specialism of providers, as there is confusion about marketing and signage.”*

This research suggests that consumers’ perceptions of the complexity of the legal services market and its regulatory and redress framework are at odds with the reality. They are thus likely to misunderstand who regulates which areas and what rights of redress they may have (if any) when something goes wrong.

Having looked at the issue of redress in general, we discuss specific areas of interest in the next section.

### **3. Routes to redress**

#### **3.1 Will writing**

Will writing is a relatively commonplace activity which affects significant numbers of people. According to the Legal Services Consumer Panel, between 36% to 48% of people have a will and approximately 1.8 million wills are prepared annually; the median value of estates with a will is around £160,000, which would equate to property of around £29 million annually.<sup>18</sup>

From a consumer point of view, will writing can be a difficult service to understand. The complexity of a will varies depending on the consumer’s individual circumstances, there is no obvious way to compare the quality of the service which is provided and, if there are mistakes in the will, this is only likely to come to light after the consumer is deceased. The evidence which exists suggests that around a quarter of wills do not meet quality standards, that is, meet the needs and circumstances of the client, while around 10% are not legally valid.<sup>19</sup>

<sup>18</sup> . Legal Services Consumer Panel *Regulating Will Writing* (July 2011) at paras 3.2 and 3.4.

<sup>19</sup> . IFF Research *Understanding the Consumer Experience of Will Writing* (2011) Table 8.3.

To summarise, the evidence suggests that there are significant number of consumers who may have cause to complain about the service that they have received.

Will writing is not, however, a reserved legal activity in England and Wales and is not subject to any regulation.<sup>20</sup> In terms of the market, consumers may choose the following to provide them with services:

- Solicitors
- Will writing companies
- Will pack or an online provider
- Financial services company, for example, a bank
- Other, for example, a trade union

If something goes wrong, the routes for redress vary dramatically, depending on what channel consumers have chosen. If the will is drawn up by a solicitor, the solicitor is required to have an internal complaints procedure and, if the consumer is not satisfied with the outcome of a complaint, there is ultimately recourse to the Legal Ombudsman. In the first six months of its operation, around 13% of the complaints accepted by the Legal Ombudsman concerned wills and probate matters, which equates to around 500 complaints.<sup>21</sup> The Legal Ombudsman has an upper limit of £30,000 on compensation for complaints.

If the consumer uses a will writing company, then there is no recourse to the Legal Ombudsman. There are two trade associations that a will writing company might belong to: the Institute of Professional Will Writers (IPWW) and the Society of Will Writers (SWW). The former seems to cover around 200 firms and operates an OFT approved Code of Practice, which requires its members to have a complaints procedure. If the consumer is not happy with the outcome, they may either refer the matter to the IPWW, who will help “to reach a mutually acceptable outcome” or they may instead refer the matter to the Estate Planning Arbitration Scheme, the results of which are binding on the parties (and there is an upper limit of £10,000).

If the will writer is a member of the SWW, which is much larger than the IPWW,<sup>22</sup> then that association may become involved. Complaints may be resolved through conciliation or, if more serious, the SWW will consider whether or not to discipline the will writer. The SWW, however, has no powers to order compensation. If the will writer is not a member of either organisation, then there is no means of recourse, outside the normal channels of consumer law.

For consumers using will packs or online providers, there is no specific means of redress, outside the ordinary law.

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<sup>20</sup> . Will writing in Scotland is due to be brought into a regulatory framework (Legal Services (Scotland) Act 2010) although this is not yet up and running.

<sup>21</sup> . Legal Ombudsman *Annual Report 2010-11* pages 10 and 13.

<sup>22</sup> . The Society estimates that it may represent around seventy per cent of will writers – e-mail.

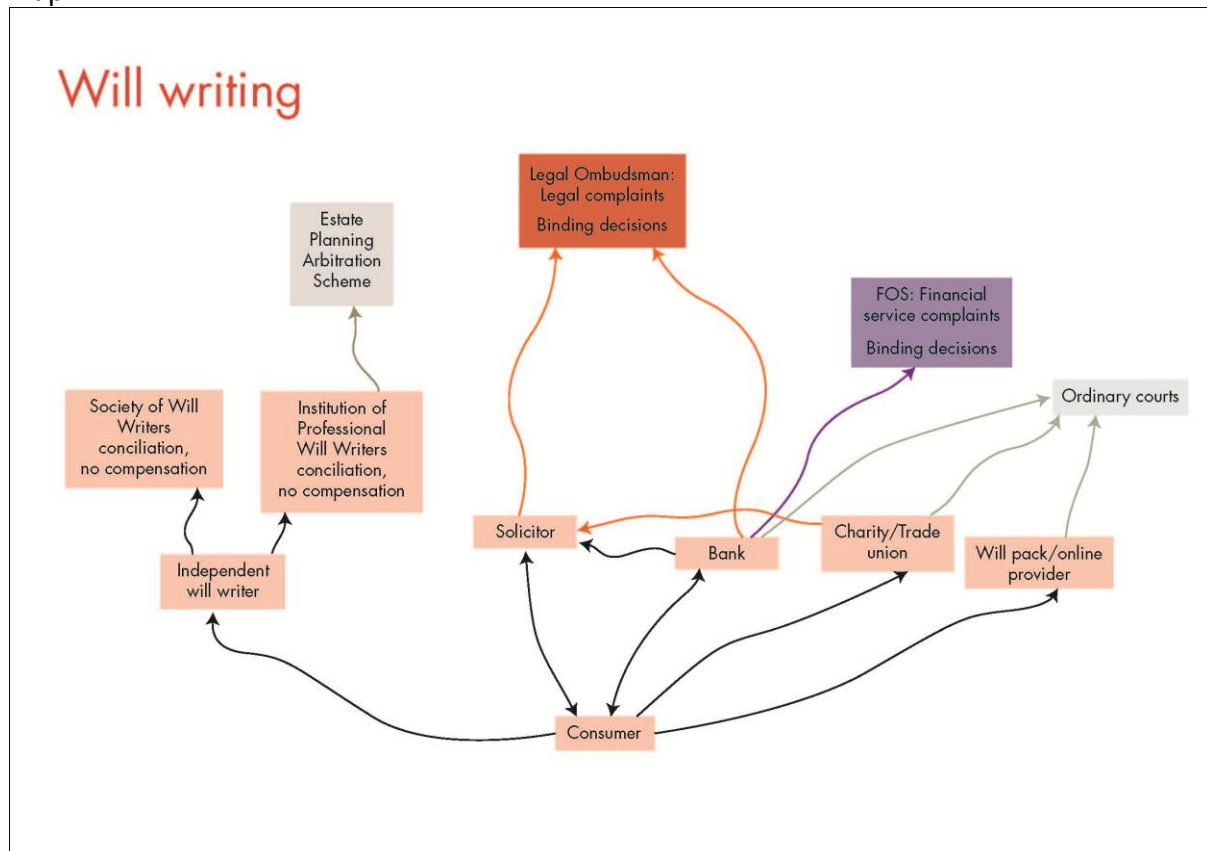


For consumers who use financial services companies or other providers, the issue is complicated by the means that the companies employ to provide the will writing service. It is possible that the service is provided by a solicitor, for example, a couple of solicitors' firms provide will writing services for trade unions. In these circumstances, the consumer would, ultimately, have recourse to the Legal Ombudsman.

Firms that are regulated by the Financial Services Authority are required to have a complaints procedure and consumers may have recourse to the Financial Ombudsman Service (FOS), which has an upper limit of £100,000. However, complaints about will writing very rarely fall within the jurisdiction of the FOS.

In summary, a consumer's rights of redress in terms of will writing, depend entirely upon who the provider happens to be. This is illustrated in Map 1.

Map 1.



For services provided by solicitors, there is a clear complaints procedure, culminating in the Legal Ombudsman. It may be the case that when a bank or a trade union or a charity's services are used to draw up a will, they involve a solicitor. Again, in these circumstances the consumer will ultimately have recourse to the Legal Ombudsman, although this may be less obvious at the outset. For will packs or online providers, there is no avenue of recourse, assuming that the online providers do not use a solicitor in some form in the background. Even where a solicitor is involved, this may not be obvious to the consumer. For a will writing company which is not a member of either of the trade associations, again there is no

recourse. For those will writing companies which are members of trade associations, there are redress provisions but they are less effective than those offered by the Legal Ombudsman.

### **3.2 Conveyancing**

Conveyancing is a reserved legal activity which can only be carried out by an authorised person. It is an area that does lead to a number of complaints: in its first year of operation, about 20% of The Legal Ombudsman's complaints related to residential conveyancing. As conveyancing is a reserved legal activity, and also because people may have some experience of it as a legal service, there is less likely to be consumer confusion over who is undertaking the service and how to complain about any problems.

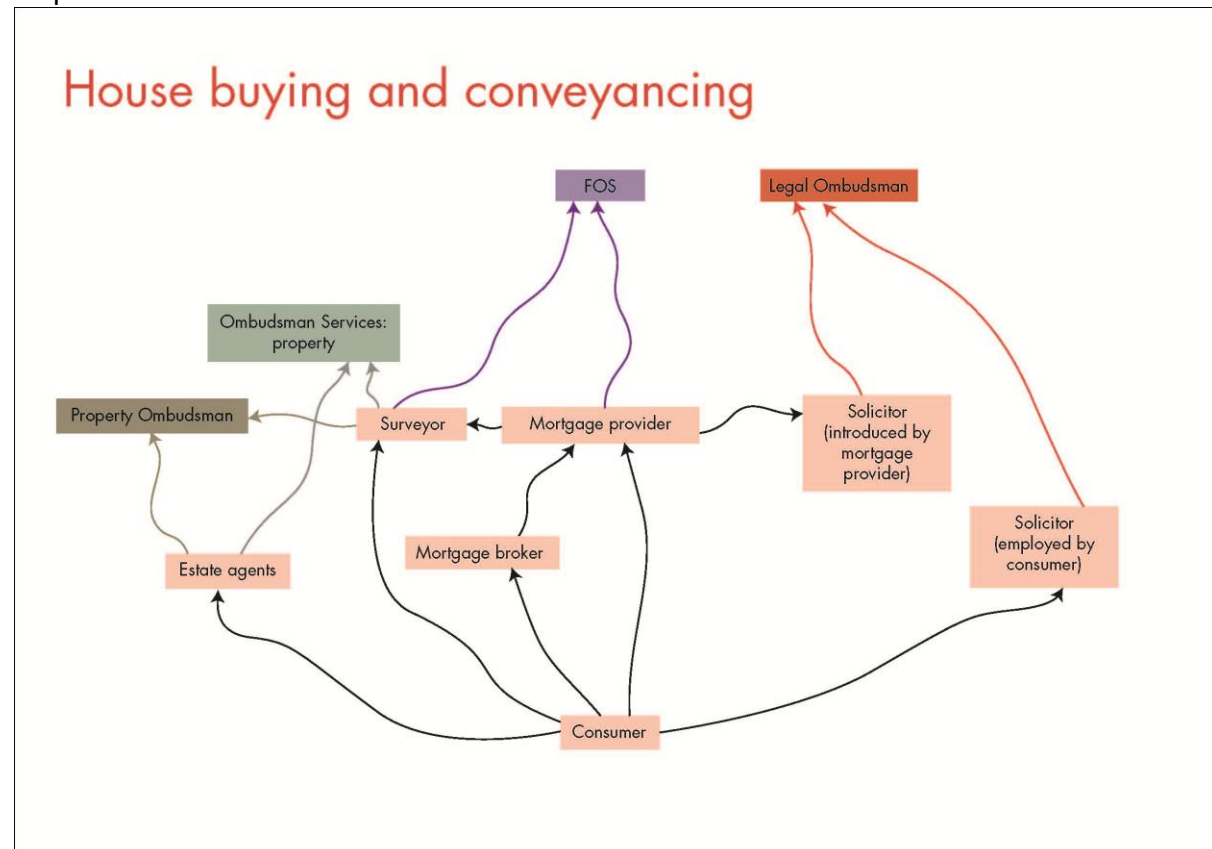
Difficulties may arise for the consumer because house purchasing is a complex transaction, typically involving at least four parties on the consumer's side: an estate agent, a mortgage finance provider, a surveyor and a solicitor.<sup>23</sup> If a consumer wishes to make a complaint, there are potentially four different routes that he or she can take. Complaints about estate agents can be made either to the Property Ombudsman or Ombudsman Services: Property, depending on which scheme the agent is a member.

Complaints against mortgage finance providers ultimately go to the Financial Ombudsman Service . Complaints about surveyors may go to FOS if the survey is carried out by the mortgage lender's in-house surveyor or, if it is not an in-house surveyor can be taken to Ombudsman Services: Property, if the surveyor concerned is a member of this scheme. Finally, complaints about solicitors and licensed conveyancers can ultimately go to The Legal Ombudsman. The possibilities are illustrated in Map 2.

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<sup>23</sup> . "Solicitor" here includes licensed conveyancer.

Map 2.



Consumer confusion may arise because there is an increasing tendency to bundle house buying services, for example, it is quite common for a mortgage arrangement to include surveying and conveyancing being carried out by firms recommended by the mortgage provider or, indeed, sometimes this could be done in-house.

The issues are, therefore, whether consumers are clear about the appropriate route for complaints, and whether or not complaint handling procedures are effective. Research for the LSB by YouGov suggests that there is a *“clear gap between what is expected to happen under the regulatory framework and what is actually happening.”*<sup>24</sup> The research suggests that significant numbers of consumers are informed about the existence of in-house complaints procedures and that those consumers who were dissatisfied, but did not plan to complain, or did not complain, more commonly had used conveyancing services.

### 3.3 Family law

Issues around family law have been an important part of The Legal Ombudsman’s initial workload and raise important issues for many people. There have been, on average, over 100,000 divorces per year in England and Wales since the mid 1970s, so this is an area of considerable legal activity. For our purposes, these matters can be divided into three different sections: arrangements prior to entering into a marriage or civil partnership, an agreed dissolution of a marriage or civil partnership, and a contentious dissolution of a marriage or civil partnership, for example, where there is a dispute over the assets of the couple or over children.

<sup>24</sup> . para 2.1.4

Where there is a contentious matter and those involved engage solicitors, the routes of redress for complaints are clear. Arrangements prior to entering into a marriage, such as a pre-nuptial agreement or an agreed divorce, could be drawn up by a solicitor(s) and again, in this case, the routes for redress would be clear.

There is, however, a growing industry which offers online services to generate legal documentation, such as divorce petitions, cohabitation agreements and pre-nuptial agreements.<sup>25</sup> The level of involvement by lawyers for these products varies. For example, quickie-divorce.com offers at least two levels of service. There is an on-line download service for a divorce petition, which does not involve a solicitor, and a more expensive service where it is said that the forms are checked by a solicitor. Where a solicitor, or other lawyer, is involved then the routes for redress are clear. However, it is not clear that there is any effective route for redress if there are faults in the on-line documentation or programming.

The problem of third party complaints should be mentioned here, that is, complaints against lawyers by people other than those who have engaged them. Although the LSA 2007 states that third party complaints do not fall within the jurisdiction of the Legal Ombudsman, this was mentioned as a gap in redress arrangements by a couple of the parties that we interviewed. Although The Legal Ombudsman decided not to seek an expansion of its jurisdiction (via secondary legislation), it left open the possibility of revisiting this issue.<sup>26</sup> The position in Scotland is different: under the Legal Profession and Legal Aid (Scotland) Act 2007, the Scottish Legal Complaints Commission accepts third party complaints: these can be made by any person who appears to have been directly affected by the suggested inadequate professional services to the practitioner's own client.

### 3.4 Claims management

Claims management is a relatively new industry, which has grown over the last decade as a result of changes in the funding of personal injury litigation and the development of conditional fee agreements. The role of such companies has been described thus:

*“Claims managers gather cases either by advertising or direct approach. The claims manager then either acts for the client to pursue a claim or as an intermediary between the claimant and the lawyers who may represent them.”<sup>27</sup>*

So claims management can involve either referral to a lawyer, at which point the activities of the lawyer would fall within The Legal Ombudsman’s jurisdiction, or pursuing a claim on behalf of a client.

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<sup>25</sup> . See, for example: <http://www.quickie-divorce.com/>; <http://www.cohabitation-agreement.co.uk/?gclid=CO3y0tjaxKsCFQMPfAodMiCpzw>; <http://www.prenuptial.agreements.co.uk/> (accessed 30/09/11)

<sup>26</sup> . Legal Ombudsman *Consultation response; Scheme rules* (2010).

<sup>27</sup> . Department for Constitutional Affairs, *Regulation of Claims Management Companies Policy Statement*, 2 March 2006, p4, [http://www.dca.gov.uk/legist/policy\\_statement.pdf](http://www.dca.gov.uk/legist/policy_statement.pdf)

As a result of concerns about the activities of these companies, a regulatory scheme was introduced by the Compensation Act 2006. Although self-regulation was considered as an option, after an independent review it was decided that this was not viable. Instead responsibility for the regulation of this sector was given to the Ministry of Justice, although it was stated at the time of the Bill that the government envisaged that the LSB would become the oversight regulator and that the government would wish to integrate claims management regulation with the new approach to legal services regulation, which was enacted in the Legal Services Act 2007.

The following types of claim are covered by this scheme:

- Personal injuries
- Claims in relation to financial products and services
- Claims in relation to employment, for example, unfair dismissal
- Criminal Injuries Compensation
- Benefits for industrial injury
- Housing disrepair

The sorts of services which may be offered in relation to these types of claim are, among others, advice in relation to a claim, investigating the circumstances of the claim, representing the claimant (orally or in writing). There are currently around 3,200 businesses which are authorised to conduct claims management, of which the largest sector, both in terms of number of businesses and value, is personal injuries. The second largest sector is that relating to financial products and it was this sector that generated the most complaints to the Ministry of Justice in 2010-11. Employment is described by the Ministry of Justice as being a “specialist and niche” area, while there seems to be relative little activity by claims management companies in the other three areas.

As well as being a regulator, the Ministry of Justice also has responsibilities in relation to complaint handling processes. The rules that it sets down for complaint management companies require them to have “*appropriate and effective internal complaint handling procedures*”.<sup>28</sup> The procedures must be publicised, complaints should be investigated by someone not directly involved in the matter complained about and with the authority, or access to the appropriate person, to settle the complaints, and complaints should be resolved within eight weeks. If the complaint cannot be resolved within eight weeks, the complainant should be told that they can refer the matter to the Claims Management Regulator.

The Claims Management Regulation Unit of the Ministry of Justice is split between two sites: a headquarters site in London and a site in Staffordshire which deals with complaints and enforcement actions, although some complaints are also made to the London office. However, the powers of the Regulator in relation to complaints are limited. If the Regulator finds that the complaint is well founded, the Regulator may give the authorised person a direction about the further handling of the complaint. The Regulator may also give

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<sup>28</sup> . MOJ *Complaints Handling Rules 2006* para 4.

directions about the future handling of complaints in general.<sup>29</sup> The Ministry of Justice describes the process like this:

*“If a complaint is upheld the Regulator has powers to direct a business to apologise, re-do work and in some limited circumstances provide a partial or full refund of fees paid.”<sup>30</sup>*

In interviews the Ministry of Justice team stressed that this was not adjudication and, as is evident from the rules, there is no power to award compensation to a consumer.

The number of consumer complaints<sup>31</sup> received by the Ministry of Justice is set out in the table below. The vast majority of these complaints relate to claims management in the context of financial services – in 2010-11, it was in the order of 96% of complaints. Almost all of these complaints are dealt with informally, with very few being formally referred to the Regulator for a re-examination and review. In the 2010-11 Ministry of Justice Annual report on claims management regulation this is described as “a very small proportion”, which seems to imply somewhere between ten and twenty cases, based on previous annual reports.<sup>32</sup>

Year	Complaints received
2007-08	1,216 <sup>33</sup>
2008-09	1,840
2009-10	7,205
2010-11	12,751

Source: Annual Reports and personal communication

There is a fair amount of scope for confusion for consumers here. First, a number of the services that claims management companies may offer look very much like legal services in the broad sense, such as representing the claimant. A number of authorised businesses clearly play on this idea by using the word “Law” or “Lawyers” in their title. A search on the Ministry’s of Justice Register found 173 firms that used this type of terminology, although not all of the 173 were active. The clearest example of such confusion is Quality Solicitors which, despite its name, is a claims management company, although our understanding is that all consumer inquiries are dealt with by solicitors operating under the brand of Quality Solicitors.

Secondly, even where the claims management company refers a case on to a solicitor, there is scope for confusion about exactly what are the terms and conditions of the reference. For example, there may be confusion over whether or not the consumer has entered into a conditional fee agreement with the solicitors. The routes for redress here are illustrated in

<sup>29</sup> . Compensation (Claims Management) Regulations 2006 paras 27-8.

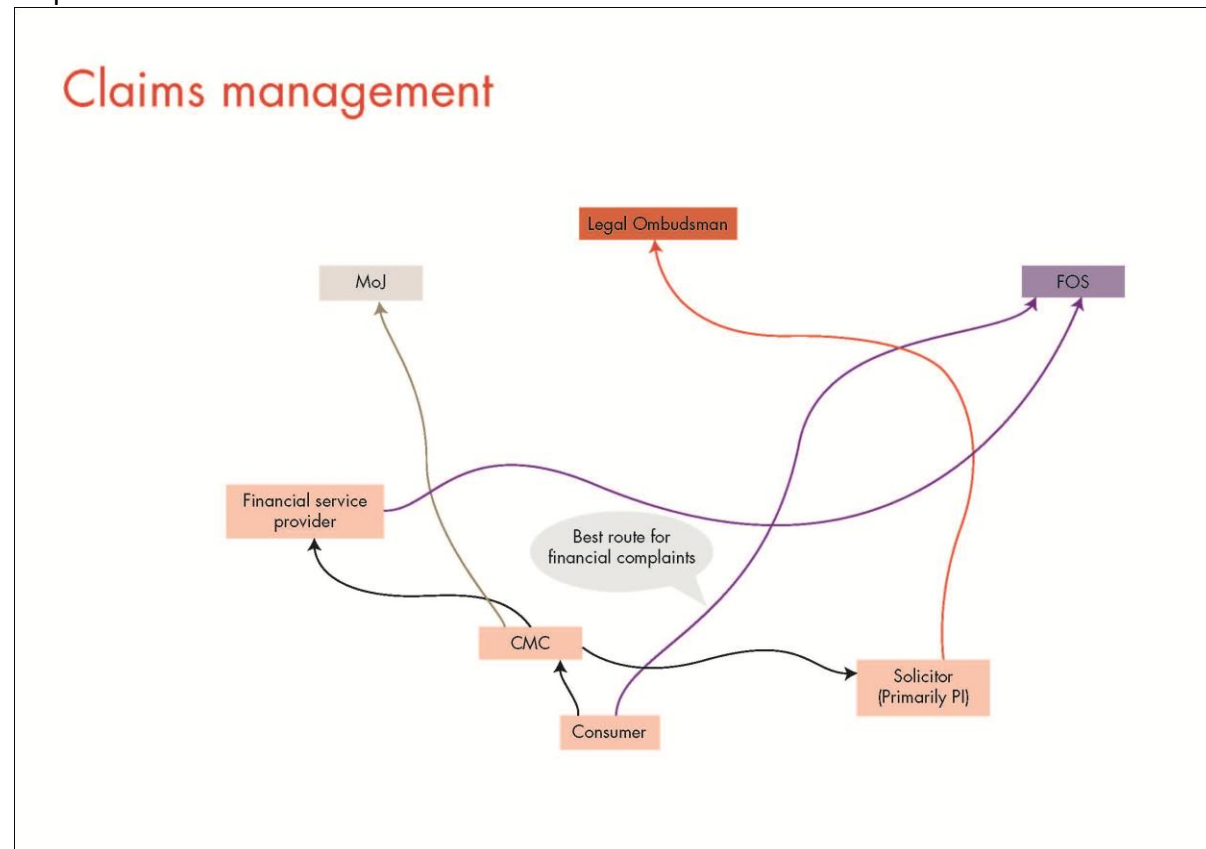
<sup>30</sup> . Annual Report 2010-11 p. 26

<sup>31</sup> . The MoJ also receives complaints from businesses about CMCs.

<sup>32</sup> . Although given the increase in numbers, this is surprising.

<sup>33</sup> . October 2007 – April 2008

Map 3.



### 3.5 Citizens Advice Service

The Citizens Advice Service (CA) is the largest not-for-profit providers of legal advice in the UK. Its network consists of Citizens Advice – the umbrella organisation – and its member Citizens Advice Bureaux (CABx). All are registered charities. Although the focus in this section is on CA, it is only one example of legal services which are delivered by non-commercial organisation. This is a significant route by which legal services are delivered and one that is likely to grow in the future, especially for consumers in vulnerable and disadvantaged circumstances.

In 2009/10, CABx in England and Wales advised over 2 million clients on over 7 million problems, of which over 60 per cent concerned debt and benefits, followed by employment and housing.<sup>34</sup> This is an area, however, which is not subject to regulation because such bodies are excluded under transitional arrangements in the Legal Services Act 2007. Regulation in this area occurs through “self-regulation” by the providers or the requirements imposed by those who commission and fund the services. There is, therefore, no common pattern of provision and complaint handling in the sector and the CA evidence cannot be generalised to other not-for-profit providers.

The aims of the Service are:

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people’s lives.

<sup>34</sup> . The Service is also linked to Citizens Advice Scotland (CAS), and Citizens Advice is also the largest advice charity in Northern Ireland.

The advice service is provided on a free, independent, confidential and impartial basis, at over 3,500 locations across England and Wales as well as by e-mail, on the phone and online via [www.Adviceguide.org.uk](http://www.Adviceguide.org.uk). 95% of advice provided by CABx is legal advice, and over 50% of CABx currently have contracts with the Legal Services Commission.<sup>35</sup> Of the 28,500 people who currently work for the service, 21,500 of them are volunteers and 7,000 are paid staff.

At present, 35 solicitors are employed by CABx in England and Wales. The only reserved activities currently provided by some CABx comprise representation in court and litigation. Clients are fully informed about the nature of qualifications of their advisor, including whether or not they are a solicitor.

The national umbrella organisation, Citizens Advice (CA), licenses the Bureaux and it can ultimately withdraw a Bureau's licence. CA sets and monitors their standards of service and advice provision, as well as overseeing the in-house information system and providing training.

The CA Service has an internal complaint handling procedure but the ultimate route to redress depends on who provided the advice. All complaints first have to be investigated at bureau level and, if the client is not satisfied with the outcome, the complaint can be escalated to the Chair of the Board. The next stage would be a review by the CA Chief Executive. If the complaint is still not resolved to the client's satisfaction, an independent adjudicator is involved.

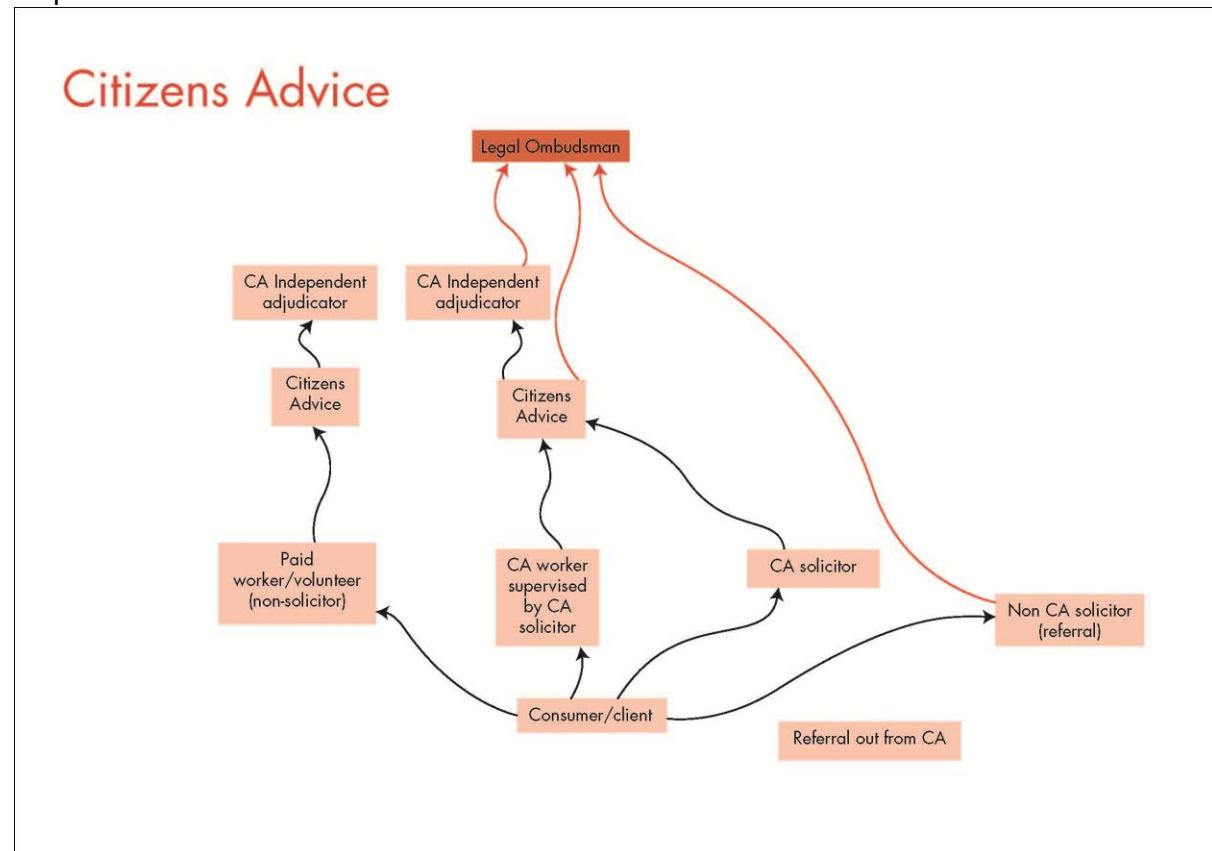
The above procedure applies to all complaints raised about CA services by clients, whether or not the advice was provided by a solicitor. However, where the advice was provided by a solicitor employed by CA, clients have ultimate recourse to the Legal Ombudsman. Otherwise, there is no further means of recourse. Routes for redress for Citizens Advice are illustrated in Map 4.

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<sup>35</sup> *Understanding the supply of legal services by 'special bodies'*, a report for the Legal Services Board by Frontier Economics (2011).



Map 4.



## 4. Conclusions and recommendations

### 4.1 Conclusions

The Legal Ombudsman has been running for a relatively short period of time but has already identified a number of issues relating to its jurisdiction which, in its opinion, seem likely to lead to consumer confusion about routes of redress. Some of the confusion may be down to the creation of a new institution but the bigger question is whether or not there is the potential for a systemic problem driven by changes in the market for the provision of legal services, which do not match the framework for regulation and redress set out in the Legal Services Act 2007.

Although the Legal Ombudsman has some evidence of consumer confusion, notably in relation to will writing and claims management, its recording systems do not systematically capture contacts and enquiries which fall outside the Legal Ombudsman's remit. There are occasional complicated cases which require resolution by the Ombudsman, but most of the contacts are dealt with at an initial stage. In our discussions with them, the Legal Ombudsman acknowledged that there was, so far, limited evidence, but they wanted to address this and commissioned this research as a first step in investigating the issue. We consider that consumer confusion is a significant problem and that the likelihood is that future developments in the market, discussed below, will exacerbate the potential for consumer confusion about legal services and routes for redress.

The Legal Ombudsman's jurisdiction is currently limited to particular types of persons (authorised persons), these being the people who carry out reserved legal activities. However, the market for legal services is wider than the definition of reserved legal activities. If someone is an authorised person, this is not a problem for the Legal Ombudsman because the complaint about an authorised person need not be restricted to the carrying out of reserved legal activities. If someone is *not* an authorised person, but is carrying out a legal service, which is *not* a reserved legal activity, then they will fall outside the Legal Ombudsman's jurisdiction.

In a number of areas covered by this study, consumer rights to complain and pursue redress vary depending upon the type of organisation that they choose, even though the service offered is substantially similar. Firms' business models may mean that some complaints can be pursued through the Legal Ombudsman whereas others may not. For example, Company A may offer probate services and do all activities in-house, including applying for the grant of probate through an in-house lawyer. Company B may offer probate services and do all activities in-house, *except* applying for the grant of probate, which will be done through an external lawyer. For Company A, the likelihood is that all of its probate activities will fall within the scope of The Legal Ombudsman while, for Company B, its in-house activities will fall outside The Legal Ombudsman, although the grant of probate falls within the Legal Ombudsman's remit.

There are other forms of business models which may also lead to consumer confusion about redress when things go wrong. The provision of legal and non-legal services may be bundled together and, although the division may be clear within the organisation, it may not be readily apparent to consumers. The position of online services may also be problematic when it is not made clear how to make a complaint and what type of person, if any, is involved in the provision of the service.

Regarding the specific areas covered in this study:

### **Will writing**

Will writing is currently not a reserved legal activity in England and Wales and is not subject to any regulation. Evidence suggests that around a quarter of wills do not meet quality standards. If something goes wrong, the routes for redress vary dramatically, depending on what channel consumers have chosen and the provider of the service. If the will is drawn up by a solicitor, there is ultimately recourse to the Legal Ombudsman. But if the consumer uses a will writing company, will packs or online providers, then there is no recourse to the Legal Ombudsman.

It now seems generally accepted that will writing ought to be a reserved legal activity in England and Wales. In Scotland, the Legal Services (Scotland) Act 2010 puts in place a framework for the regulation of will writing and consumer redress. Consequently, consumers will be able to take unresolved complaints about non-lawyer will writers to the Scottish Legal Complaints Commission. It is anticipated that these provisions will be implemented in Scotland during 2012.

### **Conveyancing**

Difficulties may arise for consumers because house purchasing is a complex transaction, and can typically involve at least four parties on the consumer's side: an estate agent, a mortgage finance provider, a surveyor and a solicitor.<sup>36</sup> As a result, there are potentially four different routes for consumers to pursue complaints. In addition, consumer confusion may arise because there is an increasing tendency to bundle house buying services, for example, it is quite common for a mortgage arrangement to include surveying and conveyancing by firms recommended by the mortgage provider or provided in-house.

Consequently, it is crucial that consumers are clearly informed about the appropriate routes for redress depending on the nature of the complaint and how the service was provided, and that complaint handling procedures in this area are effective. This reinforces the need for good signposting for consumers about redress routes and speedy referral systems.

### **Claims management**

Claims management companies may do many things that look like legal services but they are subject to a separate regulatory arrangement under the Ministry of Justice. The problem is that a consumer, wishing to pursue a complaint may start at the wrong point and, for instance, contact the Legal Ombudsman, to be told that they should take their complaint to the Ministry of Justice. However, the consumer may drop out of the process because of having to make more than one contact. Moreover, there is a gap in the nature of redress available to a consumer whose complaint is upheld, as the MoJ cannot offer financial compensation.

### **Family law**

Where a solicitor is involved then the routes for redress are clear. This includes online services where forms are checked by a solicitor, with the caveat that consumers need to be aware that a solicitor has been involved and of their rights to pursue complaints with the Legal Ombudsman. However, some online download services for a divorce petition do not involve a solicitor. Nor is it clear that there is any effective route for redress if complaints relate to faults in the on-line documentation or programming for example.

### **Looking to the future**

The most significant market change which is due to take place is the introduction of Alternative Business Structures (ABS), the provision for which was a centrepiece of the Legal Services Act and has occupied much of the time of the LSB. At the moment it is much too early to say what impact ABS will have on the legal services market and the LSB has been very cautious and declined to make any predictions.<sup>37</sup> For our purposes, the creation of ABS will not make any difference in terms of the routes for redress against lawyers working within an ABS.

For the consumer, however, the possibility arises for confusion between an ABS and a non ABS structure. For example, issues may arise in relation to a non ABS organisation where reserved legal services are contracted out, although this problem exists at the moment. It has also been put to us that, insofar as redress is concerned, the ability to create an ABS is a sideshow. This is because commercial organisations, that is, not law firms, are able to do

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<sup>36</sup> . "Solicitor" here includes licensed conveyance.

<sup>37</sup> . See Legal Services Board *Research Note: The legal services market* (2011).

everything that they want to do without ABS. The example here would be the offerings by major financial services companies, such as Barclays or the Co-Operative. These groups may use ABS, but only as part of a larger corporate strategy. If, in the longer term, banks have a regulatory separation imposed on them between retail and investment banking, this will provide an extra incentive to develop alternative income streams on the retail side, of which one might be offering legal services, either on their own, or as part of a broader package.

As regards non-commercial organisations, Citizens Advice is one among the ‘special bodies’, which are permitted under the Legal Services Act 2007 to carry out reserved activities without a licence for a transitional period.<sup>38</sup> The LSB can make a recommendation to the Lord Chancellor that he should end the transitional protections, after which those bodies may seek special treatment from the Licensing Authority, which may be the LSB, an approved regulator or another body approved as a Licensing Authority.

The LSB is currently exploring the market in which special bodies, such as Citizens Advice, operate. This includes the nature of their activities; and the potential risks which these may pose to the LSB’s regulatory objectives. As part of this process, the LSB commissioned a report on ‘special bodies’ by Frontier Economics which maps the sector and discusses a number of possible options for regulation. These options include ex post regulatory controls which would be intended to provide a framework in which clients have protection or a means of recourse. For example, requirements could include offering a formal complaints process or designating responsibility for handling complaints with a particular body such as an ombudsman.<sup>39</sup>

Citizens Advice has suggested that it could be appointed as the formal regulator of Citizens Advice Bureaux, in view of the quality assurance framework they already have in place.<sup>40</sup> As such, it would sit between the CABx and the LSB. Given that CABx are registered charities, CA does not believe that they should be made into ABSs and it wishes to avoid the CABx being subject to multiple regulation.

However, this raises questions about possible conflicts of interest: the CA umbrella organisation clearly has a direct interest in the CABx as they are part of the Citizens Advice Service network. More broadly, if this model were to be adopted and followed, questions remain as to what type of regulation and routes for redress could be adopted for other ‘special bodies’ in future outside the CAS.

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<sup>38</sup> Special bodies are non-commercial organisations owned by non-lawyers and permitted to conduct reserved legal activities; they include not-for-profit bodies, community interest companies and some trade unions.

<sup>39</sup> *Understanding the supply of legal services by ‘special bodies’*, a report for the Legal Services Board by Frontier Economics (2011).

<sup>40</sup> *ibid*

## **4.2 Recommendations**

### **Review of redress in legal services**

- The existing framework for redress in legal services contains gaps and anomalies which raise serious concerns about whether it is fit for purpose, particularly in light of the developments that are taking place in this market. The LSB and the Ministry of Justice should conduct a review of the redress framework, and consult on possible options to ensure that future redress arrangements are sufficiently comprehensive, streamlined and robust to meet consumers' needs.

### **Recording of complaints and contacts**

- There needs to be systematic recording by the Legal Ombudsman of complaints that it is unable to handle. There need to be clear records on what sort of body is being complained about and where the complainant has been signposted to. If it turns out that there are areas of significant confusion, the Legal Ombudsman should explore the possibility of direct transfer of complainants to the relevant body.

### **Will writing**

- There seems to be a consensus forming within the stakeholders in this area that will writing should become a reserved legal activity and subject to regulation. The Scottish experience in regulating will writing is instructive. The initial consultation paper was published in December 2009, the Legal Services (Scotland) Act 2010 received Royal Assent in November 2010 but it is estimated that the new regulatory arrangements for will writers will not be in place until some time in 2012. It therefore appears that the Scottish process will have taken three years to put a regulatory system in place. Given the preliminary nature of discussion in England on this topic at present, it is likely to take some time to produce a regulatory scheme for will writing.

We would recommend, therefore, that the Legal Ombudsman pursue the possibility of creating a voluntary jurisdiction for complaints about will writers who are not authorised persons under s. 164 of the Legal Services Act.

### **Claims management**

- This is an area which requires further consideration and research. It is clear from our interviews that the Ministry of Justice sees handling complaints about CMCs as an integral part of its approach to their regulation. S 161 of the Legal Services Act envisages that claims management could be brought within the Legal Ombudsman's jurisdiction.

It is anomalous that the Ministry of Justice powers in relation to complaints are more limited than the Legal Ombudsman's, in particular with regard to compensation and this is likely to give rise to consumer detriment. The Ministry of Justice may wish to explore and consult on this issue as a matter of urgency, particularly given the rise in the numbers of complaints.

## **Not-for-profit sector**

- With regard to the non-for-profit sector or, as the Legal Services Act puts it, “special bodies”, this is an anomaly, insofar as the regulatory arrangements are concerned. There is no immediate prospect of dealing with the regulatory issues which the LSB is only beginning to address. CA, for one, recognises that there is a need for some form of independent adjudication for dissatisfied clients.

We would also recommend that the Legal Ombudsman have discussions with the not-for-profit sector and the Ministry of Justice over the possibility of creating some form of voluntary jurisdiction for complaints regarding legal services provided by this sector.

## **Consumer information**

- It is crucial that consumers have easy access to clear and comprehensible information about their rights to redress in legal services and what routes are available, including the various factors that determine whether and how they can pursue redress. The Ombudsman community should consider producing fact sheets which explain how consumers can pursue unresolved complaints, including both complaints that potentially fall within their remit and those that are outside their jurisdiction.

These should be published on its website and also made available to CABx and other advice agencies, as well as made available in different formats and languages.

## **Third party complaints**

- Given that this seems to represent a gap in redress arrangements, when compared to the position in Scotland, we think that the Legal Ombudsman could usefully re-visit this issue.

## Appendix A – A Hypothetical Scenario

### Generic scenario:

#### When things go wrong in all kinds of ways

Mrs A is married with two school age children, and works full-time. She discovers that Mr A has been having an affair with their next door neighbour. After some intense discussions, they decide that it would be best to divorce amicably, sell the house and split the proceeds.

**Moving home:** Mr and Mrs A agree to put their house up for sale. Mrs A finds a nice house for herself and the children which is near their current school. She goes to a local branch of her bank to arrange a mortgage and, as part of the mortgage arrangement, they ask her to use a solicitor from their recommended panel. She chooses C, a local firm. Although the purchase is agreed, C do not carry out the necessary searches quickly enough and the vendor decides to sell the house to another person. Because the matrimonial home has been sold, Mrs A and her children have to move into rented accommodation. When she complains to C, they say, “This is just a risk in the current market conditions.” She complains to the bank, who say that they are sorry but there is nothing that they can do about this. She takes her complaint to the Financial Ombudsman Service (FOS) who say that this is really a complaint about legal, not financial services and that they cannot deal with it and she should go to the Legal Ombudsman. She takes her complaint to the Legal Ombudsman, who initially respond by saying that this is a complaint against the bank. When she explains the circumstances, the Legal Ombudsman advise her to complain to the solicitor, C. She says that she has already done this, but was not told about the Legal Ombudsman. The Legal Ombudsman then investigate, find in her favour and award compensation.

**Sorting out a new will:** Mrs A decides that she needs to write a new will and approaches B, an independent online will writer. When it arrives, she finds that there are numerous errors in it and writes to B to ask that these are corrected. After some significant delay, and some follow up phone calls by Mrs A, B refuses to alter the will unless Mrs A pays him more money. Because Mrs A feels that a will is a legal document, she rings the Legal Ombudsman for advice. The Legal Ombudsman says that because he is an unregistered will writer she should contact either the Society of Will Writers (SWW) or the Institute of Professional Will Writers (IPWW). She contacts the IPWW, who tell her that B is not one of their members and that she should contact the SWW. At this point, she gives up and purchases a will writing kit from W H Smith.

**Employment problems:** Mrs A receives an unsolicited phone call from Super-Law, a claims management company (CMC), who say that they can get her compensation if she has been mis-sold Payment Protection Insurance (PPI). When she rings them up to discuss this, she mentions that the money would be very helpful as she is just about to be made redundant and she thinks that her selection for redundancy has been conducted unfairly. The person on the phone says that they can help with this as well and he will pass her details onto their “legal expert”. She pays an up-front fee for both services and then does not hear anything for some time.

When she rings Super-Law, she is told that neither of her claims have any merit but, as they have done work on the issue, they are going to keep the fee. Because of the name of the CMC, she rings the Legal Ombudsman, who tell her that, since this is a CMC, she should complain to the Ministry of Justice (MOJ). She rings the MOJ, who ask her to send in details of the problem. After five days the MOJ reply, saying that they can deal with the PPI issue, but not the employment issue, as Super-Law sold the information to Xanadu, a firm of employment solicitors. Mrs A writes to Xanadu who reply, after eight weeks, saying that they knew from the outset that her claim had no merit and told Super-Law this. It was not their fault that Super-Law did not tell her in a timely fashion. They do not mention that she can complain to the Legal Ombudsman and she does not take her complaint further. The MOJ then write to Mrs A, six weeks after having received the complaint, saying that, despite discussions with Super-law, they have not been able to agree a resolution, so the case should be formally referred to the Regulator for a review. Her complaint is ultimately upheld by the MOJ, who direct Super-Law to return her fee, but by this time Super-Law has gone out of business. Mrs A can't get her money back.

**Getting divorced:** Mr and Mrs A download a divorce petition from the internet, fill it in and send it off. This is returned by the county court stating that the petition is defective. Mr and Mrs A log onto the provider's website but are unable to find any means to register a complaint without paying a further fee. They complain to the Legal Ombudsman, who look at the matter but say there is nothing that they can do, as this was not a service provided by an authorised person.

**Getting help with money:** Because Mrs A has lost her job, she finds it difficult to keep up with paying bills, especially as her ex-husband is very slow with maintenance payments. Her energy supplier is chasing her for fuel arrears, and making ends meet is becoming increasingly difficult. She is also becoming increasingly worried about her elderly mother whose health is deteriorating. Mrs A decides to visit her local Citizens Advice Bureau (CAB) to find out what help she might be entitled to. However, she forgets to mention that she is also being chased for overpayments of tax credits received when she was working and on low wages. She doesn't know where the paperwork is about this and isn't sure what happened when.

As a result of all the stress, she keeps forgetting to bring along paperwork which the CAB needs to help her with the various problems. In the end, she complains that the CAB worker did not give her proper advice. The CAB manager looks into the complaint but decides to escalate it to head office as it is not clear that the worker was at fault due to the complicated nature of the issues and the absence of crucial information from Mrs A. The complaint is not upheld and Mrs A is told that she can still go to an independent adjudicator. She does not want to do this as a friend has told her about the Legal Ombudsman but, when she rings the Legal Ombudsman, she is told that the Ombudsman cannot deal with the complaint as the advice worker was not a solicitor.



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