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# Overview of annual complaints data 2020/21

## Introduction

*Paul McFadden, Chief Ombudsman*

Welcome to the Annual Review of complaints for 2020/21.

Sharing learning and insight from consumer complaints is a vital part of the work of an ombudsman scheme. Investigating complaints and providing redress for legal consumers is, of course, the key and primary role of the Legal Ombudsman and one that contributes to wider confidence in the legal services sector. However, to truly deliver that confidence and drive improvement across the legal profession, a learning culture is essential. There needs to be a clear sense that providers learn from and respond to mistakes. Our part in this is providing the learning and insight from the thousands of complaints we investigate and resolve to support the sector in understanding the areas where customer service needs to improve and where they can do more to resolve complaints themselves.

The Legal Ombudsman already provides a range of training events – these have successfully taken place online for the last year and there will most likely be a mixture of online and in person events for the foreseeable future. Last year we began trialling opportunities for more tailored support to service providers, through small workshops where there was an opportunity to have focused conversations about how areas like complaints procedures and responses could be improved. Please get in touch if you think this is something you could benefit from.

Each year the Legal Ombudsman publishes a range of data and information about all the complaints we investigate, which is also available on our [website](#). The aim of this review is to share the data from the complaints that have been investigated by the Legal Ombudsman during April 2020 to March 2021, highlight the learning that the sector and providers can take from this data and the difference that the ombudsman service makes.

In 2019/20 we reported a number of key themes that were apparent from the complaints data. A review of the 2020/21 data shows that the same issues are still occurring and, indeed, have been consistent for some time. The complaint types have remained consistent, with delay and failure to advise being the top causes of complaint, followed by poor communication, costs and a failure to follow instructions. As have the amount of cases that require an ombudsman decision and the number of cases where we find unreasonable service.

It is clear that there is an underlying core of dissatisfaction with legal service provision, expressed through the complaints system, that is not changing or being sufficiently addressed. As Legal Ombudsman an important part of our role is to identify these issues and help inform sector improvement and help prevent complaints happening in the first instance.

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In this report there is also a focus on how to improve first-tier complaint handling, our casework and the issues we investigate, and the impact this has on complainants and how we determine reasonable service.

One of the commitments in our business plan is to be transparent and accountable about the work of the ombudsman scheme. It would be remiss if I didn't mention here that we also have improvements to make to improve our own customer experiences for both the profession and complainants. Our current wait-times to start an investigation are not where we want them to be and our commitment to increasing performance and productivity to reduce the backlog has been our main focus for the last few months and will continue to be until we see some stabilisation.

We have implemented new and innovative ways of working to help us resolve complaints better and earlier identify where complaints can be resolved at an earlier stage, we are also working on scoping our cases more efficiently so investigations can progress more quickly when they start. We have introduced Robotic Processing Automation for complaints made online to free up staff time at the start of the process and we are well underway with plans to recruit more staff over the next few months.

Our insight and feedback work has been sharpened to areas which will have the most impact in preventing and reducing complaints and this report is a key part of this transparency and sharing the impact of the work that is undertaken by our investigators and ombudsman.

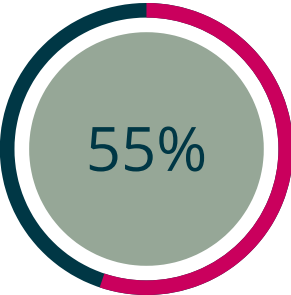
As Chief Ombudsman I am committed to taking forward this area of the ombudsman's work and hope to continue to develop collaborative working relationships across the sector.

# Data highlights - 2020/21

In 2020/21 we accepted **4,573** new cases and concluded **4,702**

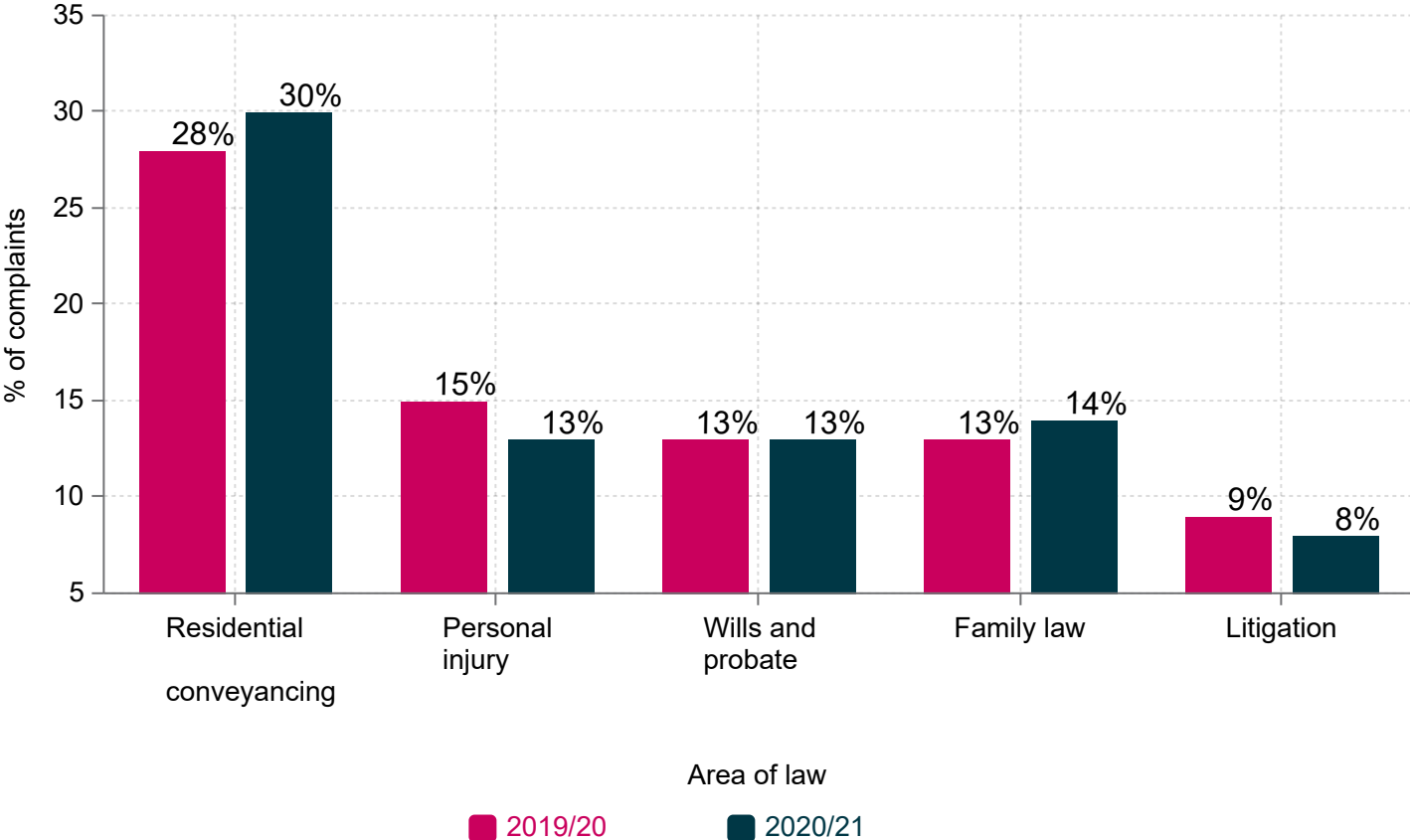
*(In 2019/20 we accepted 6,425 and resolved 6,342. The significant difference between years 2019/20 and 2020/21 can be attributed to the Covid-19 pandemic.)*

## Was the service unreasonable?



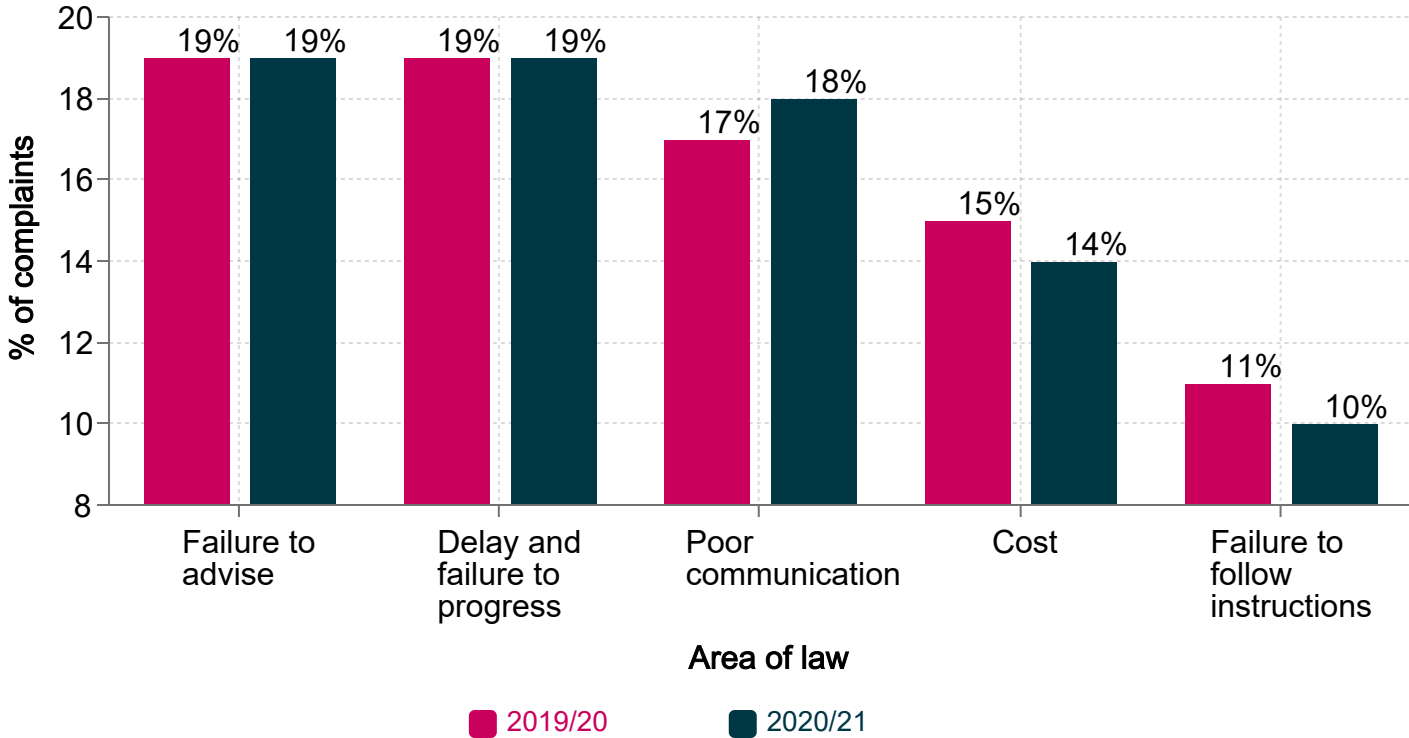
Our ombudsmen found evidence of poor service in 55% of complaints. *A slight increase from last year which was 51%.*

## What areas of law attracted the most complaints?



# Data highlights - 2020/21

## What did people complain about?

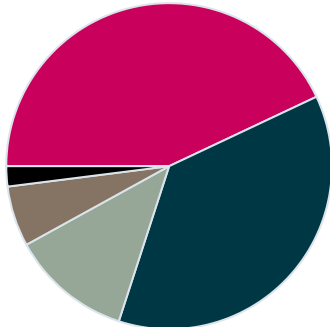


## How did we resolve cases?



- Agreed outcome 41%
- Ombudsman final decision 36%
- Other 23%

## How did we put things right?



- No remedy 43%
- Compensation 37%
- Fee related remedy 12%
- Putting right and taking action 6%
- Non financial remedy 2%

## What can service providers do to improve their customer service?

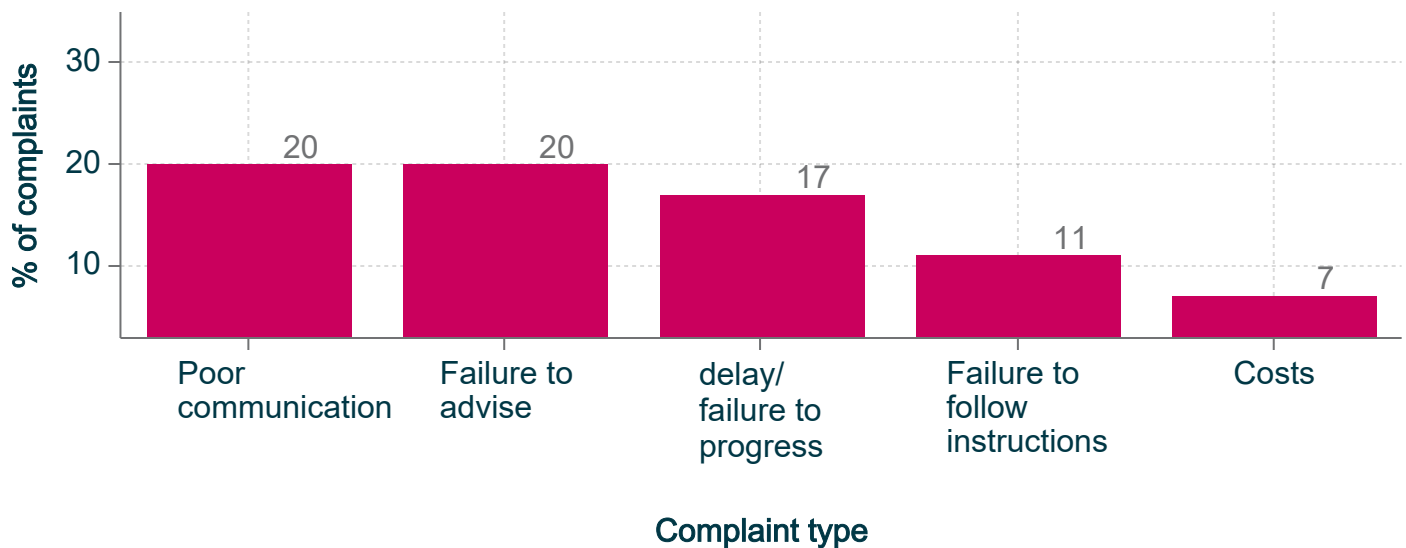
Below we take a brief look at the top areas of law we receive complaints about and the main areas where service providers can make improvements to avoid complaints arising.

### Residential conveyancing

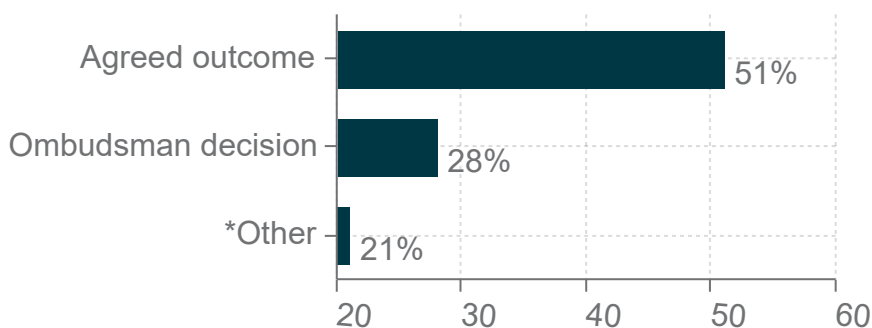


In 2020/21 **30%** of complaints made were in relation to residential conveyancing. From the cases that had an ombudsman decision made, **65%** showed evidence of poor service.

#### Upheld complaints



#### How did we resolve cases?



\*Other refers to various other reasons why a complaint may be resolved, including but not limited to: complainant unable to proceed, complaint resolved without investigation, withdrawn, general guidance given, contacted in error, dismissed, out of jurisdiction or premature.

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## Residential conveyancing

### Tailoring your service could lead to far fewer complaints.

The process of purchasing a property can be unfamiliar to most people. A first-time buyer may require more updates than a more experienced purchaser and managing expectations early on and talking to your customer about their needs could alleviate a lot of the complaints we see.

Agree a level of service (code of conduct) setting out:

- what customers can expect from your service
- the process you will follow
- how often they can expect to hear from you

Record any conversations and agreements. It is a useful reference and if a complaint does arise, it is evidence of what was agreed.

When it comes to costs, we understand that providers can't see into the future, but we do expect you to give a broad overview of what a straightforward transaction looks like as well as possible costs associated to more complex issues. If something out of the ordinary happens, notify the customer as soon as possible.

It is also important to ensure there is proper supervision for any out of the ordinary things that may come to light. It is not enough to put the onus on the customer to ask questions, the responsibility is on the service provider to bring anything that may impact the use of the property to the customers attention. If these tasks are delegated, ensure there is appropriate supervision.

Service providers also need to make sure they are up to date on any issues that may impact multiple purchases. Examples of this would be doubling ground rent, the recent issues regarding cladding of buildings and the General Bidding Rules 2020 which affected septic tank owners. We expect advice given to be reasonable at the time it was given, service providers are responsible for ensuring they are up to date on any changes in law.



## **Case study**

Mr J instructed the firm to act for him in the purchase of a house and all seemed to go smoothly, and the purchase completed.

Mr J was employed as an accountant at the time but had a hobby of making wooden garden furniture. Not long after the purchase Mr J started exploring the option of turning his hobby into a full-time business. Mr J wanted to convert his garage to a workshop and open it to members of the public to buy garden furniture from.

When Mr J confided in one of his friends about his idea, it became apparent that there were a number of restrictive covenants which were set out in the Land Registry title document for his house. One of the covenants said that the house was not be used “for the operation of any type of manufacturing business providing goods to the public for commercial gain”.

Mr J wrote to the firm to ask what the covenant meant, and they confirmed that he wouldn't be able to open a garden furniture manufacturing business from his garage. Mr J complained to the firm, saying that they hadn't told him anything about restrictive covenants when he purchased the house.

### **Was the service reasonable?**

The firm provided a copy of the 'Report on Title' which they sent to Mr J, just before he instructed them to exchange contracts on the purchase. Under the heading, legal title, the firm's report said:

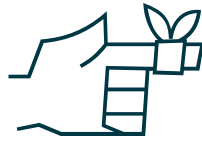
“Attached is a copy of the Land Registry title. All would appear to be in order. However, we would recommend that you read the attached papers and let us know if you have any questions or concerns.”

The firm say that if Mr J had read the papers then he would have seen the restrictive covenant and therefore they can't be held responsible for the fact that Mr J didn't read it.

### **How was the situation resolved?**

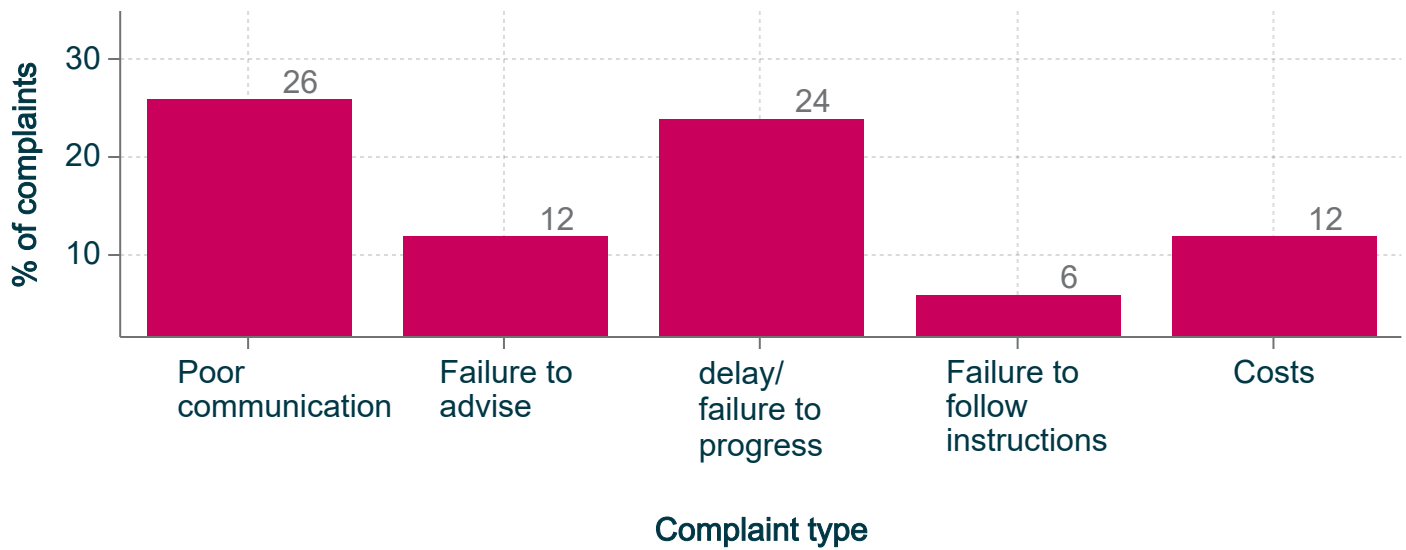
It was decided that the firm's service was poor because they failed to highlight the restrictive covenants to Mr J and to explain to him how significant a restrictive covenant is. Although the firm sent Mr J the Land registry Title, the onus was on them to point out anything that may impact the use of the property. The firm's role was to make sure that Mr J made a fully informed decision to purchase the property. A remedy of £250 was directed in acknowledgement.

## Personal injury

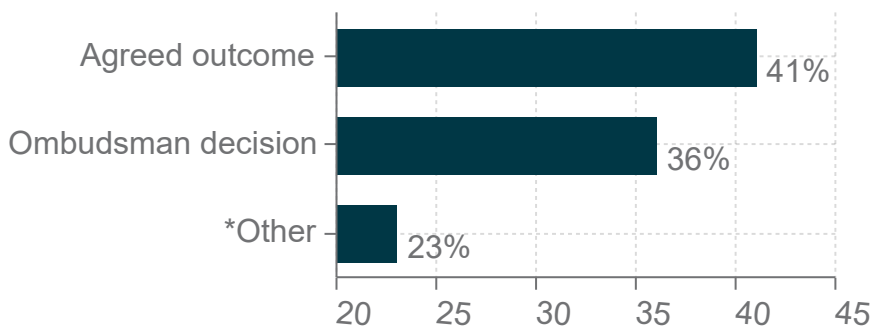


In 2020/21 **13%** of complaints made were in relation to personal injury. From the cases that had an ombudsman decision made, **53%** showed evidence of poor service.

### Upheld complaints



### How did we resolve cases?



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## Personal injury

### **Check your customer understands and follow up in writing!**

We see a lot of complaints from claimants in personal injury and a big driver of these complaints are when expectations haven't been met, whether it be a change in the merits of a case, the prospects of success, progression to court or a dissatisfaction with the settlement received. All of these can drive complaints around service.

To avoid these complaints, service providers should clearly explain what to expect during each part of the process.

Appreciating that funding can be complex to explain in simple terms, a lot of complaints arise when these are communicated poorly. When funding is well explained and evidenced by an attendance note or call log and followed up in writing, we are unlikely to find poor service.

It is also important to clearly explain how you assess the merits of a case and how this can change as the claim progresses. Record any conversation around this in an attendance note and follow it up in writing to refer back to.

Another key area we see complaints in is customers not feeling prepared for court proceedings. This can be an extremely daunting process for customers and service providers should ensure their customer understands what is about to happen and how things will progress during court proceedings.

From the customer's perspective, there can be long periods of inactivity in personal injury cases, and whilst things may still be progressing, a customer will only be aware of this if you have explained to them and responded to any queries in a timely manner. Refer to your service level agreement and update customers in line with what is outlined.

Final bills should not come as a surprise to a customer, any cost increases should be explained as soon as possible so that customers can make informed decisions along the way.

## **Case study**

Mr A was involved in a road traffic accident and instructed the firm to represent him in making a claim against the other driver, which they agreed to do on the basis of a 'no win no fee' agreement.

The firm progressed the claim but as they obtained information relating to the accident it became clear that the claim did not enjoy reasonable prospects of success and the firm informed Mr A two years after first instruction that they were no longer able to represent him.

Mr A complained that the firm had not obtained sufficient evidence to progress his claim, and that they had failed to keep him updated as to how the claim was progressing, so it was a huge shock to him to be told that the firm were withdrawing from the claim two years on.

### **Was the service reasonable?**

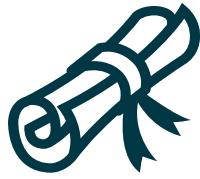
When we investigated the complaint, we found that there were long periods during which the firm had not contacted Mr A to update him. Mr A's case handler had changed several times during the period that the firm had represented Mr A but there was no evidence that Mr A was ever told until he chased the firm for an update. Also, he was not informed about the evidence that the firm had obtained that changed their view on the prospects of the claim, nor was it explained to him what relevance that evidence had to the claim. We therefore determined that the firm had provided poor service in this respect.

We did not however agree with Mr A that the firm had acted unreasonably in their decision to end their involvement as the evidence provided by the third party had changed their view. The issue was that the communication was poor and Mr A's expectations had not been reasonably managed.

### **How was the situation resolved?**

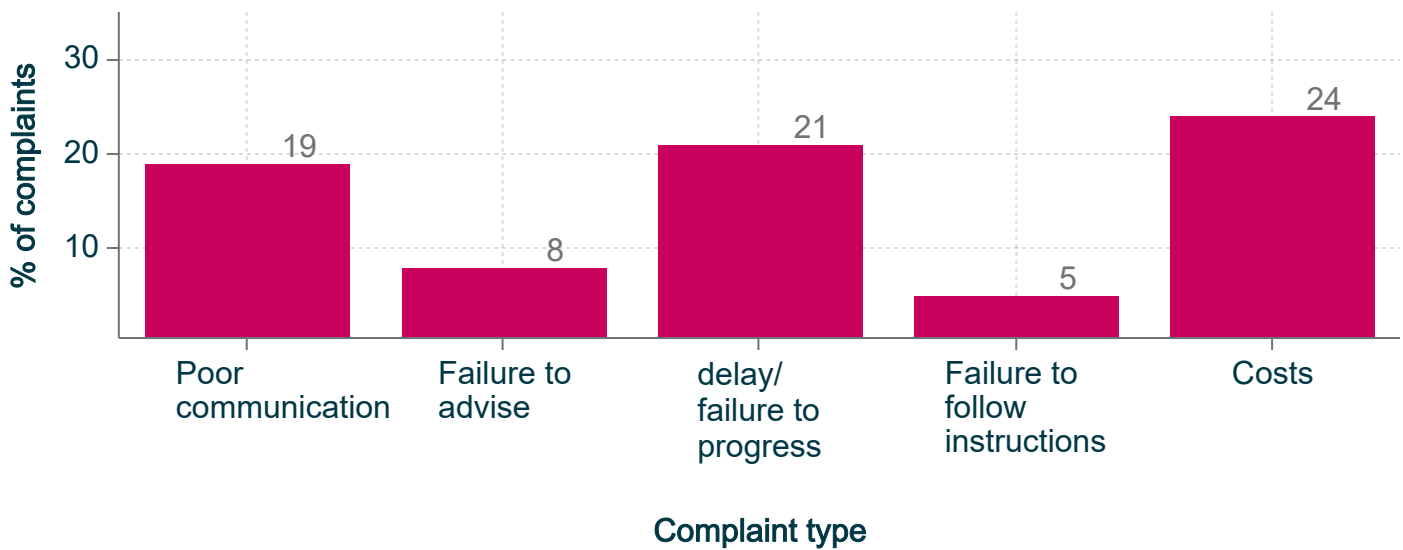
Therefore, although we did not determine that the firm's poor service had affected the claim in any way, we did find that the firm had caused Mr A to suffer frustration and upset which was avoidable, and our decision was to direct the firm to pay Mr A the sum of £250 in compensation.

## Wills and probate

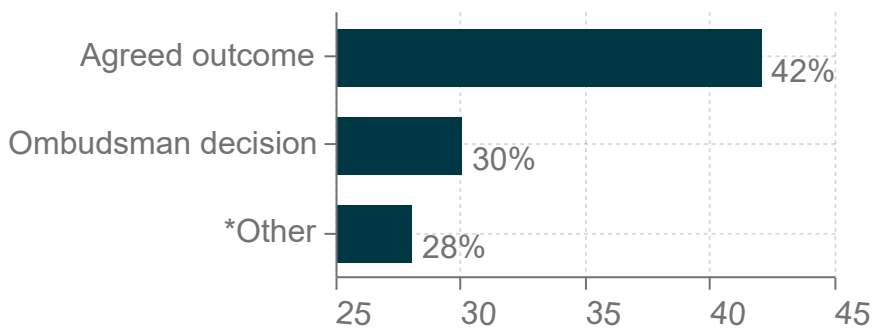


In 2020/21 **13%** of complaints made were in relation to wills and probate. From the cases that had an ombudsman decision made, **61%** showed evidence of poor service.

### Upheld complaints



### How did we resolve cases?



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## Wills and probate

### Consider the residuary beneficiaries!

Probate complaints are different to other categories of complaint we receive because complaints can be raised by beneficiaries of the estate who are not clients of the service provider. When we investigate these complaints, we will carefully consider who the complaint is from and the appropriate standard of service. Remedies are also viewed slightly differently as we are usually aiming to put the estate back in the position it would have been, rather than the individual beneficiary.

Delays are not uncommon during the administration of an estate. This is because there may be a challenge to the will, or there could be assets based abroad which take time to value, or sometimes there can be a delay by the court sending the grant of probate. These things can't always be helped but service providers need to keep their clients informed of any changes to timeframes. Too often we find that service providers are not updating the residuary beneficiaries of important changes in timeframes, even if the update is that there won't be any communication for a period while the case progresses. Let the customer know that everything is in hand.

Costs is another area where service providers sometimes fail to adequately update the parties. Costs can unexpectedly increase for several reasons, even in a straightforward probate case. For example, if there is a challenge to the estate and a third party isn't responding, this may mean that the service provider sends several chasers which can increase the costs. It is important that residuary beneficiaries are notified of increased costs as soon as possible so the final bill doesn't come as a surprise.

Probate cases can be very upsetting for consumers. They may have lost a loved one and, in the case of a lay executor, it may be the first time they have had to instruct a lawyer, so communication is key. If things occur out of the service providers control, such as delays or a cost increase, if this is communicated promptly with the beneficiaries then we are unlikely to find poor service.

## Case study

Mrs B's mother sadly passed away in 2017. Her will appointed two partners of a solicitors firm as executors of her estate. Mrs B was the residuary beneficiary of the estate.

The firm explained in their client care letter that they believed to administer the estate they would charge around £5,000 plus VAT, but later realised the administration would be more complicated than they anticipated and increased the estimate to £8,000 plus VAT.

When the firm sent Mrs B the draft estate accounts when the administration neared conclusion their costs were £12,000 plus VAT and they also charged a value element on the gross value of the estate of £3,000 plus VAT.

Mrs B was unhappy with the firm's charges as they were nearly double what she expected and she brought a complaint to this office.

### **Was the service reasonable?**

Following an investigation this office found as the firm had exceeded their upper estimate of £8,000 plus VAT, and not provided any information to Mrs B to indicate they would do so.

### **How was the issue resolved?**

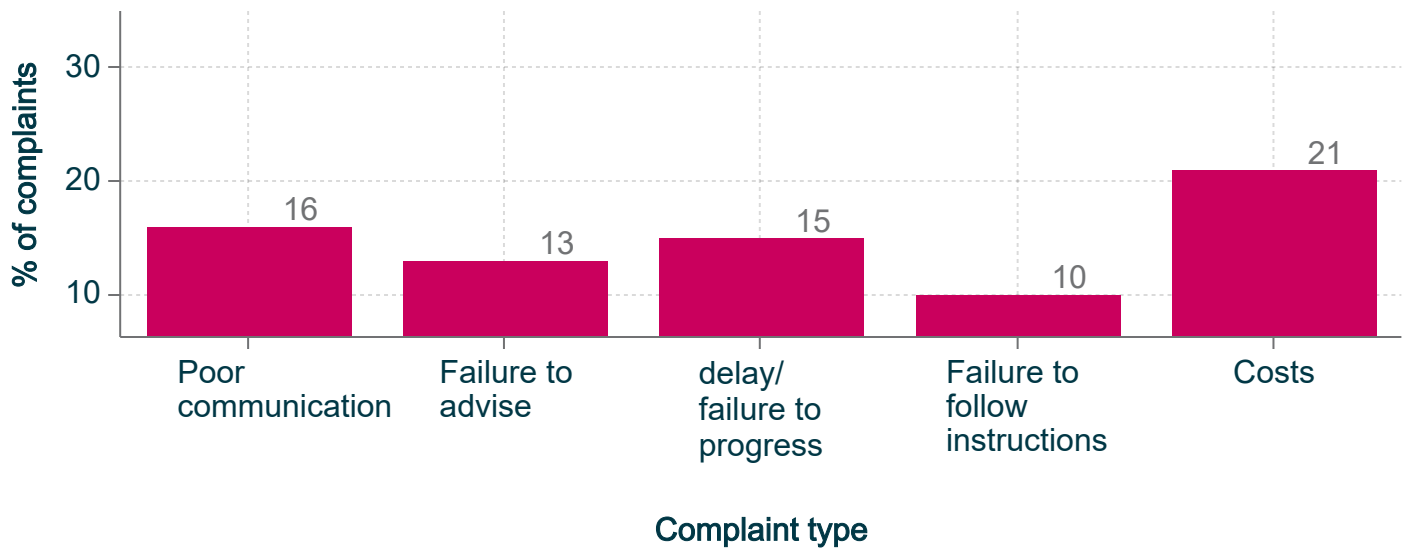
The firm were instructed to reduce their costs from £12,000 plus VAT to £8,000 plus VAT. In addition to this, as the firm had failed to tell Mrs B they would charge a value element we directed the firm not to charge the £3,000 plus VAT value element.

## Family law

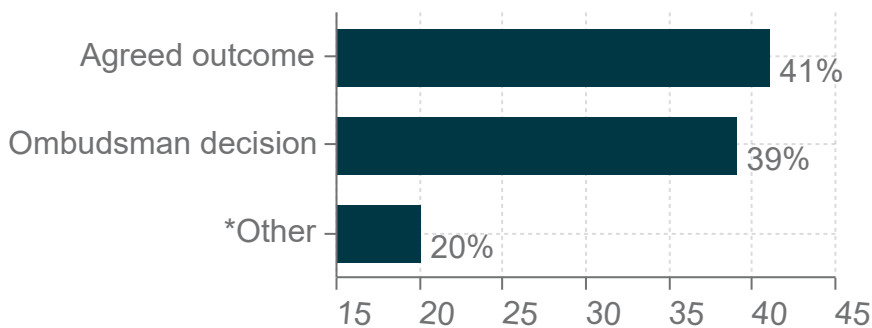


In 2020/21 **14%** of complaints made were in relation to family law. From the cases that had an ombudsman decision made, **51%** showed evidence of poor service.

### Upheld complaints



### How did we resolve cases?





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## Family law

### **Don't add to the stress, manage expectations!**

A lot of service providers give reasonable costs information at the outset. The issues we see are usually around the unexpected and unpredictable areas of work and the downfall is usually around not communicating this properly or in a timely manner to the customer. Costs can increase for valid reasons and service providers need to get better at updating their costs information throughout the transaction and not just at the start of the process. If costs spiral out of control and the customer is not aware, this can add to an already upsetting time.

Placing importance on the customer service side can alleviate a lot of concerns for a customer who may already be facing a stressful and daunting situation. In simple terms explain what the process will look like, explain what is and is not included in the price, what you will and won't do. Provide a clear cost benefit analysis and manage expectations around extra charges.

Record advice given, particularly when advising on settlement, if a client is unhappy with the outcome or had different expectations, this can be a useful reference point. It is important to ensure the customer understands the advice given and that you advise at appropriate points based on what the customer is telling you. If you get an indication that a customer is struggling financially then ask if they want advice on interim maintenance or payment plans and the cost implications of this.

This is likely to be one and only time a customer goes through this process, the more you can do at the start of the process to manage expectations, the less likely a complaint will arise.

## **Case study**

Mr Y instructed the firm in respect of his divorce and financial matters. He complained that the firm failed to follow his instructions in respect of issuing the divorce petition, that the firm failed to keep him informed and act in a timely fashion, that the firm failed to respond to his correspondence and that the firm's costs were excessive.

### **Was the service reasonable?**

Following an investigation, it became clear that there were some avoidable delays at the beginning of the process, when the firm could have filed a petition, and did not respond within a reasonable timeframe to the other side's questions about the same. This led to the other side deciding to proceed and file, which caused concern for Mr Y. The evidence also showed that there were various occasions where the firm were unreasonably slow in responding to substantive points raised by Mr Y. This led to Mr Y needing to chase the firm, and being frustrated that he felt his matter was not reasonably being progressed.

Turning to the costs issues, the evidence shows that the firm exceeded their estimate by over £1,000 without informing Mr Y of the same. The evidence also showed that the firm's costs information in respect of how time spent by other members of staff would be charged. Both of these aspects of the firm's service fell below a reasonable level.

### **How was the issue resolved?**

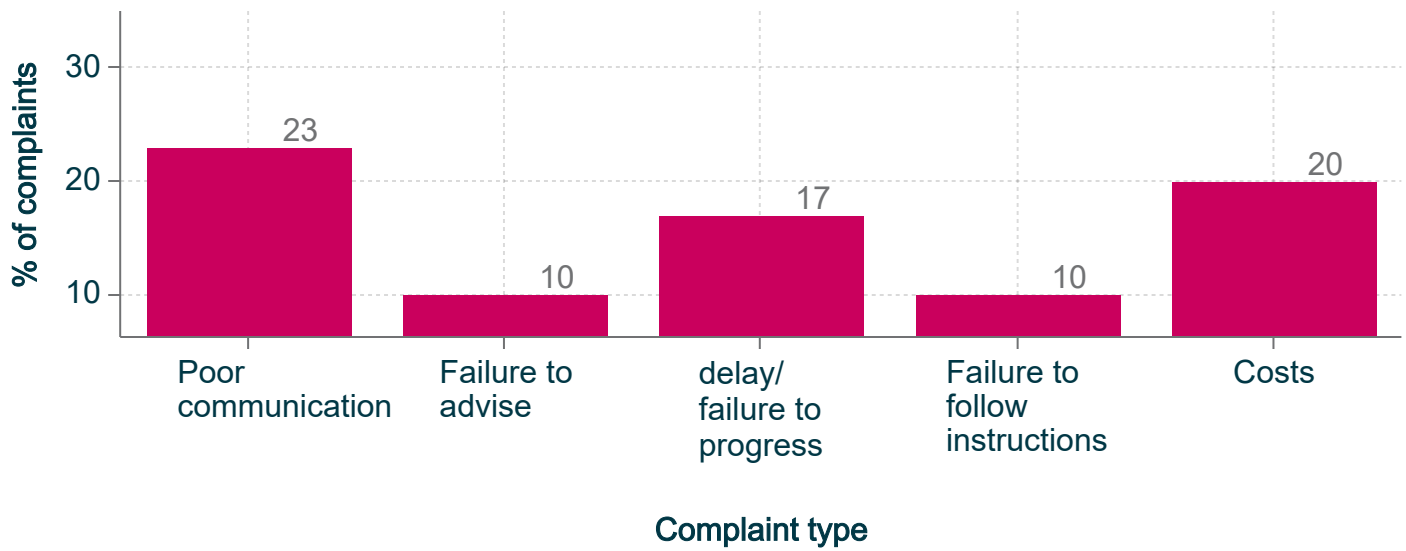
The firm accepted at first tier that there had been some service issues and had offered to reduce their outstanding invoice by the amount the estimate was exceeded therefore no further costs reduction was applied, however failing to respond to Mr Y and causing delays at the outset of the matter meant that Mr Y was caused avoidable upset and distress by the firm's service failings and so the firm were directed to pay Mr Y an additional £400 as a result of the impact on him of their service failings.

## Litigation

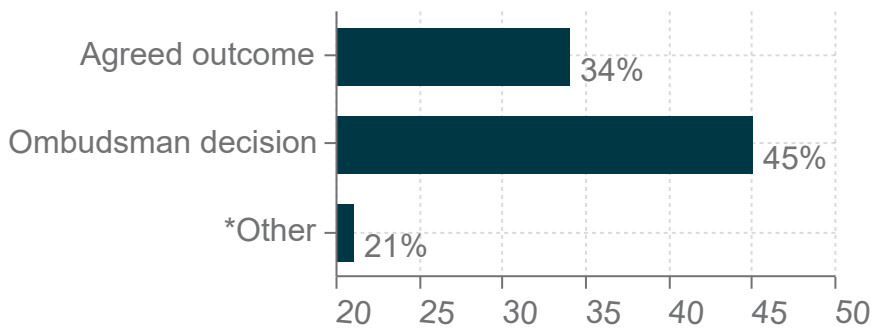


In 2020/21 **8%** of complaints made were in relation to litigation. From the cases that had an ombudsman decision made, **62%** showed evidence of poor service.

## Upheld complaints



## How did we resolve cases?



## Litigation

### **Provide better costs information!**

It can be difficult to provide an accurate estimate at the outset of a litigation matter due to the very nature of taking or defending legal action and the drivers behind this. A claim may resolve during mediation early on or it may go all the way to court if an agreement can't be reached. Costs can quickly build up once barristers are instructed, court documents are being prepared, and a few hundred pounds can quickly increase to a few thousand.

Therefore, it is important that service providers give staged estimates so that customers can make informed decisions throughout the process. As well as the estimates, it is essential to keep customers informed through regular billing. This avoids the final bill coming as a surprise.

Another key step is the cost benefit analysis so that the customer can make an informed decision about whether a claim is worth the likely costs associated.

Better communication would alleviate a lot of the cost complaints we see.

### **Case study**

A complainant was sued by a provider of a service for breach of contract. The firm were instructed both to defend the claim and to issue a counterclaim against the provider.

The firm incurred significant costs in dealing with the claim and counterclaim and part of the complaint raised was that the firm's costs information had been poor, that they had failed to provide costs estimates for dealing with the matter and they had failed to comply with an agreed cap on costs of £5,000, with their costs reaching £17,500.

#### **Was the service reasonable?**

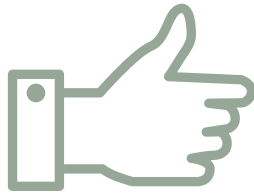
The firm relied on the fact that it is difficult to estimate costs in litigation matters due to the unpredictability of proceedings, as in it is difficult to guess how and when in the process the matter will settle, and that they provided estimates in costs budgets provided to the court as part of the litigation process as the court required details of the costs incurred in circumstances where they may direct the other side to pay those costs.

When we investigated, it was clear that the firm had failed to provide their Terms of Business to the customer and failed to respond to enquiries about their costs in a timely manner which was poor service.

#### **How was the issue resolved?**

The customer wanted a full refund of fees, however it was decided that as the firm had completed work that was of benefit to the customer, instead the firm were instructed to pay a sum of £400 to recognise the detriment caused.

## Are service providers handling complaints well?



Tier 1 complaints handling was **adequate** in 76% of cases we investigated



Tier 1 complaints handling was **inadequate** in 24% of cases we investigated

In nearly a quarter of the complaints investigated in 2020/21 we decided that the first-tier complaint handling (the initial response to the complaint from the service provider) was not satisfactory. This trend has been consistent for the last few years.

In [last year's report](#), we outlined some common issues found in complaint responses which are likely to create barriers to resolving issues in the initial stages:

- Not taking the time to fully understand the complaint
- Too much narrative and not enough analysis
- Making promises and not keeping them
- Use of language (jargon and legalistic language can create barriers)
- Taking complaints personally
- Not being willing to admit when things have gone wrong
- Not signposting consumers to the Legal Ombudsman

A recent check of our data indicated that, where signposting information is provided by the consumer, only 50% recollect this information being provided by their service provider, despite it being a regulatory requirement. This [signposting](#) guidance provides more information on correcting this.

Aside from the issues outlined above (which can create a barrier to resolving issues), the most common reasons for finding inadequate tier one handling are: not responding to a complaint within the eight week time-limit, not addressing all of the complaints or simply not responding at all. A recent dip sample of a handful of cases showed that the complaint handling was inadequate simply because no response was issued. Whilst we appreciate that service providers deal with a lot of files, if you fail to identify and respond to complaints you have lost the chance to resolve it without the Legal Ombudsman's involvement. It also means that you lose the chance for a case fee to be waived because you will have failed part of the [test](#).

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Over the last year we have had the opportunity to spend some time with service providers on a 1:1 basis and identified some common themes which are creating barriers to resolving first tier complaints.

Our experience shows that having transparent, accessible, and clear complaint procedures and processes in place will help to meet both your regulatory requirements and increase customer confidence in your service. It shows you are committed to providing a good level of service and you are ready if/when a complaint is made. This is not insignificant when you consider that the [2021 Legal Services Consumer Panel tracker Survey](#) shows that reputation is still a key factor in how consumers are choosing legal services at 80%.

Our [Best Practice Complaint Handling Guide](#) will help you to improve your internal complaints process, prevent complaints coming to the Legal Ombudsman or ensure that your decisions are in line with any the ombudsman would recommend.

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## What difference has the Legal Ombudsman made?

This section includes a range of case studies from our work over the last year. These case studies show the impact poor service can have on complainants as well as highlighting why the service was not reasonable.

Communication is a key thread that runs along almost all the complaints we see, whether it is poorly communicated costs, poorly communicated advice or a lack of updates. Improving communication with your customer could have a big impact on the amount of complaints you receive. Introducing a simple change in procedure, for example providing key updates to your customer could minimise complaints.

## Acknowledging the impact of distress and inconvenience

Although it is impossible to undo the emotional effects caused by poor service, a compensation payment can help to acknowledge the impact of poor service and the added worry, upset, stress or general inconvenience it has caused.

We aim to recognise the impact and frustration that poor service can have on a person. This means that compensation is specific to the individual and their characteristics. What may be upsetting and distressing to one individual may be less so for someone else.

Our approach to putting things right guide shows what we consider when determining compensation and whilst we can, and do, award over £1,000 in exceptional circumstances, usually awards are much lower.

### Case study - Frustrated by lack of updates

Mr G instructed a service provider when he was purchasing a new build property. He complained that he was always having to chase the service provider for updates.

#### **Was the service reasonable?**

The evidence showed that the transaction completed without delay, however, there was a lack of client care. Mr G was not kept up to date about what was happening on the file and as a result, made numerous calls to find out what was happening.

Out of ten calls that Mr G made to the service provider, only one was returned. In addition to this several emails from Mr G went unanswered.

#### **How was the situation resolved?**

In this case the work that the service provider did on the conveyancing transaction was reasonable.

However, Mr G did not know what was happening and it was clear from the evidence we reviewed that this caused him considerable stress and worry. He had a perception that the service provider was not doing anything to move things forward because they did not answer his correspondence. This was unreasonable.

An award of £200 was directed to acknowledge the upset and frustration caused.

*Without our intervention the complainant would not have had any acknowledgement of the impact of the poor client care on them.*



## Case study - The impact of a two-year delay and lack of action

Mr A instructed his service provider to assist with the sale of a plot of land to a developer, this included supporting the removal of a covenant from the land. Planning permission attached to the land the buyer intended to purchase from Mr A expired on 18 July 2015. The sale of the land fell through and the covenant was never removed.

Mr A complained that the sale fell through because of delays caused by the service provider and he received inconsistent information about the covenant, and a failure to advise him on the best course of action. Mr A never received an invoice for the work and the service provider did not respond to his complaint.

### **Was the service reasonable?**

The service and the complaint handling was not reasonable in this case and the evidence supported Mr A's complaint. The service provider gave inconsistent advice around the covenant, failed to adequately keep Mr A informed of progress during a two-year period and failed to proactively progress the case. Even though Mr A had asked for other options to progress the sale, they did not advise him. They also failed to respond to Mr A's complaint.

### **How was the situation resolved?**

We could not compensate Mr A for the loss of the sale as he had hoped, as he still had the land as an asset and could sell it in the future.

In this sort of case we would often instruct a refund or waiver of fees. However, in this case as no invoice had been raised, they couldn't do this.

Instead the ombudsman concluded that no charges should be made for any of the work undertaken and that the service provider should compensate Mr A with £400 for the frustration and inconvenience. Mr A wasn't happy with this decision, he felt he should have been awarded more, however he did say that '*despite rejecting your decision, I wish to thank you for your understanding and professionalism during what has been a difficult process for me.*'

*Despite Mr A not getting the outcome he hoped for this is an example where we were able to help Mr A who had been extremely upset by the lack of action from the service provider which had impacted his mental health.*

### Case study - inconvenience caused by lack of advice

Mr W instructed a service provider when he was purchasing a flat. He complained that the firm failed to advise him of his right to a statutory lease extension.

#### **Was the service reasonable?**

The evidence showed that the firm failed to advise Mr W and as a result, he lost 84 years on the previous term by agreeing to a new lease.

#### **How was the situation resolved?**

In this case, the firm completed the conveyancing purchase they were instructed to deal with but failed to give reasonable advice on the lease extension. Mr W has the ongoing perception that he could have had a better lease, had he been advised correctly.

An award of £750 was directed to acknowledge the upset and frustration caused.

*Without our intervention the complainant would not have had any acknowledgement of the impact the unreasonable advice had on them.*

### **Case study - Direct impact on immigration status**

Mr I instructed the service provider to act for him in an immigration matter. The service provider advised Mr I to make a further leave to remain (FLR(O)) application and that once his wife's application for indefinite leave to remain was accepted he would be added to her status. Mr I's application was unsuccessful and he complained.

#### **Was the service reasonable?**

The evidence showed that it was clear that Mr I would not have met the requirements to make a FLR(O) application, and so he had received no benefit from the service provider's work. It was also clear that the service provider had not told Mr I that the appeal they lodged after the failed application had been rejected.

Before instructing the service provider Mr I had a good immigration history, but the poor service he received meant he was now an over-stayer with limited options.

#### **How was the situation resolved?**

The ombudsman directed the service provider to refund both their fee and the home office fee for the application. The ombudsman also awarded financial compensation of £2,500 because of the emotional impact on Mr I and his immigration status.

*We can never reverse the impact on his immigration status, however our intervention ensured that the emotional impact on Mr I was recognised.*

## Waiving fees

If we consider that the poor service has reduced the value of the work that has been completed, we can decide that the service provider's costs should be reduced or refunded. In some circumstances, if the service has been of no benefit whatsoever to a customer, a full refund or waiver of a service provider's costs may be appropriate.

### **Case study - unreasonable fee arrangement**

Ms D ended her service providers instruction, on her divorce, after only a few months. She had a number of concerns relating to the fees and the final invoice received came a shock. She complained about the service.

#### **Was the service reasonable?**

The fee structure the service provider used was confusing. The client care letter stated it was a conditional fee agreement (CFA), however the recovery element set out in correspondence with Ms D was more in line with a damages-based agreement (DBA). Neither of these arrangements are allowed in family law matters which was unreasonable and concerning.

In addition, a range of possible hourly rates were set out, to be applied at their discretion. This was also not considered a reasonable approach to determining fees as it provides no certainty to the potential overall costs.

When the instruction ended early, the evidence the service provider sent to Ms D to account for the work carried out to date was vague and it wasn't clear how the costs were accounted for.

#### **How was the situation resolved?**

The ombudsman decided that the fee arrangement was unenforceable. This meant the service provider could not recover any fees in this case and they were instructed to waive the entire fee of £44,544 inc VAT. The ombudsman also awarded £300 compensation amount for the distress and inconvenience caused to Ms D.

The service provider was also referred to the SRA to consider if regulatory action is warranted in relation to the funding arrangements.

*Our intervention ensured that Ms D was not liable for a funding arrangement that the service provider should never have used in the first place.*

## Compensation for financial loss

The Legal Ombudsman can direct that the service provider pays compensation for financial losses. Financial losses are the expenses a customer has incurred, or money/assets they have lost, because of a service provider's poor service.

### Case study - financial award for excessive costs

When Mrs B died, she left most of her estate to an animal charity.

A sole practitioner was instructed as executor and quoted the cost of £6,480 to handle the administration of the estate.

The sole practitioner merged with a service provider ("the service provider") and soon after retired, leaving the service provider to continue the administration of the estate.

The charity became concerned that the service provider was not administering the estate appropriately and instructed another solicitor ("Solicitor C") to represent the charity when dealing with the service provider.

The final cost of administering the estate came to £37,512.94 (over £30,000 more than was originally quoted) which came as a shock to the charity. The charity also had a substantial bill for the costs of Solicitor C, who they instructed to sort out the issues they were having with the service provider.

### **Was the service reasonable?**

The service was not reasonable in this case. Due to a catalogue of failures by the service provider the charity lost out on a large portion of the legacy they were due and on top of this, incurred very high fees from Solicitor C to try and sort out the problems.

The evidence showed that the service provider failed to record or give adequate costs information or update costs as they progressed, and they completed work that was of little value to the estate.

### **How was the situation resolved?**

To put things right, the service provider was instructed to:

1. Pay the charity **£39,071.52** as compensation for the financial loss suffered when they instructed the new solicitor to put right the service provider's failures;
2. Return **£19,920.50** which belonged to the charity and which the service provider unfairly deducted as their costs without providing adequate costs information and for completing work which was of little, if any, value to the estate; and,
3. Return **£11,112.44** which belonged to the charity and which the service provider unfairly deducted as an uplift.

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The Legal Ombudsman can award remedies up to the value of £50,000. However, in this case the second and third award instruction are classed as a return of money that should never have been deducted from the estate. Because these amounts are not a refund of fees, but money the estate should still have, these fall outside of the overall limit we can award.

In this case, Mrs B must go through insurers to claim the money back as the service provider have ceased trading. We followed up with Mrs B to check she had received the award, and unfortunately discovered that she is still struggling to get some of the money returned.

### Case study - financial award for unreasonable advice

Mrs E purchased a two-bedroom leasehold property. One of the bedrooms was a converted attic.

A year after buying the property Mrs E found out that the lease did not allow for a converted attic room. To resolve the problem Mrs E had to pay to convert the attic back to its former state and incurred legal fees because of her unauthorised use of the attic. In addition, the property was now worth £25,000 less because of the loss of one bedroom.

Mrs E complained that the service provider had failed to identify that the lease was at odds with the property particulars and description of the property.

#### **Was the service reasonable?**

We concluded that the service provider's advice on the terms of the lease was unreasonable.

The service provider put the onus on Mrs E, who was a first-time buyer, to ask them if there was anything she was unsure of or if she had any questions about the lease. She had employed the service provider to assist her with the conveyance and had a reasonable expectation that it was their role to point out any key parts of the lease that she should be aware of. Expecting her to review the lease and flag any issues is unreasonable – the service provider has been paid for their expertise in this area.

#### **How was the situation resolved?**

It was clear that the service provider had the information which was needed to identify that the lease did not match the particulars – they missed this and failed to advise Mrs E.

The ombudsman concluded that the service provided by the service provider was unreasonable and they were directed to pay Mrs E just over £40,000. This was to cover the costs of converting the attic back to its former state and the legal fees she was charged for its unauthorised use as well as acknowledging the property was now worth £25,000 less.

*Our intervention ensured that Mrs E was, as much as possible, put back in the position she would have been in had she actually bought a one bedroom flat in the beginning.*

## Case study - poor advice on investment

Mr K and the service provider were named co-Trustees of his late father's estate.

Part of the residuary estate was left to two grandchildren (the beneficiaries) contingent upon them reaching the age of 35 and so a bare Trust was created by the service provider.

The interest return on the invested trust funds was declining. Over a period of four years the service provider requested that alternative investments should be made but Mr K failed to arrange this. The beneficiaries of the Trust sent a letter of claim to both Trustees at the end of 2018 as they were unhappy with the investment decisions.

Mr K complained that the service provider failed to insure him against Trustee claims or advise him to obtain his own insurance. They also ignored his request for details of their complaint's procedure.

### **Was the service reasonable?**

Whilst Trustees are jointly liable for breach of Trust to their beneficiaries, the courts generally expect more care and skill from a professional Trustee, than of a lay Trustee.

Whilst the service provider had written to Mr K about the investments, they had not told Mr K about the potential consequences of failing to give an instruction or following their advice.

The evidence also showed that there were points where the service provider should have outlined the risks of a potential claim and failed to do this.

The service provider also failed to adequately deal with the complaint in a timely manner or respond to Mr K to manage his expectations.

### **How was the situation resolved?**

The ombudsman instructed the service provider to refund the £16,000 Mr K spent defending the claim and indemnify Mr K against any legal fees he may face in the future if the beneficiaries issue a claim up the amount of £32,522 in exchange for any cooperation they may require from him in such proceedings

The ombudsman also instructed compensation of £600 to recognise the frustration and stress caused of having to defend the claim and the lack of response to the complaint.

Mr K said *'I am so pleased to have closure with this nightmare and would like to thank you for everything you have done ... I can move on from this awful episode now and find some sort of peace...your good work changes lives.'*

*The service providers were not engaging with the complaints process, so our intervention ensured that Mr K did not have to pay the costs of defending a claim which he should have been properly advised about in the first place.*



## Financial award for loss of chance

Compensation for financial loss also covers situations where the service provider's poor service deprived the customer of the opportunity to obtain a benefit/or avoid a loss. In loss of chance cases, the ombudsman must consider what would have happened had the poor service not occurred.

### Case study - a case of negligence?

Ms C instructed a service provider to deal with a negligence claim against her previous provider who handled her divorce and financial settlement claim. The negligence claim was not handled correctly which meant deadlines were not adhered to which meant that Ms C was unable to take her claim to court.

#### **Was the service reasonable?**

We concluded that the service was not reasonable. The service provider did not proactively manage the claim, did not set deadlines for the barrister to provide input, and allowed various limitation dates to pass without any action.

#### **How was the situation resolved?**

This is an interesting case that shows what the possibilities are in cases where there is a 'loss of chance'.

The ombudsman concluded that if it weren't for the service failings the matter would have continued and that there was a reasonable chance Ms C would have been successful in her action.

Because Ms C lost the chance to go to court the ombudsman considered, what Ms C would have received had her claim continued. The prospects of success was rated at 60% and therefore the ombudsman decided it was reasonable that the service provider should pay 60% of what Ms C would have achieved if the matter had continued to court. The value of the claim could have been between £130,000 and £311,000. However, our scheme rules state the maximum we can award is £50,000 and Ms C accepted this as a remedy.

## Reasonable adjustments

For most people, making a complaint can feel like a daunting experience, especially as complaints usually arise from a service failing which can be stressful, disappointing, or overwhelming. For others, there can be additional barriers to raising a complaint which can make complaints processes almost impossible without making reasonable adjustments.

When considering if reasonable adjustments are needed, we'd simply say ask your customer! Ask whether they need any additional support and then have a conversation about how you might be able to meet those needs or whether it would be best to get some outside support from a family member or a charity representative.

Reasonable adjustments can be anything from translation services to adapting processes to ensure your customer understands what is happening. If additional services or measures are needed, be upfront about how you can accommodate this and the impact on any costs.

We have seen complaints where costs and service breakdowns have spiralled out of control early on because the service provider hasn't taken the time to stop and really understand the needs of their customer. Each customer's needs will be different.

Below is an example of reasonable adjustments we have put in place to better support complainants.

### Case study - a case of negligence?

Mr Y instructed a service provider to assist with a landlord/tenant dispute. Initially his niece was supporting him as he is unable to read or write. He also suffers with schizophrenia and can be prone to self-harm and suicidal thoughts. Mr Y was living in a hotel temporarily until he could be re-housed by his local authority.

The landlord sought possession of the property where Mr Y was living and when he was evicted, he had to leave immediately without any of his personal belongings.

Mr Y's niece wrote a letter of complaint to the service provider and no response was received.

### **How did we assist?**

We made it very clear to Mr Y the issues we could and could not assist him with.

We got in touch with the service provider on Mr Y's behalf to confirm they had received his complaint. The service provider advised that no complaint had been received.

This was very frustrating to Mr Y and so we assisted in drafting another complaint letter on his behalf, this was read back to Mr Y to ensure we had captured his complaint accurately.

The service provider responded and Mr Y was not happy with this response and so we captured his complaint to the Legal Ombudsman over the phone.

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## Summary

The data in this report shows that once again the most common complaint types and the areas of law that attract these complaints have remained consistent for some time now. The Legal Ombudsman's challenge is how we can have an impact and drive improvements in these areas. This will remain a focus of ours.

The 2019/20 [Overview of annual complaints](#) gives more detail around how service providers can make improvements in complaint handling as well as the specific complaint types that are most common and how to avoid these. We would recommend providers read that report.

In this 2020/21 report, our case work highlights a notable theme throughout of poor communication. This really impacts the customer experience. Improving communication, even on a small scale, such as providing more frequent updates to customers can minimise complaints and significantly improve the customer journey.

The case work also highlights the various ways we can put things right where service has fallen below a reasonable standard. Compensation can be offered for distress and is usually below £500 however, as demonstrated in Mr I's case it can be a lot more if there is a significant impact on someone's life. Or entire fees can be waived as shown in Ms D's case. Ms C's case also shows that we can consider remedies where there has been a loss of chance, and the evidence indicates that the prospects of success in a case for example would have been high.

Our intention with these annual reviews is to provide some understanding of the areas where service needs to improve and what service providers can do themselves to minimise and resolve complaints.

As always, the basics remain key. Make sure you have an accessible complaints procedure in place, that the signposting information within it is correct and transparent to customers. Take the time to respond to complaints and when you do, make sure you understand the real cause of the complaint. When things do go wrong, consider the best way to put them right. Overall, improve communication with customers, send updates as agreed, notify when things change, and tailor approaches to suit the needs of the individual customer.

The next page outlines some of the key pieces of guidance for the profession to refer to.

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## Support for the profession

Our website has lots of useful information to support service providers. The [learning resources](#) section has key guidance, reports and research to help prevent complaints and effectively handle the ones that do arise. There is also a section that provides information on our approach to determining service.

### Some key pieces include:

[Best practice complaint handling guide](#) The aim of this guide is to help service providers improve the overall service they provide to their customers. By sharing best practice, we hope to reduce the number of complaints that are escalated to the Legal Ombudsman and improve service standards across the profession.

[Signposting guidance](#) Service providers are required to have a complaints process and signpost to the Legal Ombudsman. This guidance sets out these requirements in detail and provides suggested text.

[Overview of annual complaints data 2019-20](#) A summary of 2019-20 complaints including the most common issues we find in complaint responses and the most common complaints we find in each area of law as well as information on how to improve the service you provide.

[Responding to challenging situations](#) This guidance is intended to support service providers when they are responding to challenging situations and to help them understand the approach the ombudsman would expect.

[Ombudsman's guide to good costs service](#) Key trends in costs complaints and examples of cases resolved by the ombudsman.

[Our approach to determining complaints](#) This guidance sets out the key questions we consider when determining "what is fair and reasonable in all the circumstances of the case."

[Our approach to putting things right](#) This guidance looks at how we put things right when the service was not of a reasonable standard.

[Scheme Rules FAQs](#) An overview of the key areas of our scheme rules and what they mean.

If you are a legal service provider and would like to talk to one of our ombudsman about a complaint you have received, you can also contact our technical advice desk and we may be able to help you resolve the issue. To find out more [click here](#).