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Initial response to market study into the supply of legal services in England and Wales

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Introduction

1. The Competition and Markets Authority (CMA) launched a market study into legal services in England and Wales to see if they are working well for consumers and small businesses on 13 January.
2. We understand they will examine long standing concerns about the affordability of legal services and standards of service. Concerns have also been raised about the complexity of the current regulatory framework.
3. We were grateful for the opportunity to meet with the CMA to discuss their approach to the market study and are happy to provide our initial feedback.

Scope of the study

4. We welcome the scope of the study in encompassing 'legal services' in a broad sense, we know from our experience consumers contact us to assist with a great number of issues about services they consider to be legal and therefore expect us as the Legal Ombudsman to deal with them.
5. In 2014/15 we received 59,000 contacts (calls, letters and e-mails) (2013-14: 69,500). The number of complaints that were within our jurisdiction continued to reduce from just under 19,500 to just over 18,000. We accepted 7,635 complaints for investigation (2013-14: 8,323) and resolved 7,440 cases (2013-14: 8,055 cases).
6. We have attached to this document charts of the data from 2014/15 on complaint types for areas of law. In 2014/15, 92.5% of complaints we accepted were about SRA regulated firms, with 4.79% being about BSB regulated firms and 2.56% regarding CLC regulated firms.
7. In January 2015 the Legal Ombudsman began to take claims management complaints, in the first year of operation the CMC jurisdiction took a total of 22,759 customer contacts, including calls/letters/emails and live chat conversations. We accepted in 2066 complaints and made 444 preliminary decisions and 301 Ombudsman decisions.
8. Of the calls we take where we are unable to accept the case at that stage, we often provide advice regarding how to make a complaint at first tier, or provide signposting information to another organisation who are better positioned to meet their needs – for example, Financial Ombudsman Service or Citizens Advice. From January – December 2015, we signposted around 4500 consumers to other organisations.
9. Voluntary jurisdiction under part 7 of the Legal Services Act - the Legal Ombudsman has power to establish voluntary scheme for resolving complaints, under an order made by the Lord Chancellor. This power is designed to provide a scheme under which legal services complaints may be resolved quickly and with minimum formality,

however the kinds of legal services covered by this order must be specified. As this would involve providing a new service we are unable to use our existing funding – a levy from regulated legal service providers and a Lord Chancellors Fee from authorised claims management service providers.

10. The Legal Ombudsman publish regular data, research, thematic reports, guidance notes and details of Ombudsman decisions all of which could be of benefit to the Competition and Market Authority for the legal services market study.

Theme 1

The ability of consumers to drive effective competition through making informed purchasing decisions

11. We have published our data and ombudsman decisions in csv files¹ to enable other organisations to use our data to assist consumers in comparing legal services, however we know that consumers are only likely to hear about the Legal Ombudsman if they have cause for a complaint with their service provider.
12. To help increase general awareness of our service we publish guides for consumers such as our recent “On the move: A guide for first time buyers”². This was based on the type of issues and complaints we see. It has been written in the style of a user guide for consumers to prompt them on issues to think about and look for when using a conveyancing lawyer, to help ensure the legal side of moving home runs smoothly.
13. We are committed to using our business intelligence to help raise standards across the legal sector, part of this is through the publication of data and reports but we also feed back to the profession directly. In January 2013, the Legal Ombudsman began running courses on complaint handling for the legal profession. The courses focus on first tier complaints handling and best practice and understanding the Legal Ombudsman’s complaints process. We regularly talk to law societies and write articles for the Legal press to ensure our learning is shared widely, to help meet our commitment to work to drive up standards in the industry.
14. We are able to provide further case study information to the CMA which explores the problems consumers present to us and their concerns about the price of legal services. In 17% of our cases from 2014-15 consumers raised an issue about costs.

Theme 2

Whether information failures expose consumers to harm that is not being adequately addressed through existing regulation or

¹ <http://www.legalombudsman.org.uk/raising-standards/data-and-decisions/>

² <http://www.legalombudsman.org.uk/?portfolio=on-the-move-a-guide-for-first-time-buyers>

redress mechanisms

15. In May 2013 we published a report which had been produced by Northumbria University entitled Redress for Legal Services³. This research included information on consumer perception of what amounts to legal services, consumer protection through legislative remedies, consumer empowerment and where redress mechanisms might do more to empower the consumer.
16. Within this research it highlighted work from the Legal Services Consumer Panel which highlighted⁴:
- 42% of people do nothing when dissatisfied with the service they receive
 - 23% of consumers decide not to complain to their lawyer because they have no confidence their complaint would be resolved fairly
 - 70% of consumers who are dissatisfied with how their lawyer handled their complaint abandon their complaint at this stage
 - Only 35% of complainants to the Legal Ombudsman recall being informed about the organisation by their provider.
17. The report highlighted
- “If the consumer is to play the role envisaged by Clementi in shaping the legal services market then it is important that s/he is able to seek redress and has confidence in the market. There is still an issue to be addressed as to how the consumer judges the quality of services but as a starting point redress where the consumer does know s/he is unsatisfied about service should be improved in terms of accessibility”⁵.
18. The situation for consumers has had an additional layer added-in, as a number of other providers are now certified as an ADR (Alternative Dispute Resolution) entity⁶ for legal services, and will be providing redress for legal services. The requirements of the ADR legislation is such that a service provider has to signpost to an ADR entity but can then state whether they are or are not willing to use them. The Legal Ombudsman has said that it will ordinarily accept in cases that have been to another ADR entity; however in our investigation we would ensure that the consumer did not receive the same compensation/redress twice.

³ <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf>

⁴ <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf> page 50.

⁵ <http://www.legalombudsman.org.uk/downloads/documents/publications/Redress-for-Legal-Services-FINAL-11072013.pdf> page 52

⁶ <http://www.tradingstandards.uk/advice/ADRApprovedBodies.cfm>

19. Service providers have a legal obligation to tell their customers (and those eligible to use our service) about accessing redress from the Ombudsman. The regulator specifies these requirements in Codes of Conduct. The same obligation also requires service providers to tell customers about their in-house complaints handling procedure.

- Section 112(1) of the Act requires approved regulators to make provision in their regulatory arrangements requiring relevant approved persons to have effective procedures in place for the resolution of first-tier complaints. Approved regulators must also make provision for the enforcement of that requirement.
- Section 112(2) of the Act provides that the LSB may specify requirements that the regulatory arrangements of approved regulators must satisfy in relation to the complaints procedures of approved persons.
- Section 28 of the Act requires approved regulators, in discharging their regulatory functions, to promote the regulatory objectives having regard to the principles of better regulation and best regulatory practice.

Case studies

20. We welcome these case studies. Wills and probate related disputes are among some of the more complex cases we see at the Legal Ombudsman.

21. We published a thematic report on will writing⁷ which examined the issues we have seen in cases which involved wills and probate, we acknowledged that disputes in this area are among some of the more complex cases we see at the Legal Ombudsman.

22. We responded on this same issue in July 2012 to the LSB's consultation paper – Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities⁸.

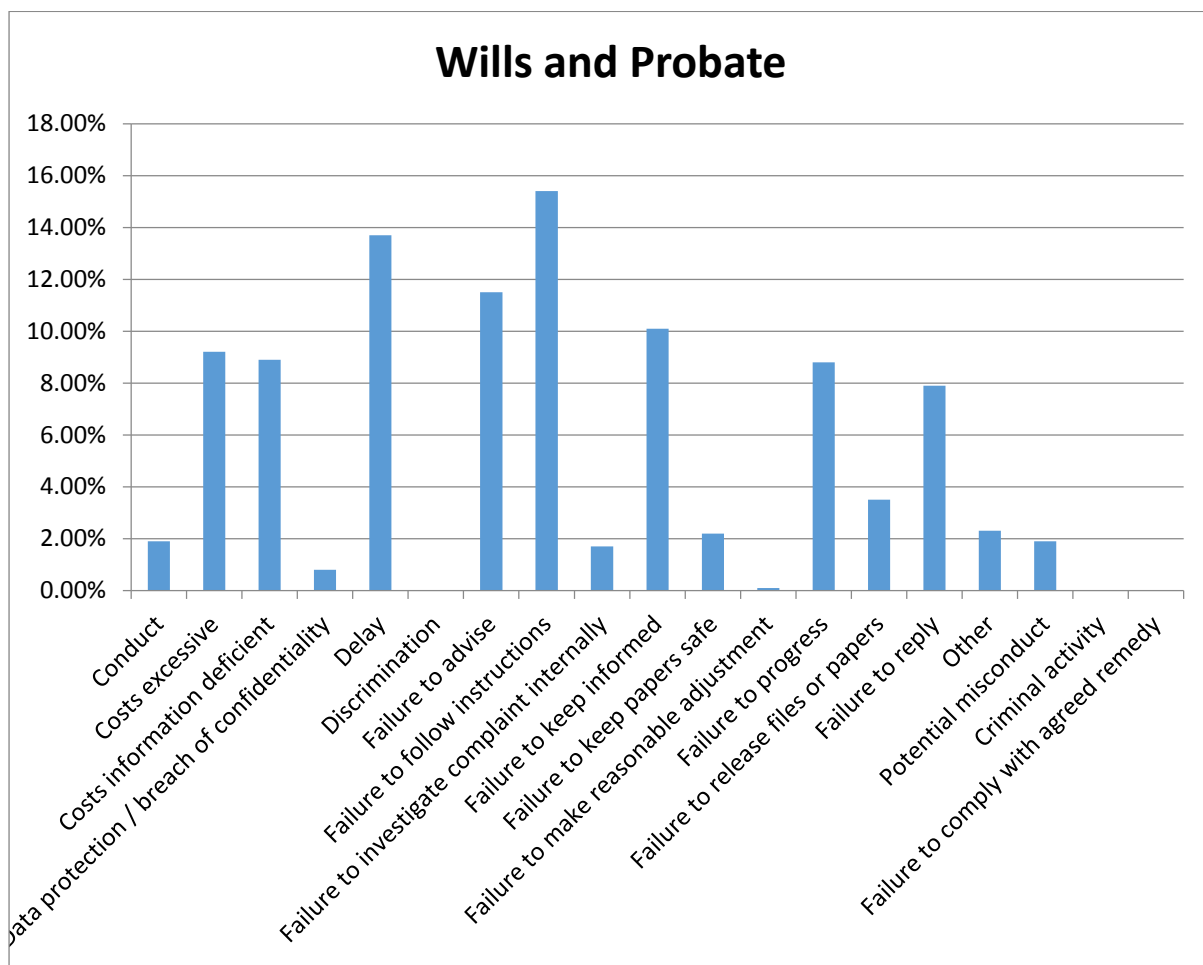
23. Meanwhile, a 'shadow shopping' exercise of 101 wills, undertaken by the Legal Services Consumer Panel, found that a quarter of wills prepared by both solicitors and will-writers were deemed poor quality – meaning problems could arise for clients whether they used a regulated provider or an unreserved will writing specialist. This suggests that presently, the only advantage to clients using a qualified solicitor would be having access to redress from the Legal Ombudsman in the event of a problem.

⁷ <http://www.legalombudsman.org.uk/publications/will-writing/report.html>

⁸ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/submissions_enhancing_consumer_protection/leo.pdf

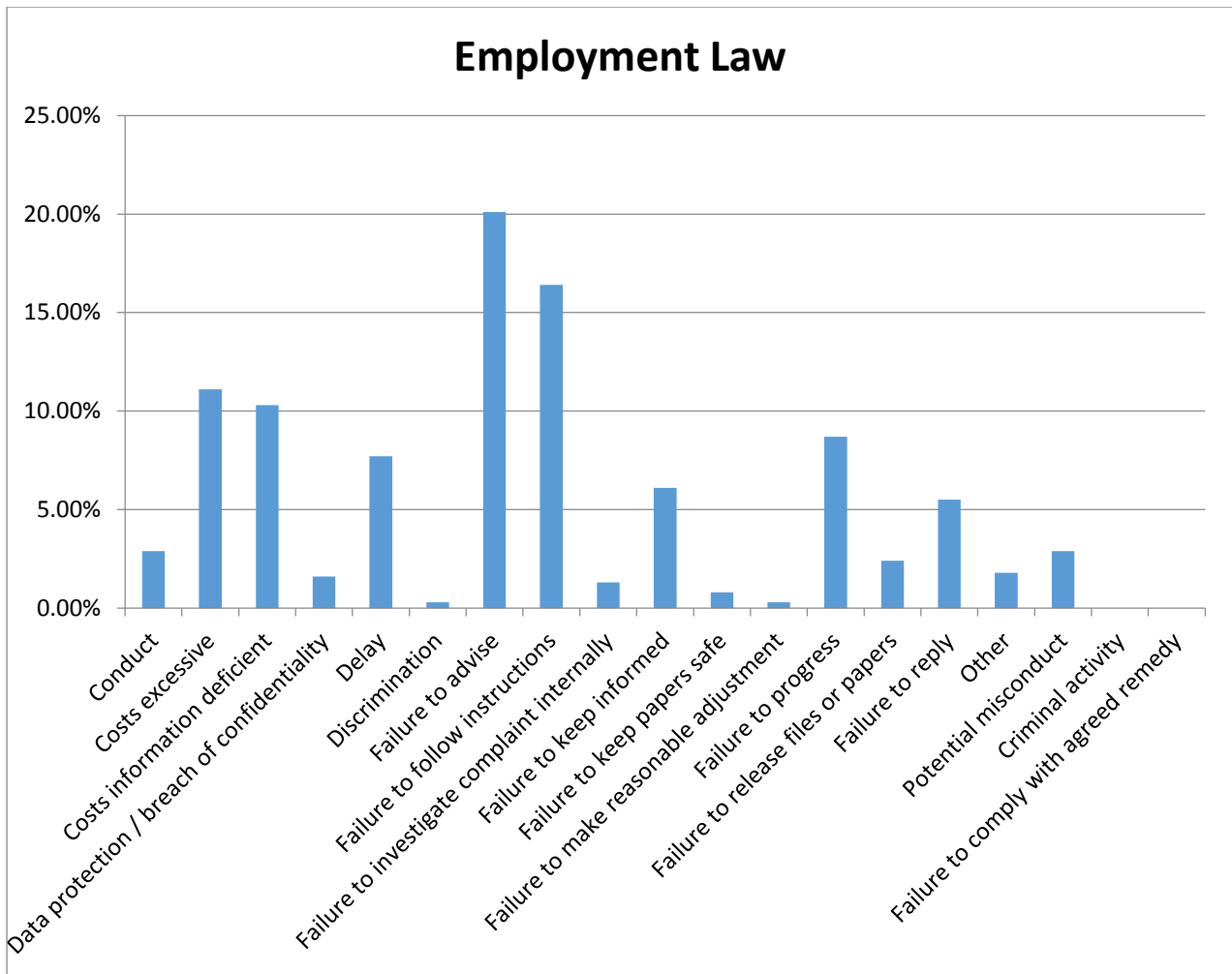
24. This area of law includes a number of functions including: will writing; obtaining a grant of probate; estate administration; and acting as an executor. However, not all of these need be authorised roles, we are concerned that the complaints we see in the regulated sector are being raised in the non-regulated sector and consumers are unable to raise their concerns with the Legal Ombudsman.

25. We have published data and case studies on our website on both Will writing and Employment law, and welcome the opportunity to engage with the CMA going forward on these case study areas. Within our data we highlight the issues consumers raise when they make a complaint, the data tables on issues raised for the two areas – Employment Law and Wills/Probate⁹, are below.



2014-15 data

⁹ <http://www.legalombudsman.org.uk/raising-standards/data-and-decisions/>



2014-15 data

Conclusion

26. We welcome the work of the CMA in exploring this theme and look forward to meeting with you again in the course of this market study.

About the Legal Ombudsman

27. The Legal Ombudsman for England and Wales was set up by the Office for Legal Complaints (our Board) under the Legal Services Act 2007.
28. We are independent and impartial. This means that when we receive complaints, we will look at the facts in each case and weigh-up both sides of the story. We are not consumer champions or part of the legal profession, and we are also independent of government. There is no cost to the taxpayer and our service is also free to use.
29. We are a member of the Ombudsman Association and apply seven key principles which support our scheme and which people can rely on when using our services. These are:
- clarity of purpose
 - accessibility
 - flexibility
 - openness and transparency
 - proportionality
 - efficiency and quality outcomes
30. The Board ensures that they and the Legal Ombudsman promote the regulatory objectives set out in the Act, which are:
- protecting and promoting the public interest;
 - supporting the constitutional principle of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of citizens' legal rights and duties; and
 - promoting and maintaining adherence to professional principles.
31. The OLC is an Arms Length Body of the MoJ and directly accountable to the MoJ for its financial management.
32. Funding for the Legal Ombudsman's activities for the legal sector comes from a levy on the legal profession set by the Legal Services Board, and which requires approval from the Secretary of State before it can be charged.
33. The OLC's activities for the Claims Management sector is funded by Grant in Aid from the MoJ. The MoJ separately charges a Lord Chancellors Fee on the Claims Management sector to recover this expenditure.
34. All OLC expenditure is classified as public spending. In addition to the OLC's relationship with the MoJ, the OLC is accountable to the LSB for the performance of the Ombudsman Scheme. The LSB also approves our budget, may set performance

targets, and is also responsible for appointing and removing the OLC Board members

35. Our KPIs are:

- **Timeliness:** The proportion of cases resolved within three and six months of a consumer’s first contact with us.
- **Quality:** We track against a mix of quality indicators that focus on the accuracy of our work and the quality of customer service provided.
- **Unit cost:** We track the unit cost of our work by reporting the annual cost of the organisation averaged according to the number of cases resolved.
- **Reputation:** We commission external, independent measurement of satisfaction levels among customers (consumers and lawyers) and stakeholders on an annual basis.
- **Impact:** We undertake annual surveys of stakeholder groups to assess their confidence that we are delivering our objectives and annual surveys of consumers of legal services to determine how many are aware of the Legal Ombudsman.

36. The OLC and management team set targets for 2014-15 and organisational efficiency of resolving on average:

- 40% of cases within 56 days (2013-14: no target set), and
- 70% of cases within three months (2013-14: 60%), and
- 95% of cases within six months (2013-14; 90%), and
- all our cases within a year (2013-14:100%).

37. Independent annual customer satisfaction research, covering the period September 2013 to October 2014, found that more than 90% of complainants and lawyers who were satisfied with the outcome of their complaint were satisfied with the Legal Ombudsman’s service.

	AVG 2012-13		AVG 2013-14		AVG 2014-15	
	COMPLAINANT	LAWYER	COMPLAINANT	LAWYER	COMPLAINANT	LAWYER
% of respondents satisfied with the outcome of their case who were satisfied with the legal Ombudsman’s service.	97%	95%	96%	97%	96%	93%

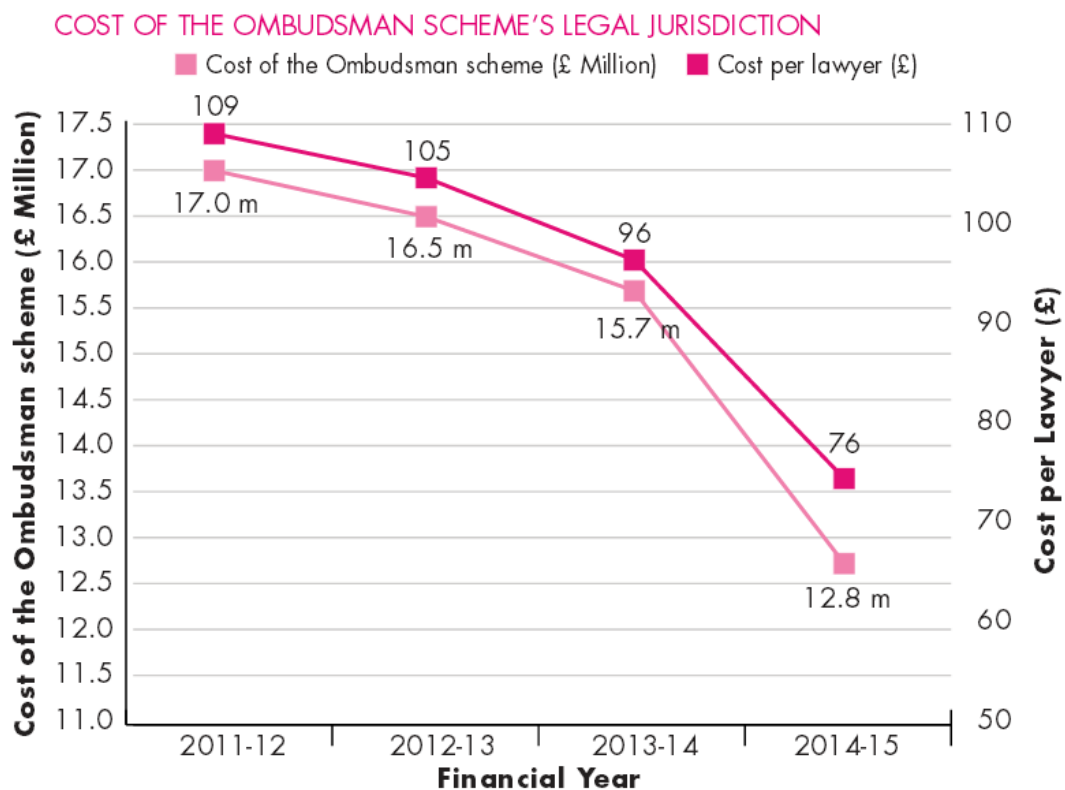
38. However, we know that by surveying customers only after they have received the final outcome of their complaint, we only have a snapshot of their experience of

using our service. We also understand the enormous impact the outcome itself has on people’s perception of the experience we have provided.

39. We are committed to improving both our understanding of our customers’ experience and our service itself, so we are undertaking a range of initiatives focused on putting our customers at the centre of our thinking. For example, we are carrying out a major research exercise to engage with users of our service. The findings this will produce will help to inform the development of a new set of customer-led, customer-focussed service principles which will place the customer voice at the centre of our operations. We are also enhancing our regular customer survey methods to capture people’s views across their journey with us. In parallel, we are revisiting our quality indicators and measures, and refocusing our quality systems to bring them into line with our new strategic objectives.

40. Independent research also tells us that our impact as a service has improved. In 2014-15, 65% of our stakeholders were confident that we could deliver against our mission, up from 59%. We want to continue to build on this improvement, and central to this aim is the further development of our insight and analysis capabilities.

41. In addition, by making changes to improve our efficiency, we have cut the costs of our legal jurisdiction substantially, from almost £16m in 2013-14 to just under £13m in 2014-15. The budget for our legal activities in 2015-16 is just over £12m.



OPERATIONAL PERFORMANCE AND ACTIVITY

	2011-12	2012-13	2013-14	2014-15
Contacts	75,420	71,195	69,500	59,000
Complaints	22,350	20,500	19,450	18,185
Less complaints where complainant has not yet used the lawyer's complaint procedure or which are outside of our time limits.	(13,699)	(11,567)	(10,541)	(10,175)
Less complaints resolved without investigation	(231)	(503)	(586)	(375)
Complaints accepted for investigation	8,420	8,430	8,323	7,635
Less complaints accepted but subsequently closed as not within our jurisdiction.	(965)	(800)	(704)	(480)
Reduction in work in progress	-	-	436	285
Cases resolved (complaints falling within our jurisdiction) *	7,455	7,630	8,055	7,440
- Of which resolved by Ombudsman Decision	2,717	2,990	3,059	3,054
Cost of the Ombudsman scheme £,m*	17.002	16.542	15.709	12.770
Unit cost	£2,281	£2,168	£1,950	£1,716

Note: * Legal Jurisdiction. Used for calculating our unit cost KPI.