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THIRD PARTY COMPLAINTS CASE STUDIES PUBLISHED AS LEGAL OMBUDSMAN SETS UP STEERING GROUP

Case studies being published for the first time today, reveal a range of situations where the Legal Ombudsman is currently unable to investigate complaints because the people losing out are not the lawyer's client – known as third party complaints.

Legal Ombudsman data shows that approximately 2,184 such complaints had to be turned away by the service during 2012-13 because they were ineligible under its Scheme Rules.

The case studies reveal house purchases falling through, allegations of harassment over disputed debts, violations of privacy and abusive treatment in the court room. Please see overleaf for a selection of the case studies.

The Legal Ombudsman is to set up a steering group aiming to reach agreement on which types of third party complaints the service could investigate in future. This honours a commitment made by the organisation following a review of its Scheme Rules in 2012, when it agreed in principle that these could in future include specific circumstances where third party complaints would be eligible.

Membership details for the steering group will be announced shortly.

Elisabeth Davies, Chair of the Legal Services Consumer Panel, said:

“The case studies include some real horror stories where consumers have been badly let down by lawyers, but then find the Legal Ombudsman cannot help them. This double whammy cannot be allowed to continue – it is deeply unfair, leaves bad practice unpunished and undermines public confidence in legal services regulation.”

“The Panel accepts that not all third party complaints should be investigated, but the current blanket ban on all such complaints is plainly wrong. We look forward to working constructively with stakeholders to identify the right way forward, so that redress for consumers can be sensibly extended.”

Adam Sampson, Chief Legal Ombudsman, said:

“Last year we made a commitment to work to identify types of third party complaints that the Legal Ombudsman might investigate in future. This is a tricky issue which needs to be grappled with to find a solution that is fair to consumers and lawyers.”

“We want to help consumers and lawyers with this issue and will be working on proposals for how we deal with third party complaints over the coming months.”

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For more information, contact Steve Brooker, Consumer Panel Manager, on 020 7271 0077.

Notes to editors

1. The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.
2. The case studies are real complaints received by the Legal Ombudsman during 2013 which it had to turn away because third party complaints are ineligible under its scheme rules. The Panel was invited to examine the Legal Ombudsman's case management system for this purpose, which took place in June 2013. The case studies have been anonymised to protect the anonymity of participants.
3. Access the case studies here:
<http://www.legalservicesconsumerpanel.org.uk/ourwork/Complaints.html>.

5 CASE STUDY EXAMPLES FROM REPORT

Conveyancing delays

In early December 2012, Ms A placed an offer for a retirement leasehold flat, the landlord being a local housing association. She claimed that the firm consistently made excuses to her own solicitor for the delay in sending out the agreements and leases, and which when they finally arrived were full of errors, mistakes and contradictions. Vital certificates and other documents were also missing. Ms A's solicitor advised her to ignore all the documents and not to sign them, and asked the firm to draw up a new set and provide the missing documents. Part of Ms A's agreement for the purchase was to pay the Housing Association's conveyancing fees, as well as her own. She pulled out of the purchase and asked for a breakdown from the firm as to their expenses, but this was denied on the grounds they were acting for the landlord. Ms A wrote a letter of complaint to the landlord's solicitors, but they said they would only correspond with her solicitor. This was not possible as Ms A's solicitor was no longer working for her.

Trying to start a small business

Ms H had been trying to buy a cafe business. Since the cafe building was a leasehold, a third solicitor acting on behalf of the freeholder was involved, and it was agreed that Ms H and the sellers would cover these legal costs. Whilst dealing with

each other, Ms H and the sellers solicitors said they were covering all they needed to and made contact with the freeholder's solicitor. They claimed the freeholder's solicitors were left various messages and made promises to call them back, but these never came. The solicitors had been calling almost on a daily basis, which as the weeks went by, was costing Ms H and the sellers a huge amount of money – and Ms H precious trading time. The sellers got so frustrated that they rang the landlord direct and were told that they had received nothing from their solicitors in regard to this.

Chasing a debt

Miss I wished to make complaint against a solicitors firm who she said was contacting her continually – several times a week, sometimes several times a day – about an outstanding amount of £400 they said she owed to HMRC. Miss I explained to the firm on numerous occasions that the payment had in fact been made and HMRC had confirmed there was no debt. HMRC's accounts online service also confirmed there was nothing to pay. Miss I asked the firm to confirm this with HMRC, but the firm declined to do this. Miss I says she has suffered stress and wasted time as a result of this episode.

Employment tribunal dispute

Mr X wished to complain about a solicitor who was acting against him in an employment tribunal on behalf of the defendant. Part of Mr X's case was that his employer had failed in their duty of care to provide safe working conditions and to protect him from sexual harassment. Mr X had decided not to pursue the sexual harassment matter through the criminal courts, but he claimed the solicitors consistently and persistently asked him to bring criminal charges and went so far as reporting a complaint to the police themselves claiming to be representing him, against his wishes and without his permission. Mr X felt this was a clear conflict of interest as the solicitors were acting against him on behalf of his employer, had acted against his wishes and had misled the police.

Denied inheritance

Mr I had contributed a substantial sum to his son's (and the son's partner) property purchase. A solicitors firm acting for the couple drew up a declaration of trust stating that Mr I would have a share of the property, which was signed by his son and his partner. When Mr I's son passed away, he was named as the executor of the will and instructed a different solicitors firm to deal with the administration of the estate. He then had difficulties recovering the money he expected from the property, due to the declaration of trust being "poorly drafted" (in the view of his new solicitors). He tried to raise this complaint with the firm, who said that he was not their client so they were unable to assist further. The firm argued there would have been a conflict of interest if they had advised Mr I on the preparing of the declaration of trust and had advised his son's partner to this effect, which Mr I does not dispute. The Legal Ombudsman concluded that the client of the firm was not Mr I but his son and partner. While understanding that Mr I might be feeling aggrieved that the deed drawn up to protect his money might be defective, and while he may have seen the document and even paid for it, it was prepared on the instructions of his son and partner, who also signed it. In this scenario, Mr I was never a client of the firm.