

## Third party complaints: case studies

### Introduction

Last year, the Panel published a report on third party complaints – those made by individuals who are not the lawyer’s client. We argued that, in certain situations, third parties should be allowed to seek redress through the Legal Ombudsman.

Our report set out the types of issues that could arise and the problems that a lack of redress leads to. We said this frustrates the intention of a contractual relationship with businesses on which consumers rely in good faith, and creates the possibility of lawyers falling outside the Legal Ombudsman’s jurisdiction by entering into complex business arrangements. Also, that this gap in redress creates weak incentives for fair dealing and ethical behaviour and limits the opportunities to learn the lessons from complaints.

We acknowledged that not all third party complaints should be eligible for consideration by the Legal Ombudsman. Lawyers have a duty to act in the best interests of their client and, in our adversarial system, it is right that they do so robustly. While this may make someone feel uncomfortable, or believe an outcome is unjust, it does not necessarily follow that the lawyer did anything wrong. However, in our view, the current system is too crude as the Legal Ombudsman must reject all third party complaints, including those legitimate complaints where people may have badly lost out.

The Panel’s report formed part of our submission to the Legal Ombudsman’s review of its scheme rules – the document which sets out when consumers can use its service. The Legal Ombudsman decided that no change would be proposed or implemented at present, but agreed in principle that the rules could include specific circumstances where it would be able to look at complaints from third parties. It committed to work with stakeholders over the next months to create a specimen list for consultation.

The Legal Ombudsman agreed with the Panel that it would establish a steering group to take this work forward. The case studies in this report, based on real complaints which the service received during the year but had to turn away, are intended to inform the work of this group. The group’s role will be to advise the Legal Ombudsman’s board about which third party complaint situations should be included in the specimen list.

## **The case studies**

The Legal Ombudsman received approximately 2,184 third party complaints in 2012-13.

At the invitation of the Legal Ombudsman, between 18-20 June, we reviewed third party complaints received by the service during the 2013 calendar year to date.<sup>1</sup> A selection of these complaints, chosen to reflect a representative spread across areas of law and where the information provided by the complainant was reasonably complete, were written up as case studies. Each case study was checked by Legal Ombudsman staff to make sure the anonymity of both complainants and lawyers had been protected.<sup>2</sup>

When reading the case studies it's important to bear in mind that, since the Legal Ombudsman has not investigated the complaint, the material presents just one side of the story and some details are incomplete. The information reflects how the complainant viewed the situation, it does not reflect the Legal Ombudsman's interpretation of the facts of the case. In addition, the lawyers concerned may have acted on instructions from their own clients, or the other side may sometimes blame their lawyer for problems their own actions have caused. However, the purpose of this exercise was not to decide whether the lawyer provided poor service, but to aid discussion about which sorts of complaints the Legal Ombudsman should be able to investigate.

What cannot be in doubt after reading these case studies is that, through no fault of their own, consumers can suffer severe financial and personal hardship due to the actions of a lawyer they have no professional relationship with. The case studies tell stories of house purchases falling through, harassment over alleged debts, violations of privacy and abusive treatment in the court room. Often they suggest misconduct has taken place and here there is already an opportunity for regulators to act, although of course not to award redress to the victims. However, on other occasions, there seems clear evidence of poor service to third parties; if it had been the lawyer's client who lost out in the same situations, the Legal Ombudsman would have been able to investigate.

The Panel has deliberately not indicated which of these case studies we think should be accepted for investigation by the Legal Ombudsman, and those which should continue to be ineligible. To do so would risk unfairly fettering the work of the steering group. However, we hope that the case studies will provoke thought and bring real life examples to this extremely important debate.

## **September 2013**

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<sup>1</sup> Section 152(3)(b) of the Legal Services Act enables the Legal Ombudsman to disclose restricted information to the Legal Services Board for the purposes of enabling or assisting the Board to exercise any of its functions.

<sup>2</sup> For this reason the complainants names have been presented in alphabetical order.

## Conveyancing

### 01

*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.*

### 02

*Before exchanging contracts to buy a piece of land, Ms B paid the seller's legal fees upfront via a professional agreement as a pre-condition of the sale. The sale was frustrated because on completion, the Land Registry disputed the boundary between the land and a neighbour's. However, despite being unable to sell the land, the seller's solicitor refused to refund their fees.*

### 03

*In late 2012, Ms C and her partner purchased a leasehold flat on the ground floor of a terraced house. The transaction was particularly difficult as on examination of the title documents it transpired that the seller did not own all of the property. As a result, the transaction was drawn out but Ms C felt that on a number of occasions the seller's solicitor's conduct exacerbated this. For example, they were unable to provide a colour copy of the property plan (as is standard practice in these cases) to make it clear what parts of the property the sale related to. In addition, documents were not executed properly as signatures were not witnessed, amendments not noted or initialled etc. On the day of completion, Ms C's solicitor transferred the agreed sum to the seller's solicitor. However, shortly before completion was due to take place her solicitor received a call from the seller's solicitor advising that the completion monies were short for the apportionment of the buildings insurance premium and claiming that a fax had been sent to this effect the previous day. The fax had not been received and Ms C's solicitor disputed the money was actually due anyway. As a result of the alleged underpayment, the seller's solicitor refused to complete the sale and instructed her client not to hand over the keys to the property. For the rest of that day there was correspondence back and forth but the matter could not be resolved. Some hours later the seller's solicitor admitted that despite the seller's instructions to include the insurance apportionment in*

*the completion amounts, she had failed to do this and it was therefore her mistake. The sellers then released the keys on the basis that their solicitor would indemnify them for the difference.*

*At this point Ms C thought the matter was finally over and decided not to seek to recover the interest due as a result of the late completion. However, a few weeks later, the seller's solicitor said that she would not release the signed transfer documents to be registered at the Land Registry unless an additional sum of over £400 was paid. She eventually released the documents after Ms C's solicitor threatened to report her to the regulator. The saga was still not over as once the documents had been released the seller's solicitor advised that she was intending to pursue the matter of the unpaid apportionment. However, after Ms C called the seller directly, she discovered that the seller had not given any such instructions.*

#### **04**

*Ms D had an offer accepted on a property that was empty because the owner had gone into a nursing home. Her solicitor advised her that there might be a problem with the paperwork as the owner's late husband's name was still on the title deeds. The solicitor advised it could be a simple error that the vendor's solicitor had not sent the relevant paperwork or there was a possibility that it may need probate. The seller's solicitor failed to respond to the solicitor's correspondence, but Ms D was assured by them and the estate agent that everything would be fine so she sent the purchase money to her solicitor. The seller's solicitor advised that he had appointed himself as trustee for the owner's late husband, but Ms D's solicitor contacted the courts who advised he legally could not appoint himself without first making an application to the Court of Protection. Ultimately the move did not take place and the purchase money was transferred back into Ms D's bank account, minus over £600 – her solicitor's fee so far.*

#### **05**

*Mrs E's mother agreed a sale on her property with a buyer who wasn't in a chain and had a mortgage in place. She claimed the buyer's solicitor had been extremely uncommunicative and the sale had got delayed at every stage. For example, an employee took three weeks off work and the sale stopped as it wasn't passed to anyone else. The potential purchaser complained directly to their solicitor and the firm gave the file to another employee. Later on the purchaser instructed her solicitors to exchange, but after three more weeks they still didn't act as they said they were awaiting more management enquiries from Mrs E's mother's management company. The potential buyer requested exchange and completion within a week period, so Mrs E was forced to empty the apartment. Mrs E's solicitor rang the buyer's solicitor five times on one day to exchange contracts, as the potential buyer was reporting that she was going to back out of the sale if they didn't respond. However, the buyer's solicitors did not respond to Mrs E's solicitor and after a six month period of trying to bring the sale to a conclusion the buyer pulled out due to their own solicitor's poor performance.*

## 06

*Mr F purchased a plot and invested in the building of a house in Europe through an investment company specialising in property and commodities investment projects in the emerging markets. During this process, Mr F liaised and acted on direction from a solicitors firm engaged by the investment company on the legal processes involved, even paying legal fees to the company via this solicitors firm. Mr F was advised that he did not need to be independently legally represented and the solicitors dealt directly with him as the buyer/investor. He therefore believed that he was legally represented by the solicitors, due to all the information and advice they provided to him in order to exchange the contract (supposedly from a company based in the country), complete the plot purchase and commence the building. When it was obvious that his investment was problematic, Mr F sent several emails to the solicitors requesting clarification of the legal situation but no response was received. Mr F then sent a formal letter of complaint but again no response was received. The investment company is now in liquidation, so Mr F's money could be at risk or lost. As it is now apparent that he had no security or protection for his investment, Mr F held the solicitors totally liable and responsible.*

## 07

*At the time of approaching the Legal Ombudsman, Mr and Mrs G were in a property chain formed almost three months ago. They felt that certain solicitors in the chain had been very unhelpful in passing along information and were incompetent. Mr and Mrs G claimed that one firm in particular were impossible to get hold of – the phone rang but was not answered and often emails were not replied to. When the firm did respond, they would not share information with the chain. They failed to request a Management Pack early on and this, allegedly, was only discovered after the poorly trained member of staff left. Every client in the chain was ready to go – contracts all signed, monies in place, all other queries answered – and this had been the case for the last 4-6 weeks. The clients in the chain said they were suffering due to the actions, or inactions, of this firm and wanted something done to kick them into the immediate finalisation of this conveyance.*

## 08

*On the day Mr G was due to move, his solicitor told him that the buyer's solicitor had sent the money to the wrong bank account. It was too late to retrieve the money and it was agreed by all parties that he would move under a licence. As a result of the delay there were extra expenses incurred by Mr G's removal company as they were unable to complete the move and had to return two days later. Mr G passed the invoice to his solicitor expecting the buyer's solicitor, who had caused the delay, to pay promptly. Three months later he received a letter from his solicitor explaining that the buyer's solicitor had yet to settle the outstanding amount and had stopped communicating with them, plus as it was now outside the normal conveyancing period they were no longer going to act on his behalf. After one more unsuccessful try by his solicitors, Mr G complained directly to the buyer's solicitor. Eventually the buyer's solicitor made the removal firm an offer and said that if this was not accepted they would need to take Mr G*

to court. Fortunately, the removal firm accepted the offer and decided not to pursue Mr G for the remaining amount. Mr G felt the solicitors had acted quite unprofessionally and dismissed the incident without considering the worry and anguish it had caused him.

## 09

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

### 10

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.

### 11

Mr and Mrs J were involved in a dispute with solicitors representing a management company about overdue service charges on a property indicating a balance of over £1,000. They claimed that the management company had twice sent an inaccurate statement of accounts which failed to show payments made. The situation was made worse because of exorbitant administration charges which they felt the management company had made. Moreover, the company had written to the mortgage lenders to claim an overdue balance which included electricity and utility costs being sorted out by the then tenant. Mr and Mrs J claimed the company had failed to disclose to the mortgage lenders its charges, but when the amount was paid the solicitors deducted their charges and credited their client's account with a lesser sum.

## 12

*Mrs K wished to complain about a firm of solicitors acting on behalf of a bank. She purchased a Children's Indoor Play Centre and the bank agreed to a commercial loan which incorporated an overdraft and credit card facility. Unfortunately, she was forced to place the business into voluntary liquidation three years later. The bank did not negotiate with her directly, but instructed a solicitor to deal with her and a debt collector to deal with her business partner. Mrs D felt this made negotiations extremely hard as the solicitors appeared to have a different agenda to the debt collector. Despite being in employment and never having missed a payment, the solicitors required her to have her incomings and outcomes reviewed and to produce a new budget analysis every three months. She says that the firm asked her to list every item of shopping purchased down to the last penny, to ensure she had no available money at all.*

*A financial adviser suggested she made herself bankrupt, but Mrs D ignored this advice because she wanted to pay off her debts. In 2013, her mother received a small inheritance and agreed that if the bank agreed to a full and final settlement, she would gift the money to her. The financial adviser wrote to the solicitors firm offering a sum as full and final settlement of the debt, but this was not acknowledged. A reminder letter to the firm threatened referral to the Financial Ombudsman. A month later the solicitors firm responded to say that the offer had been referred to the bank and to await their response, but no indication of timing was given. Mrs D felt the treatment and bullying tactics used by the solicitors over the whole episode had been appalling. She said this caused her unnecessary stress requiring medical treatment and that she had felt quite suicidal due to the relentless pressure from the solicitors.*

## 13

*Mr L wished to complain about a solicitors firm acting on behalf of a leaseholder in relation to outstanding ground rent. However, according to Mr L, his records clearly showed that the payment had been made. Further, he claimed that the solicitors had not responded to any of his communications and continued to make erroneous demands directed towards an incorrect postal address. Mr L said that other tenants were experiencing similar difficulties with the same solicitors firm.*

## 14

*Mr M was involved in a road traffic accident and a solicitors firm acting on behalf of the other vehicle's driver managed a settlement with his insurers. To his surprise, Mr M received a letter informing of proceedings against him in court. The letter explained that a term of the settlement was that Mr M's insurers would pay the solicitors legal costs, but these had not been paid; Mr M's involvement in the accident meant that the proceedings would be against him. Mr M felt the solicitors firm was attempting to bully him as their letter was issued on the same day that the draft court order was made.*

## 15

*Mr N received two Statutory Demands from a solicitors firm instructed by his former business partner. He successfully applied to have the first overturned. The second demand was delivered by post to his girlfriend's address on Christmas Eve, an address which he had never used for correspondence or ever given to the solicitors firm. The demand was for claimed overdue payments, although Mr N said there had been no prior agreement stating the date on which these payments should be made. In writing to the Legal Ombudsman, Mr N said he was aware that solicitors should strive to protect their clients' interests, but also considered they had a duty to resolve problems and narrow the issues to achieve this. However, he felt this firm had repeatedly done the opposite and harassed him in a deliberately vindictive manner. He considered this latest tactic was an especially calculating attempt to spoil his Christmas and gave him little time to respond due to the closure of solicitors offices and courts over the holiday period.*

## 16

*Mrs O accepted she was liable for costs incurred by the solicitors engaged by her ex tenant, but disputed the breakdown of costs provided by the solicitor. For example, it claimed attendance at a court hearing on a day the court was not open, travelling time of one hour for a 15 minute walk, and time spent with the client at court and receiving instructions which Mrs O felt was unrealistic for a straightforward rent arrears case.*

## 17

*Mr P said he received a telephone call asking him to confirm his personal details from an organisation which refused to identify itself until these security questions had been answered. When Mr P declined to provide this information, the call took a threatening tone. Follow up calls proceeded on the same basis and Mr P eventually blocked the number from his phone as calls were increasing daily at 5 or 6 calls a day. After this, a solicitors firm sent repeated letters to chase a debt, but these were sent to Mr P's estranged wife's address. Mr P's wife was worried as the letter stated their objective was to obtain a charging order on the property. Despite being advised of the incorrect address, letters continued to arrive and Mr P's wife threatened to take legal action against the firm for harassment. The case eventually went to court, but the solicitors firm sent everything to Mr P instead of directly to the court. Mr P made an offer which was accepted and paid the amount, but said this was only because he could no longer handle the strain and had difficult family circumstances to deal with. He claimed the firm continued to pursue him to sign a Consent Order and threatened to advise their client to refund the monies paid and seek the full amount in court. In the end, the order was struck out on both sides for failing to comply with court procedures.*

## 18

*Mr Q's ex wife instructed solicitors in respect of alleged maintenance arrears. Mr Q claimed he was served a Statutory Demand despite the fact that this should not be used*



*to support maintenance arrears. Mr Q's solicitor considers that his ex wife's solicitors were fully aware that the demand was improper, but went ahead anyway as a means of threatening Mr Q with bankruptcy to persuade him to pay. The firm did not respond to a formal complaint, so Mr Q contacted the Legal Ombudsman.*

## **Courts and tribunals**

### **19**

*Mr R reported a distressing experience in court when he was pursuing an eviction order on a room that he rented out. He was waiting for his legal representative in the waiting room when he heard his name called. A gentleman called him across and asked to see his documentation. He did not question who the gentleman was and handed over his file. The gentleman then asked details about the documentation he had brought and for other paperwork in an aggressive manner. Mr R asked whether it was possible to continue the discussion somewhere more private but the gentleman ignored him and continued to demand various documentation. When Mr R was unable to answer all his questions he said the gentleman called him "rubbish". At this stage Mr R lost his temper and shouted back at him. Mr R's legal representative arrived shortly after, at which point it became clear that the gentleman was in fact the defendant's legal representative.*

### **20**

*Mrs S had a complaint against the Courts Service. Despite her being a vulnerable witness under the special measures directive, the CPS barrister read out her full address in open court on three occasions. The Legal Ombudsman was unable to help because the legal service she was complaining about was provided to the Crown.*

### **21**

*Mr T paid his builder in stages as the work was completed but it did not pass building regulations, which he argued amounted to a breach of contract. He claimed the builder then did not carry out the remedial work agreed and began to demand further money for this. The builder then left and would not return because Mr T would not pay him in advance. Mr T paid all outstanding monies to the builder, but nine months later he received a pre-action protocol from a solicitors firm acting for the builder. After taking legal advice, Mr T returned the protocol and made a counter-claim. However, he said the solicitors firm failed to respond to him. A further eight months on, Mr T received a demand for £15,000 plus costs/arbitration. Mr T says his response to this letter was also ignored and he had received a further demand for this settlement/arbitration.*

## 22

*Mr and Mrs U signed a court document agreeing to pay the claimant £6,000 and legal fees for both parties in a housing disrepair case. The legal fees for the claimant were £17,000, which Mr and Mrs U were astonished by since their own solicitors fees were only £3,500. They employed a costs draftsman who drew up many points of dispute over discrepancies and additional costs which did not add up, for example the solicitors claimed to have written over 100 letters during a 12 month period. Mr and Mrs U never received a formal reply, although the firm offered to lower the amount by £2,000. Mr and Mrs U contacted the Legal Ombudsman because they had run out of money to pursue this further and didn't know what to do.*

## 23

*Ms V wished to complain about the solicitor acting for her husband in their divorce. She initially tried self representing, but says the solicitor failed to respond to any of her letters or emails other than to write advising her that she was instructed (without any evidence) that Ms V had stolen money from her husband's account. The solicitor issued court proceedings, despite Ms V advising that she would need up to 3 months to agree finances given she was facing redundancy but would know her fate within this timeframe. Proceedings were nevertheless issued, but the solicitor was not ready for the first court date 4 months later, and then also not ready for the second. Further, no disclosure had been served even though Ms V had long since served all of hers. Again self representing at that hearing in order to save costs, she claims that opposing counsel saw this as a chance to exploit the situation, serving on her 10 minutes before the hearing a lengthy draft "proposal" containing distorted figures and claiming most of the assets for her client. Ms V felt that counsel then proceeded to completely dominate proceedings and produced a list of directions she had not previously been shown, then applied for costs in the cause. At the time of contacting the Legal Ombudsman, Ms V faced yet another court hearing and further legal fees. She had engaged her own solicitor, but said the other side just wouldn't negotiate and always served everything at the last minute so leaving no room for meaningful discussion.*

## 24

*Mr W wished to complain about the conduct of two solicitors acting on behalf of his former employer in an employment tribunal claim, with regard to their handling of the Witness Statement for his Disclosure Documents. He claimed that despite being told on countless times that no such documents existed, two Witness Statements suddenly appeared, but missing dates and signatures. Mr W believed that the documents were fabricated due to the solicitors' failed attempts to get his claim struck out.*

## 25

*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.*

## **26**

*Ms Y represented her daughter at an Employment Tribunal. She claimed the solicitors for the other side were guilty of treating her with contempt, bullying, intimidation and constructed a contract and released information which they should not have done. She said they also refused to co-operate with her, citing her status as mother and her not being legally trained as the reason for this. Following a Case Management Discussion where orders and dates were given to both sides, the opposing solicitors failed to respond at all to the first instruction and ever after that failed to comply with any of the orders by the due date, while just before the settlement they also did not respond to the order for exchange of witness statements.*

## **Family law**

## **27**

*Ms Z was being taken to court by her ex-husband. At the last hearing she had a private room because there was a history of domestic violence. Whilst in this room with her support worker and sister, she claimed that her ex-husband's solicitor's colleague came in and within seconds became aggressive – shouting, threatening, stamping her feet, slamming the door, lying, belittling and doing her absolute best to intimidate and frighten her before she went in to the court. Ms Z felt this behaviour undermined the case, but she could not remember the person's name. She asked her ex-husband's solicitor twice to furnish her with the woman's name, but this was refused.*

## **28**

*Mr A was a litigant in person in a family court hearing to establish contact arrangements with his son and wished to complain about the solicitor representing his ex partner. He was aggrieved that no draft court order was shown to him, despite being advised by the court to have all relevant paperwork sent at an early date in order to give him time to read and respond to it. Further, when he called to clarify matters, he claimed the solicitor shouted at him, which greatly upset his son.*

## 29

*Following a contested divorce petition, the High Court made an order to freeze Ms B's assets, which were supposed to have been placed in a joint account in the names of her solicitors and her ex husband's solicitors. However, it transpired that the joint account was not set up. In the meantime, the ex husband's solicitor was holding a sum of over £7,000 in their client account. Some months later, another court issued an order that the ex husband's solicitor discharge the injunctions made in the High Court, but this had yet to happen as Ms B's banks informed her that her accounts remained frozen. Ms B's own solicitor had written to her ex husband's solicitor on several occasions over a 2 ½ year period, but had not received any response. Ms M said this had caused her a great deal of stress and made it difficult for her to restart her life, for example she was unable to open a new current bank account which made it difficult for her to gain employment. She could no longer afford to pay her solicitor to pursue this further.*

## 30

*Mr C was recently divorced and facing a legal bill of over £100,000. He wished to complain against his ex wife's solicitor, who he claimed used his ex wife's malice, coupled with various wholly unsupportable and untrue accusations that his financial declaration was not full and frank, to allow the legal costs to needlessly ramp up to extraordinary levels. His own solicitor's view was that his costs were driven needlessly high by perhaps as much as 45%, due to the manner in which his ex wife's solicitor had advised and acted.*

## 31

*While attending a court hearing about access to her daughter, Ms D said her ex partner and his lawyer were overheard by a work colleague in a public arena discussing very intimate details that were demeaning to her character. Ms D said this caused her much distress and embarrassment and the allegations potentially compromised her future employment and her daughter's welfare.*

## 32

*Mr E and his partner were involved in a divorce case and were happy enough with the legal advice provided by his partner's solicitor. However, from the outset, they said they had been dogged by constant delay of the other solicitor who was representing the partner's husband. For example, three months after the divorce papers were lodged in Court and after constantly seeking an update, the solicitors said there had been an error on their side regarding the papers which they were in process of rectifying. At the time of contacting the Legal Ombudsman, Mr E and his partner were at their wits end, watching an ever spiralling bill and yet being no further on than they were almost a year ago.*

## Probate and power of attorney

### 33

*Mr F wished to complain about a solicitor dealing with his father's will as one of the executors. The will had removed three sons and Mr F had doubts about his father's health and state of mind when writing his will. He claimed that the solicitor failed to answer any of his emails, nor did the senior partner when asked to investigate why these emails had been ignored.*

### 34

*Ms G received a letter from a solicitors stating they had been instructed by an individual (Mrs D) and Ms G's Grandmother, to change the deeds to a property then jointly owned by Ms G and her Grandmother. The letter was a severance of Joint Tenancy notice and explained that the Land Registry had been informed that the property would now be held as Tenants In Common to avoid it passing to the surviving owner upon death. In the meantime, there was an ongoing court case regarding how Ms G had handled her Grandmother's finances while exercising a Power of Attorney. Ms G's powers had been suspended until any outcome was decided by the court. Ms G stated that Mrs D had no authority to act on her Grandmother's behalf as she had dementia and did not have power of attorney for her Grandmother. Ms G was very confused as to how the solicitors had changed the deeds without checking what powers Mrs D had, so she emailed the solicitors about this. The solicitors carried out the necessary checks, and since Mrs D could provide no evidence of having power of attorney, the deeds were changed back.*

### 35

*When Mr H's mother died, her property, purchased as a joint tenancy, passed to the survivor, but who died some months later. Mr H believed he had a claim under the Inheritance Act 1975 and separate claims relating to trusts in respect of the property. Due to the presence of the potential claim, Mr H's solicitors requested that the solicitors dealing with the estate notify them within 21 days of the issue of the Grant of Letters of Administration so as to allow adequate time to instruct counsel and obtain advice and, if appropriate, draft particulars of claim. An undertaking was given to this effect. However, Mr H's solicitor was later telephoned on behalf of a prospective purchaser for the property, during which they learned that a Grant had already been obtained. As a result of the breach of the undertaking, the remaining time period to make a claim was significantly reduced. This was significant as Mr H was away at the time and it was difficult for his solicitors to obtain instructions from him.*

### 36

*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.*

### 37

*After her father became incapable of handling his affairs and went into a care home, his three children, including Mrs J, instructed a solicitors firm regarding the sale of his home. She said they did not discuss the expected sale price as they expected this to be discussed before any sale was agreed. They received no communication from the firm but later discovered it had been sold at a massive undervalue to the son of one of the sisters. It appeared that the sister had been acting on her own and instructed the solicitors to act on behalf of the family's father without their consent. After a short period, after some repair work, the property was sold at a massive profit. Mrs J and her other sibling claimed they had never agreed to either of these sales, nor were consulted about them by the solicitors. They contacted the firm to ask on whose authority they sold the property at the price, to ask for a copy of any power of attorney and proof that they had got the best possible price given that it had been sold to family and looked decidedly dubious given the very low price of sale, plus the large amount of profit made in a short period. The family had no luck in getting the answers to these questions and also had no response after going through the complaints procedure. The Legal Ombudsman explained it could not investigate as Mrs J's father would have been the client of the firm as it was the sale of his house they would have been dealing with.*

### 38

*A solicitor notarised a power of attorney that Ms K's former husband had taken to him. The document was in a foreign language and was a power of attorney to transfer her interest in two properties in Europe to Ms K's former husband without her knowledge. Ms K claimed that the solicitor had failed in his duties as a notary to check what the document was. Although Ms K's solicitor was able to stop the sale of one of the*

*properties, she lost 50,000 Euros on the sale of the other. The ex husband's solicitor denied acting improperly, claiming that his client had changed the document. Although the solicitor had insurance, the insurers would not indemnify him for this case.*

## **Insolvency**

**39**

*Mr L wished to complain about a solicitor acting against him on behalf of an insolvency practitioner. Mr L alleged that the solicitor misled the judge by bringing false evidence against him in order to procure his bankruptcy, via an Insolvency Voluntary Agreement (IVA). After working with the Insolvency Practitioners Association, Mr L alleged that he had evidence showing the insolvency practitioner was also not telling the truth. However, the Financial Ombudsman told him they could not proceed with an investigation because the Trustee of the bankruptcy had refused to allow a full and proper investigation. Mr L stated that all his creditors were unaware of the insolvency practitioner's involvement and were happy to offer debt repayment plans, which Mr L started six weeks before the bankruptcy hearing. Mr L claimed that in the two years since the bankruptcy, the solicitor and insolvency practitioner had not sold any part of his property portfolio or paid a penny to his creditors, meanwhile running up costs of tens of thousands of pounds.*

*Mr L told the Legal Ombudsman that the solicitor was acting for all parties within the IVA; however, the Legal Ombudsman considered that the solicitor was instructed by the insolvency practitioner to assist in the administration of the IVA. In the absence of any further evidence to show that Mr L personally had a retainer with the solicitor, such as a client care letter, or costs update, the Legal Ombudsman concluded that he had not received a service from the solicitor and so was unable to look into his complaint.*