

# Benchmarking the Legal Ombudsman

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## Note

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# 1 Executive summary

## Context

- 1.1. The creation of the Legal Ombudsman was one of the three main planks of the legal services reforms. Given failings in the previous system which plagued the sector, the Legal Ombudsman will be a very visible symbol of the success of these changes. In this context, the Legal Services Board, which ultimately has oversight responsibility for its performance, has asked us to carry out a study to benchmark the organisation against other redress schemes.
  - 1.2. The ADR Directive makes this exercise a particularly timely one. Competent authorities will be required to publish regular reports on ADR schemes which will be informed by performance data, so we hope this report will assist the Government in delivering on its new responsibilities. The Directive also promises to expand the consumer's right to access redress across the entire economy and decisions will need to be made on where complaints handling duties should be allocated. These changes have breathed new life into discussions about rationalising the overall consumer redress landscape.
  - 1.3. The study covers ten schemes; the first seven below are ombudsman schemes and the others offer alternative models of dispute resolution:
    - Office of the Independent Adjudicator
    - Pensions Ombudsman
    - The Property Ombudsman
    - Prisons and Probation Ombudsman for England and Wales
    - Tenancy Deposit Scheme
    - Dental Complaints Service
    - Communications and Internet Services Adjudication Scheme
  - 1.4. The study focuses on the complaints handling role of redress schemes and so does not cover secondary roles to use complaints data to raise standards or work to promote access. It uses data for the 2012-13 period extracted from annual reports and other published sources, plus further information that some schemes provided. We are grateful to them for their cooperation.
  - 1.5. The introductory section of the report highlights the value and limitations of benchmarking exercises and there is a chapter which explains some of the key differences between schemes. This is important to put the results in context and we have erred on the side of caution in drawing conclusions. While there are some data gaps, we have been able to draw tentative conclusions about the Legal Ombudsman, suggest areas for further research and offer some wider reflections and questions about future directions in redress.
- Financial Ombudsman Service
  - Legal Ombudsman
  - Ombudsman Services

## Strengths and weaknesses

1.6. The data, despite its limitations, has allowed us to make some conclusions about the relative strengths and weaknesses of the Legal Ombudsman.

- Caseload – compared to other schemes the proportion of contacts ending up as complaints are at the lower end. There is evidence of consumer confusion leading to lots of people ‘going through the wrong door’. Large numbers of premature complaints appear mainly due to a lack of consumer confidence in first-tier complaint handling. There are some gaps in redress for historic reasons related to the reserved activities, but also due to restrictions in the organisation’s scheme rules, which are largely derived from statute. While most issues are for others to address, the Legal Ombudsman has been proactive in highlighting the need for action.
- Timeliness – it compares well to its nearest comparators on resolution times and customer satisfaction. Formal ombudsman decisions are needed in 39% of cases – a key factor in extending decision-making times. Resolving more cases informally is seen as a priority, but it may not always be what consumers want. Although quicker and less stressful, people may want a full investigation and the outcome detailed in writing.
- Quality – perceptions of fairness among complainants are relatively high compared with other schemes, especially bearing in mind the Legal Ombudsman upholds fewer complaints. Less positively, in nearly 70% of cases where an ombudsman made a decision, the complainant rejected it; although this may reflect

false expectations of the scheme. Overall advocacy rates – whether users would recommend the scheme to others – are lower than most other schemes, which is probably due to differences in uphold rates. User survey data is consistent in highlighting the need to keep complainants informed of progress and a perceived weakness in staff understanding of complaints. The Legal Ombudsman receives higher proportions of complaints about its service and judicial review applications than other schemes.

- Cost – the Legal Ombudsman’s unit cost is higher than comparable schemes and it is taking steps to reduce this. There are good reasons why legal complaints are costly to deal with – e.g. complexity, higher stakes mean more ombudsman decisions. However, the scheme’s unit cost has implications for its case fee policy and ambitions to widen its jurisdiction. The Panel wants to see the unit cost reduced, but not at the expense of making savings on standards-raising work.

## Wider reflections

- 1.7. While this benchmarking report focuses on legal services, we end by offering wider reflections on consumer redress in the context of the ADR Directive, which may greatly expand consumer usage of ADR across the economy.
- 1.8. ADR schemes carry out an important public interest function and they should be accountable for their performance. The large number of data gaps in this report is disappointing. Some of these are for valid reasons, such as data not being collected in the same way, but not always. Schemes should reflect on this in light of the Government agenda

to promote transparency and the need to set an example given they handle complaints alleging a lack of transparency by businesses. The introduction of a competent authority, as specified in the ADR Directive, provides an opportunity to address this on a consistent basis.

- 1.9. The study reveals some other common challenges facing ADR schemes, such as premature complaints, the linked issue of signposting by providers and the wish to promote informal resolution. Timeliness has been a historic area of concern for ombudsmen and corporate documents signal ambitions to reduce further case resolution times. The ADR Directive will put renewed focus on this.
- 1.10. ADR schemes want more consumers to use their services, but are reluctant to advertise for complaints, which they fear could compromise their impartiality and blur into regulation. Similarly, there has been a reluctance to fully embrace the Government's default position that schemes should identify the names of providers. A higher public profile would build consumer confidence and help to deter poor industry practice. It should also dampen the impact of claims management companies who have no such inhibitions and who have become a feature in a range of markets.
- 1.11. There is some appetite to rationalise the consumer redress landscape. The benchmarking exercise offers some support for this: scale generally makes for lower unit cost and smooths out peaks and troughs, while there is a large degree of signposting consumers between schemes due to jurisdiction issues. However, it also indicates that competition between ADR schemes may lead to innovation and efficiencies. Although like for like comparisons are difficult, the alternative redress models featured in this report achieve quick

and cheap redress, perceptions of fairness are comparable despite their less inquisitorial approach, and advocacy rates are at the high end.

- 1.12. The right balance has to be found between: simplifying the maze; and promoting efficiency through competition, which lends itself to more redress schemes but risks causing greater confusion. A middle ground approach might be a commissioning model, based on appropriate choice criteria, with competition for monopoly rights over wide areas that make sense from a consumer journey perspective.
- 1.13. The ombudsman is just one of a range of dispute resolution models and it may not be necessary to turn to this in every consumer situation. Research suggests it is especially useful when there is a need to equalise a power imbalance between the parties, while the model is also marked out by a focus on using complaints data to raise industry standards and promoting access to under-represented groups. Therefore, in certain sectors – and legal services is one – there is a public interest case to favour the ombudsman model of redress. However, in arenas where these factors are less evident, alternative models may be sufficient.
- 1.14. The ADR Directive therefore presents both an opportunity and a threat to the Legal Ombudsman, and indeed the ombudsman model in general. While features of the ombudsman model add value and these explain why it comes at a higher cost, these benefits need to be clearly evidenced if it is to remain the dispute resolution model of choice in a future consumer landscape.

# 2 Introduction

## A vital role

- 2.1. Failures in complaints handling were a key driver of the legal services reforms. The Law Society's arrangements drew particular criticism for lengthy backlogs and lacking independence, but redress schemes for other types of lawyer also faced public scrutiny. The Government decided consumers deserved better when they complained about any legal service and legislated to create a single scheme to cover the whole profession.
- 2.2. Against this problematic history, the performance of the Legal Ombudsman is rightly seen as a key test of whether this plank of the 2007 reforms is working. The service is designed to deliver justice for individuals who have received poor service from their lawyer, often in situations where the financial and personal stakes are high. We know that consumers feel intimidated by the idea of complaining about lawyers and draw confidence from knowing there is an independent body to which they can turn to obtain quick and fair redress. The benefits of the Legal Ombudsman go beyond the individual complainant, by supporting a competitive market and through extracting the learning from complaints to help raise standards.
- 2.3. The Panel was asked by the Legal Services Board (LSB) to benchmark the Legal Ombudsman against other Alternative Dispute Resolution (ADR) schemes. The LSB has oversight responsibility for the scheme and agrees key performance indicators with

its board. This report will help inform the LSB's processes for approving the scheme's budget and business plan.

- 2.4. The Legal Ombudsman has now been operational for three years. While the service is still evolving and improving, with recent figures for this year showing ongoing improvements, this seems a reasonable period of time to compare its performance to other schemes. As the statutory body in the sector charged with representing the interests of consumers, the Panel is well placed to carry out this exercise.

## External developments

- 2.5. This project is timely due to external developments that will affect the Legal Ombudsman and other redress bodies. In particular, an EU Directive on ADR is due to be implemented by July 2015. Each Member State will be required to appoint a 'competent authority' to monitor the functioning of ADR schemes and assess whether each respects a set of agreed quality principles. Competent authorities will publish regular reports on the development and functioning of ADR schemes, which will then be compiled at EU level. Performance data will need to inform such exercises and we hope this project will assist the Government in meeting its new responsibilities.
- 2.6. The Directive gives consumers a new right to access ADR for all transactions, with certain exemptions. There is ambiguity because individual member

states must decide whether it should be mandatory for traders to take part. The Government's intentions will be clearer once it consults on how to implement the Directive. However, this could lead to a major increase in work for redress schemes. The Legal Ombudsman has recently published a discussion paper raising the possibility of it accepting complaints about all legal services and a wide range of professional services. The performance of ADR bodies could influence where this work is allocated.

- 2.7. Another source of new work is the Consumer Codes Approval Scheme, now operated by the Trading Standards Institute. This initiative enables traders to commit to consumer protection standards above the minimum required by general law. All codes must provide access to a recognised ADR scheme. Therefore, even if there is a minimum compliance approach to implementing the ADR Directive, the emphasis on credible self-regulation could lead to higher demand for out-of-court redress. Again, trade associations should be interested in how ADR bodies perform.
- 2.8. Government and trade bodies alike will look for evidence of good performance and value for money before awarding new business. While this report mainly focuses on ombudsmen, there is an increasing diversity of redress models. So increasing demand is a threat as well as an opportunity for ombudsmen in an environment where the right to provide redress services is becoming more contested. In the legal sector, the Legal Ombudsman faces competition from other suitors coveting unregulated providers' business. While the Panel supports a single place for all legal services complaints, other imperatives might lead to a different outcome.

## Benchmarking: our approach

- 2.9. The study uses a series of indicators grouped under four headings: caseload, timeliness, quality and cost. The data selected was informed by the Legal Ombudsman's current KPIs, the quality criteria in the ADR Directive and the Ombudsman Association's principles. We have needed to take a pragmatic approach in using data which is commonly reported by redress schemes; in this sense the study was an exercise in the art of the possible, rather than what we would consider to be an ideal data set.
- 2.10. The data covers the 2012-13 period unless otherwise stated. Three year trend data has been provided for some of the indicators, although it has been necessary to use two year trend data for the Legal Ombudsman because it only started receiving complaints in October 2010. As a relatively new body, we would not expect the Legal Ombudsman to be at full operational effectiveness and indeed its business and staffing models are evolving; this also makes comparisons challenging.
- 2.11. An overview of the indicators can be found on page 7 and detailed data tables are at the back of the report. We wish to place on record that the Legal Ombudsman fully cooperated with the project including by providing data that is not recorded in their annual report.
- 2.12. This project has collected data on the *complaints handling* performance of the Legal Ombudsman and compared this against similar data for selected other redress schemes. Of course, resolving disputes is just one aspect of the Legal Ombudsman's role. In fact, one of the features that sets ombudsmen apart from other types of redress scheme is using complaints data to help raise standards. This is a large topic which

merits its own study, and in any case does not lend itself to the quantitative approach used in this report. Similarly, diversity data and work to promote access to under-represented groups have also been excluded. This is important to remember when comparing the costs of ombudsman schemes with other redress models.

- 2.13. Benchmarking is a commonly used technique that provides an independent perspective about the performance of organisations relative to comparable bodies. It allows organisations to spot opportunities to improve and learn from good practice by others. It can assist in setting realistic expectations about what can be achieved and to monitor progress towards meeting objectives. Equally, it can help to identify common problems that face organisations of a similar type and so areas of apparent weakness might not be as bad as they initially seem. Benchmarking thus helps to prioritise areas for action and focus improvements where they are most likely to achieve better performance. Bearing in mind our remarks above about the future expansion of redress, benchmarking is not only a useful accountability tool for public bodies, but also one which can be used to secure success in a competitive environment.
- 2.14. Benchmarking redress schemes is challenging and we wish to openly acknowledge some limitations of this methodology at the start. We note the Parliamentary and Health Service Ombudsman has suggested that the Ombudsman Association develop quality standards and benchmarks for the sector. We hope this exercise is a useful forerunner to any such initiative.
- 2.15. Each scheme operates in different contexts, which affects the size and type of complaints it receives and the customers (complainants and

respondents) it deals with. The processes schemes use differ somewhat and the resources at their disposal vary greatly. The Panel is also alert to the risks of creating perverse incentives or encouraging misreporting due to a 'targets culture'. The schemes use a variety of reporting conventions which makes comparisons difficult. Some publish quite limited data which has created gaps in our analysis.

- 2.16. In order to help us manage these risks, a pre-populated standard data form was issued to each scheme to enable checks for factual accuracy and to fill information gaps. In addition, to help put our findings in context, we read the commentary sections of annual reports and corporate plans and familiarised ourselves with latest developments in the field. We also benefited from discussions with senior figures within many of the redress schemes within scope. All the schemes were provided with a draft of the full report to check for accuracy prior to publication.
- 2.17. Inevitably, there are data gaps which have impacted on our analysis. The reasons for this vary for each indicator. These include data not being collected, differences in reporting conventions making comparisons too difficult and schemes refusing to disclose data on the grounds of commercial sensitivity. The Panel has interpreted the data with caution and highlighted limitations in the text. Moreover, we have included a series of measures in each section and we encourage readers to look across the charts to seek patterns, rather than focus too heavily on a single chart. Despite these challenges, we are confident this was a useful exercise that opens up questions which would benefit from further investigation and qualitative insight, even if making firm conclusions was not always possible.

## Structure of report

2.18. The structure of the report is as follows:

- Chapter 3 provides brief details about each of the schemes included in the study
- Chapters 4 to 7 include our analysis under each of the headings above
- Chapter 8 offers wider reflections on future directions in redress

## What we measured

### Caseload

- Proportion of premature complaints
- Proportion of excluded complaints due to scheme rules/legislative gaps
- Signposting by provider to schemes

### Timeliness

- Average time taken to resolve disputes
- Proportion of formal ombudsman decisions
- Complainant satisfaction with timeliness

### Quality

- Fairness of decisions
- Customer satisfaction survey results
- Proportion of service complaints compared to case volumes
- Judicial review applications

### Cost

- Unit cost
- Ratio of cases to staff

# 3 About the schemes

## Schemes included

- 3.1. The UK has numerous ADR schemes operating in the private and public sectors. This study includes six ombudsman schemes, in addition to the Legal Ombudsman, plus three other redress models. They were chosen based on size, similarity of area and availability of performance data.
- 3.2. In order of size, as measured by annual expenditure, the ombudsmen are:
- Financial Ombudsman Service (FOS) – complaints against financial firms, covering most areas of personal finance, from insurance and pension complaints to bank accounts and investments
  - The Legal Ombudsman (LeO) – service complaints about lawyers in England and Wales
  - Ombudsman Services (OS) – provides dispute resolution for the communications, energy, property and copyright licensing industries
  - Office of the Independent Adjudicator (OIA) – complaints by students in higher education in England and Wales
  - Pensions Ombudsman (PEN) – complaints of maladministration by, and disputes of fact or law with, trustees, managers, employers and administrators in relation to pension schemes
  - The Property Ombudsman (TPO) – complaints relating to sales, lettings, search providers, residential leasehold management, chattels auctions, international and commercial property agents
  - Prisons and Probation Ombudsman for England and Wales (PPO) - investigates complaints from prisoners, those on probation and those held in immigration removal centres. The Ombudsman also investigates all deaths that occur among prisoners, immigration detainees and the residents of probation hostels
- 3.3. We have selected three schemes to provide a contrast to the ombudsman model. Again, in order of size, they are:
- Tenancy Deposit Scheme (TDS) – operates an insurance backed scheme and resolves tenancy deposit disputes arising in the private rented sector
  - Dental Complaints Service (DCS) – complaints about private dental care. The scheme is funded by the General Dental Council
  - Communications and Internet Services Adjudication Scheme (CISAS) – an adjudication scheme approved by Ofcom, which settles consumer disputes with certain communications providers

## Differences

- 3.4. It is important to understand differences between schemes to put the results into appropriate context. Performance differences between the schemes are inevitable and acceptable due to the nature of complaints and other factors.
- 3.5. In relation to the time periods for our analysis, data was collected for the 2012-13 financial year. Exceptions were OIA and TPO which both report on a calendar year basis. For ease of presentation, we have kept to financial year labels in the charts and data tables in the Annex. Since the 2013 calendar year has not completed, the most recent data is for 2012. This unavoidably means that the data does not compare identical time periods.
- 3.6. There are differences between the ombudsman model and other types of dispute resolution service. When asked, ombudsmen describe some of their defining features as including: the independence of the office holder; the inquisitorial nature of the process; the assistance they provide consumers in formulating their complaint; outreach activities to under-represented groups; and use of complaints data to raise standards in their respective sectors. The Ombudsman Association has listed principal features of ombudsman schemes (see Annex 1) and publishes criteria for the recognition of ombudsman offices which are included in Cabinet Office guidance.
- 3.7. However, 'ombudsman' is not a protected title and the distinctions between these schemes and other dispute resolution bodies have become blurred as the latter have borrowed from the ombudsman model without adopting all of its features. Also, it is fair to say that ombudsman schemes carry out the value added activities described above to varying extents. Thus, boundaries between the various dispute models are not clear cut. A question we pose at the end of this report is in what circumstances the ombudsman model is necessary and when alternatives would be sufficient.
- 3.8. One of the main differences between the schemes is size. FOS dwarfs all other schemes in terms of caseload and resources. In fact, it handles eight times more complaints than all the other schemes in this study put together. Size matters due to the economies of scale larger schemes can reap and the wider range of activities their high levels of resources open up, for example around increasing access to under-represented groups. Charts 1 and 2 below record this information.
- 3.9. We note a significant increase in expenditure across most schemes over the last three years, ranging 10-50%. This reflects a growth in work; across schemes as a whole our analysis suggests case volumes have increased at a higher rate than expenditure. The Legal Ombudsman's caseload has remained the same over the last two years, whereas its expenditure fell by 3.7% over this period. In the public sector, the Parliamentary and Health Service Ombudsman, and the Local Government Ombudsman, have both reported increased levels of enquiries but a reduction in their budgets – each is restructuring their organisation.
- 3.10. The maturity of schemes may also affect performance as new schemes take time to settle down. The Legal Ombudsman is the only scheme in this report which is under five years old. Changing responsibilities, such as taking on new jurisdictions, is also likely to impact on performance.

- 3.11. The schemes deal with different types of complaint. In some cases, the facts will be obvious and involve quite small sums of money. On other occasions, the issues may be complex and quite emotive. This will affect the speed of decision-making and the likely success of informal resolution approaches. In turn, this will impact on cost-efficiency. The Legal Ombudsman, OIA and TPO have suggested the nature of the complaints they deal with are one of the biggest factors that influence their performance data.
- 3.12. Another key source of difference is the processes used by the schemes to resolve disputes. All schemes insist that consumers first try to resolve their dispute with the provider. After this, however, there are different procedures to go through, variations in the degree of 'to and fro' between consumer and provider that is allowed, and linked to this, emphasis on the investigator to seek informal resolution rather than refer for a formal ombudsman decision. The use of IT, telephone or paper based processes also differs in degree. Annex 2 provides a basic outline of the steps involved in each scheme.
- 3.13. Finally, all of the ombudsman schemes in this study, with the exception of PPO, are backed by statute and/or subject to oversight by a regulator. Sometimes this legislation can be quite prescriptive about how the scheme should work and so the ombudsmen have little freedom of movement to make changes. This is particularly true in relation to which types of complaints fall within their jurisdiction.

**Chart 1 – Expenditure, 2012-13**



**Chart 2 – % change in expenditure, 2011-13**



\*LEO: 2012-13 difference used. It started receiving complaints in October 2010 so full 2010-11 financial year data is not available

# 4 Caseload

## Why this is important

- 4.1. There are no rights without redress. Consumers who have received poor service from a lawyer should have access to an ADR scheme to put things right. Restrictions due to unjustified narrow boundaries or scheme rules can frustrate this objective. These can also increase dissatisfaction and undermine confidence by defying expectations that an ADR scheme has wide coverage. Exclusions limit the other benefits of ADR to consumers and industry, such as highlighting opportunities for innovation and improvement.

## Case volumes

- 4.2. Chart 3 reports cases accepted for investigation as a proportion of all individual contacts made to schemes in 2012-13. As context, the Legal Ombudsman received 36,668 new contacts and accepted 8,430 complaints (2011-12: 37,872 contacts and 8,420 accepted complaints).
- 4.3. 1.7% of cases closed by the Legal Ombudsman were complaints made by microenterprises. The Financial Ombudsman recorded 0.9% from this source, although this is likely to underestimate the true figure. For Ombudsman Services, 16% of complaints were from businesses; this was 15% at The Property Ombudsman.
- 4.4. In other schemes, commentaries in annual reports highlight increased

complaint volumes compared to previous years. Reasons offered are expansion of remit and economic factors meaning a higher propensity to complain. So caseloads at the Legal Ombudsman are bucking the general trend. Moreover, the scheme has attracted far fewer complaints than it anticipated before opening its doors; it planned for 12-14,000 cases. Chart 4 provides a three year comparison.

- 4.5. Various reasons have been offered to explain these figures. It may reflect the general economic picture, for example conveyancing was the most common source of complaints for the Legal Ombudsman's predecessor, but there has been a contraction in the housing market in recent years. Conveyancing accounted for 15% of the Legal Ombudsman's caseload last year compared to 35% of its predecessor's. Further, the Legal Ombudsman has not yet had to deal with any 'scandals' that have led to multiple complaints equivalent to the miners' compensation episode. Against this, the Panel's Tracker Survey suggests the numbers of transactions have remained largely static over the past five years.<sup>1</sup>

<sup>1</sup> The same proportion of people used any legal service during the previous two years in 2011-13 as in 2010-12 (30%). Ministry of Justice data in 2010 suggests that 34% of people used any legal service within a three year period.

- 4.6. Another possible reason is poor levels of compliance with rules requiring firms to signpost consumers to the service. All law firms are required to inform their clients about their right to complain to the Legal Ombudsman. These details should be provided both at the point of engagement and at the end of the internal complaints process. The Legal Ombudsman has recently produced an information pack to help lawyers know what to tell their clients.
- 4.7. However, Legal Ombudsman survey data indicates that only 27% of users recalled hearing about the scheme from their provider. Other research has indicated a 'small but material rate of non-compliance' among solicitors.<sup>2</sup> In fact, regulators in other sectors have similar signposting rules yet recall rates appear similar to legal services based on user surveys carried out by the ADR schemes. Unless all sectors suffer from non-compliance, this may suggest that the real issue is around the design or implementation of signposting rules, as well as what it is reasonable to expect consumers to recall in a world where there is a general information overload.
- 4.8. Others suggest the shortfall is due to better complaints handling among law firms. SRA data shows a 2% drop in complaint volumes and a 15% fall in complaints referred to the Legal Ombudsman.<sup>3</sup> Certainly this has been the focus of regulatory attention, while there are some potentially strong incentives: the policy to name providers subject to formal ombudsman decisions and the prospect of paying a £400 case fee (individual case fees were a limited feature of the previous system). The Legal Ombudsman told us it has anecdotal evidence that its publication policy is influencing positively the way in which law firms handle complaints.
- 4.9. However, based on a range of research evidence, complaints standards still appear to be still poor. For example, research commissioned jointly by the Legal Ombudsman and the Panel<sup>4</sup> revealed powerful general barriers to complaining: people are confused about what to do, get completely thrown by legal jargon, believe they won't get a fair hearing and fear that upsetting their lawyer could have repercussions for their case. Moreover, of those premature complainants who then complained to the firm, 61% rated their experience as poor including 26% who scored it at just 1 out of 10.
- 4.10. In addition, SRA data shows that traditional solicitor firms deal with only four complaints in-house for every one referred to the Legal Ombudsman.<sup>5</sup> The figure for Legal Disciplinary Practices (LDPs) is 5 and alternative business structures (ABS) is 11. Therefore, even if complaints handling is improving, these figures suggest it is from a low base. By way of contrast, our analysis of data published by the Financial Conduct Authority and Financial Ombudsman Service shows a ratio of 14:1. In addition, survey data of the consumer experience in 51 markets reveals that legal and accountancy services was one of six markets where consumers were especially likely to complain to a third party organisation or complaints body. Consumer Futures says this implies that the complaints

<sup>2</sup> Referenced in [http://www.legalservicesboard.org.uk/Projects/pdf/sra\\_ftch\\_letter.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/sra_ftch_letter.pdf).

<sup>3</sup> Legal Services Board, Evaluation: Changes in competition in different legal markets. An empirical analysis, October 2013.

<sup>4</sup> YouGov, Consumer experiences of complaint handling in the legal services market, August 2012.

<sup>5</sup> Legal Services Board, Evaluation: Changes in competition in different legal markets. An empirical analysis, October 2013.

were serious but had not been satisfactorily resolved by the provider.<sup>6</sup>

## Excluded complaints

- 4.11. Across the schemes, a minority of contacts end up as investigations. 23% of individual new contacts to the Legal Ombudsman converted to accepted complaints. This is among the lower proportions across schemes where data is available. This is not necessarily a negative, as it is valuable if schemes signpost people to a useful source of advice or can help them to resolve their issue without needing to lodge a formal complaint. However, it would be of concern if the low figure reflected poor first-tier complaints handling standards or gaps in the scheme's jurisdiction.
- 4.12. The scope of ADR schemes is usually determined by statute or, in voluntary private schemes, by negotiation with industry. While this is outside of ADR bodies' control to determine, it is important for a benchmarking study to consider excluded complaints as this is important to consumers' ability to obtain redress. We would expect ADR schemes to draw boundary issues to the attention of decision-makers.

## Premature complaints

- 4.13. The Legal Ombudsman initially turned away 9,594 complaints in 2012-13 because the consumer had not first complained to their lawyer – known as premature complaints. This represents 26% of all new contacts. Of these, around one-third returned to the Legal Ombudsman and progressed to the case resolution stage. Data gaps make comparisons with other schemes difficult, but high levels of premature

complaints appear to be a common issue across schemes and this may be a fruitful area for joint working.

- 4.14. The Legal Ombudsman commissioned research to explore the reasons why consumers complain prematurely. It found that a lack of confidence in the complaints system explains why people do not complain to their law firm. People think the complaints process will not work objectively and fear that to complain will disadvantage them. Therefore, this issue is primarily for the regulators to tackle. However, the study also found that people misinterpreted information on the Legal Ombudsman's website and there was scope to make this guidance clearer. There were also false expectations among those who thought the scheme would act on their behalf by making their complaint. While the Legal Ombudsman facilitates complaints, it cannot of course 'act' on the complainant's behalf.
- 4.15. Given the low consumer confidence in complaining to a law firm, there is good reason for the Legal Ombudsman to support people in making a complaint. Following the research study above, it has trialled ways of doing this, including contacting complainants again to check on progress and alerting the law firm that they are aware of the situation.

## Outside of jurisdiction

- 4.16. The Legal Ombudsman turned away 5,575 complaints because they fell outside of its jurisdiction, representing 15% of all new contacts. This is a very large number given the scheme accepted a total of 8,430 complaints. Again, other schemes also reject large numbers of complaints for this reason.
- 4.17. Different schemes have different acceptance criteria for complaints. The Legal Ombudsman's jurisdiction is

<sup>6</sup> Consumer Focus, Consumer conditions in the UK 2012: Analysis of the EU Market monitoring Survey Results, September 2013.

largely derived from primary legislation, but it may make recommendations to the Lord Chancellor to alter the range of situations where it may accept complaints. The Panel also has powers to make such recommendations. Changes made to the scheme rules which took effect in February 2013, for example in relation to time bars and the maximum compensation limit, are anticipated to increase the proportion of contacts falling within the eligibility criteria by approximately 10%. For example, the Legal Ombudsman has told us that time barred complaints have fallen by 50% since the time periods for complaining were extended.

- 4.18. However, some type of complaints will remain out of scope for the time being, in particular third party complaints, of which there were over 2,000 last year. This is an area which the Panel has asked the Legal Ombudsman to look at and it has agreed to set up a steering group for this purpose. While we accept that not all third party complaints should be investigated, clearly numbers of such complaints are not trivial.
- 4.19. In responding to an information request by the LSB, the Legal Ombudsman said that since starting operating it has signposted 11,627 enquiries to other bodies, or 18% of enquiries per year.<sup>7</sup> Of these, 41% were signposted to regulators, so the service/misconduct split of duties between the Legal Ombudsman and approved regulators may account for much of this. An additional 34% were signposted to other bodies that have some role in redress, consumer advice, regulation or another aspect of the justice system. While indicative, three-quarters of initial contacts represent consumers going

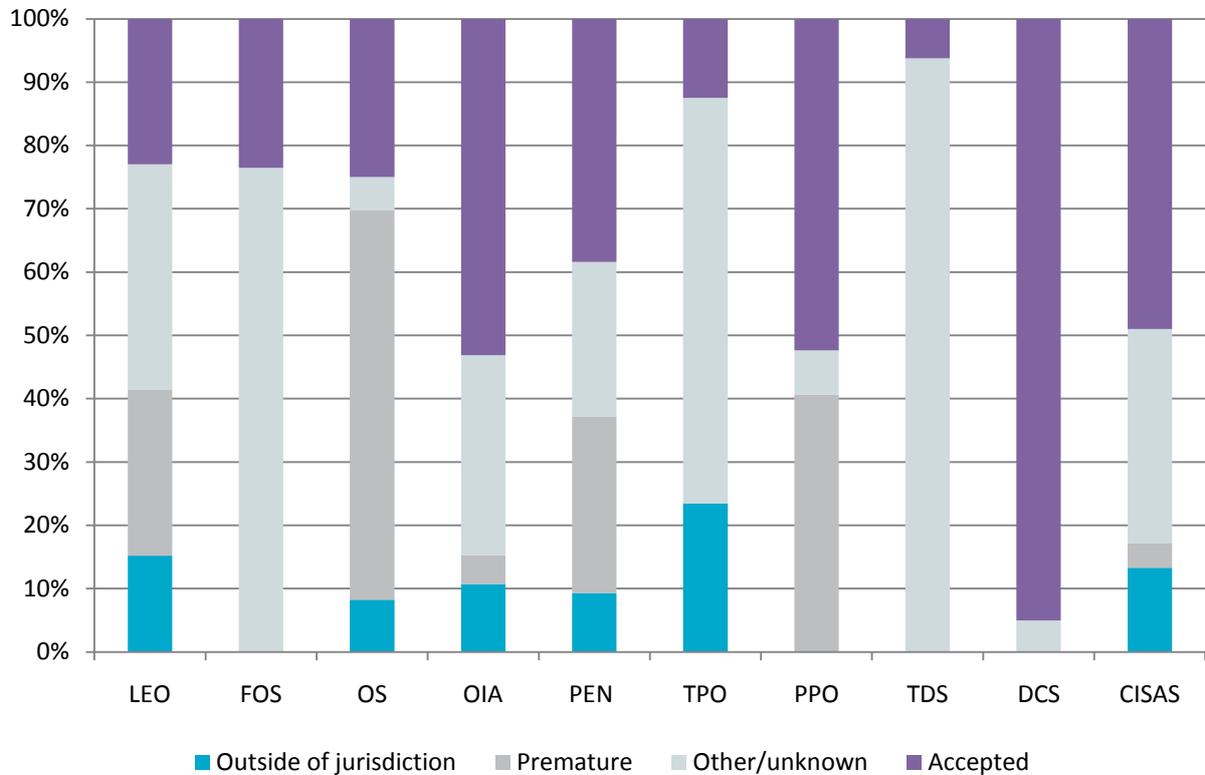
through the 'wrong door', suggesting a high degree of consumer confusion.

- 4.20. The boundaries of regulation and so access to redress are determined by statute. There are gaps in redress for various reasons and the problems this situation creates have been well documented elsewhere. In short, these are the result of the narrow reserved activities and blurred regulatory boundaries causing confusion about what falls within scope and opportunities for creative business models that escape the regulatory net. Other types of legal services provider, such as immigration advisors and claims management companies, while regulated, are not in a complaints scheme with redress awarding powers that are binding on providers.
- 4.21. The Legal Ombudsman has been proactive in seeking to expand its remit across all legal services and potentially into other professional services markets. Our response to its recent discussion paper welcomes plans to create the voluntary jurisdiction, which is long overdue.<sup>8</sup> However, we have reserved judgement as to whether the Legal Ombudsman should expand into other professional services markets.

<sup>7</sup> Legal Ombudsman, *Report under section 120 of the Legal Services Act 2007: complaints outside the Legal Ombudsman jurisdiction*, March 2013.

<sup>8</sup> Legal Services Consumer Panel, *Legal Ombudsman – Access to redress for legal and other professional services*, October 2013.

**Chart 3 – Caseload based on all enquiries, 2012-13**

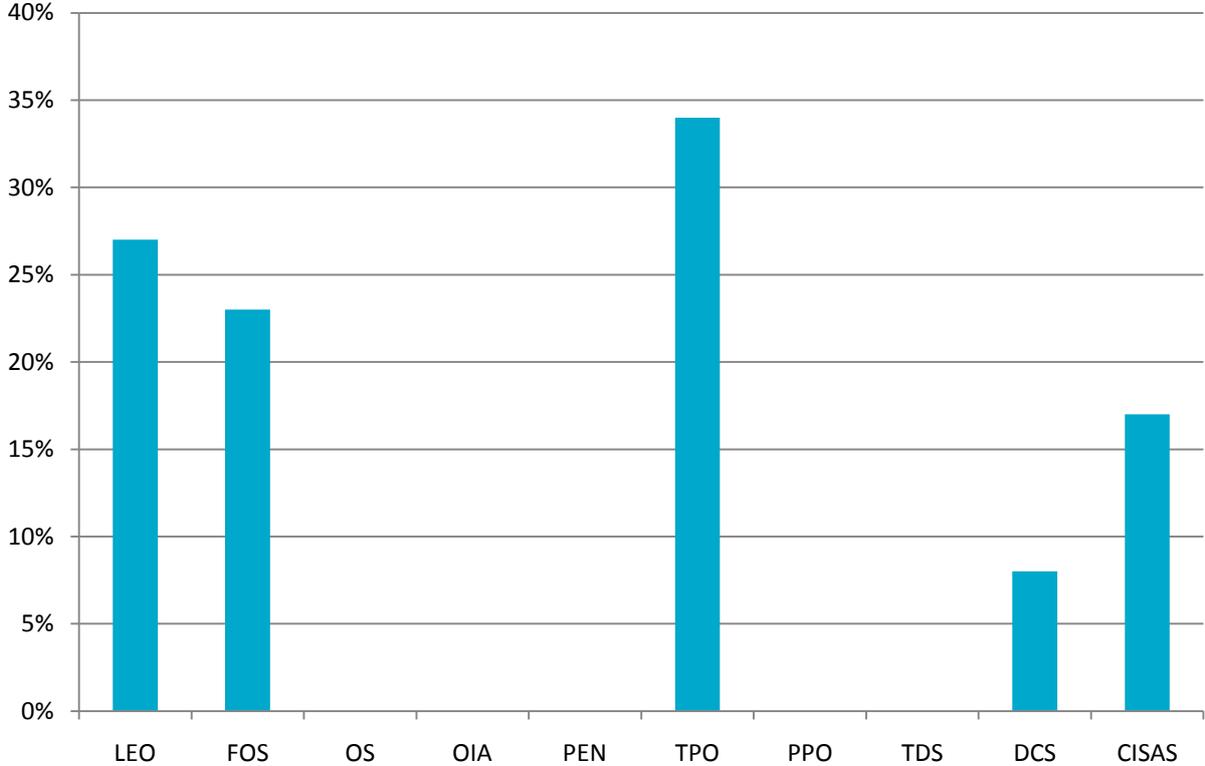


**Chart 4 – % change in case volumes, 2011-13**



\*LEO: 2012-13 difference used. It started receiving complaints in October 2010 so full 2010-11 caseload data is not recorded

**Chart 5 – Signposting to scheme by providers (most recent survey)**



\*OIA: This is not a legal requirement for higher education providers

# 5 Timeliness

## Why this is important

- 5.1. Before reaching the ADR scheme, consumers may have already been through a drawn out process trying to resolve their complaint with the firm. They may be out-of-pocket and need to recover their losses quickly, or want to achieve emotional closure in order to move on with their lives. As bodies that consider complaints about delays and missed deadlines, it is important for ADR schemes to lead by example and handle complaints in a timely way. However, speed should not be at the expense of fairness and thoroughness.

## Case resolution times

- 5.2. Timeliness was one of the most difficult measures to compare due to variations in reporting conventions. Schemes use time bands (i.e. within 3, 6, 12 months) or average time taken (days or weeks). They also differ in practice as to when the clock starts (e.g. when consumers first make contact, when a complaint is accepted, or when all the information is received to make a decision). This can make a significant difference, but is rarely explained in annual reports.
- 5.3. The Legal Ombudsman measures how long it takes from the point at which the complainant agrees what it is that they want them to investigate until the point at which the complaint is resolved. Clearly there is a prior period during which eligibility is established and the

scope of the complaint is agreed. In the Panel's view, it would be better if all schemes measured the time elapsed from receipt to closure of complaint, as this would most closely mirror perceptions about the length of process from the complainant's perspective.

- 5.4. We note the ADR Directive will require schemes, unless in exceptional cases, to resolve disputes expeditiously, within a timeframe of 90 days starting on the date on which the scheme has received the complete complaint file and ending on the date on which the outcome is made available. This is a ADR provider focused objective, divorced from the consumer experience, and there is a risk that the focus becomes on meeting the target instead of the outcome.
- 5.5. The Legal Ombudsman exceeded its KPI targets in 2012-13 resolving 55% of cases within 90 days, 93% within 180 days and 100% within 365 days. 14% more cases were resolved within 90 days last year than during 2011-12. Backlogs were an issue under the previous set of arrangements, so it is positive that 100% of cases are resolved within twelve months. Nevertheless, its annual report states that '*Reducing the time it takes us to settle cases remains a key priority for us in terms of improving our customer service and organisational efficiency*'. More challenging KPIs have been agreed with the LSB for 2013-14. Also,

steps have been taken to streamline the decision-making process.

- 5.6. The variability in case resolution times across schemes is striking, see Chart 6. Various factors may help to explain differences between schemes: the relative complexity of cases; the emotional element; success of informal resolution; the need to obtain expert testimony or documentation; and the number of exchanges between the parties, each of which adds time.
- 5.7. The schemes tend to fall into two camps for speed of dispute resolution: most ombudsman schemes take months; alternative models take weeks. The Legal Ombudsman compares well against schemes of similar complaint type (FOS, PPO, OIA, TPO and PEN). Also, its customer satisfaction ratings for timeliness (61%), while not spectacular, compares well with other schemes, even those which resolve disputes more quickly – see Chart 8.
- 5.8. A question for further study is whether the business process model or the nature of the complaint has the bigger influence on timeliness. We note that Ombudsman Services has a KPI to resolve 90% of energy and communications complaints in under six weeks, yet the same proportion of property complaints in under eight weeks. This reflects some allowance for more complex disputes, but the differences are not huge.
- 5.9. Timeliness is a historic weakness of ombudsman schemes in general and satisfaction surveys suggest that case resolution speeds generally still fall short of expectations. Increasing speed of case resolution is a common aim in business plans. This goal is welcome, although we recognise the trade-offs between reducing speed, quality and cost. For example, hiring more staff

could resolve complaints more quickly, but also increase unit cost.

## Informal resolution

- 5.10. Finding ways to reduce the time taken to resolve disputes is a common theme in annual reports. For example:
- The Financial Ombudsman has trialled projects with businesses to explore ways to reach a fair and quick resolution to disputes. Further it is working increasingly to tailor its service based on the nature and complexity of individual complaints; some will be capable of mediation, but others require the full panoply of its existing more formal procedures
  - Ombudsman Services states it has ‘removed non-value added steps from our processes and refined the way we manage complaints to make us more efficient and flexible’. It is looking to resolve more complaints over the telephone and has written guidance on case files so providers provide the right information
  - OIA has introduced a triage system to assess more quickly the eligibility of complaints. It has reviewed its processes, diverted more staff resource to front line case-handling and is working with universities and students unions to encourage earlier resolution of complaints
  - The Pensions Ombudsman has changed its process to empower investigators to become ‘more authoritatively involved in decision making’ by issuing their “opinion” of the case in a formal document
  - The Property Ombudsman, after a larger than expected increase in complaints and concerned was causing concerns about a backlog mounting, built up capacity (in both

the early resolution and formal investigation areas)

- 5.11. A common theme across schemes is the emphasis on informal resolution of complaints and to minimise cases requiring a formal ombudsman decision – the lengthiest and costliest option. The Financial Ombudsman, in relation to its E-money pilot, describes this as involving giving caseworkers licence to engage with the parties and just “sort it” without using the usual range of forms, and rethinking timescales to be able to engage with both sides in as near to “real time” as possible. It notes that consumers assumed that having their complaints sorted in hours or days – rather than weeks or months – was entirely normal.
- 5.12. We speculate that minimising the time between the complaint arriving and the start of efforts to resolve it, could be an important factor in the success of informal resolution. This is because the longer it takes to start, the more likely parties are to have higher expectations about what the process will involve. While many complaints may be able to be dealt with in a few phone calls, this may not be the case if backlogs build.
- 5.13. The Legal Ombudsman has repeatedly stated its wish to reduce the number of cases involving ombudsman decisions. In 2012-13, this stage was needed for 39% of cases – an increase of 4% on the previous year. Comparisons with other schemes are difficult due to the different processes and organisational structures in place. At the Financial Ombudsman, perhaps the most similar scheme to the Legal Ombudsman, 11% of cases required a formal ombudsman decision last year. Both schemes’ data show that complainants are mostly responsible for insisting that the original decision is reviewed by ombudsmen. Further, annual report commentary

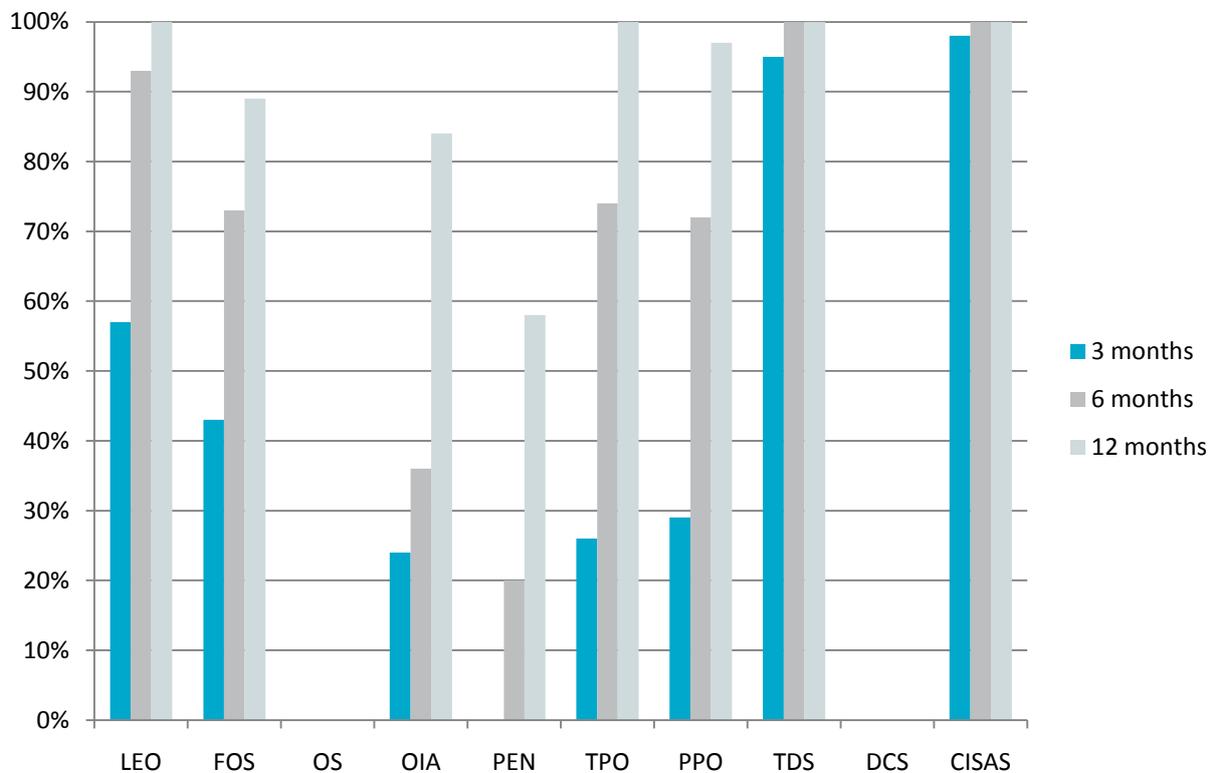
suggests a trend where both sides increasingly take entrenched positions, which slows case resolution speeds.

- 5.14. The Legal Ombudsman’s Business Plan states it will undertake a range of activities with the aim of reducing the proportion of ombudsman decisions to below 30%. This is welcome to the extent that it should reduce time and stress for consumers, but the service should not force consumers down a path they do not wish to follow – given the nature of many legal disputes, it is reasonable for someone to expect their issue to be given full consideration and the outcome detailed in writing.
- 5.15. The inquisitorial, more informal, nature of ombudsman schemes distinguishes them from the court system. However, a paper by Queen Margaret University notes that the trend towards early resolution techniques might be more reflective of unit cost pressures than what consumers actually want. It also found that most ombudsman processes lack clarity about whether informal resolution is essentially a negotiated, conciliatory dispute resolution process or an inquisitorial, adjudicative one. The paper warns that informality is not a panacea and that formal procedures are essential to the development of principled decision making. It argues that ombudsman schemes must be able to demonstrate clearly the nature and value of the unique system of justice which they exemplify; one which reconciles informality and formality, pragmatism and principle, and is explained in a way that is clear to stakeholders and the public.<sup>9</sup>

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<sup>9</sup> Chris Gill, Jane Williams, Carol Brennan and Nick O’Brien, *The future of ombudsman schemes: drivers for change and strategic responses*, Queen Margaret University, July 2013.

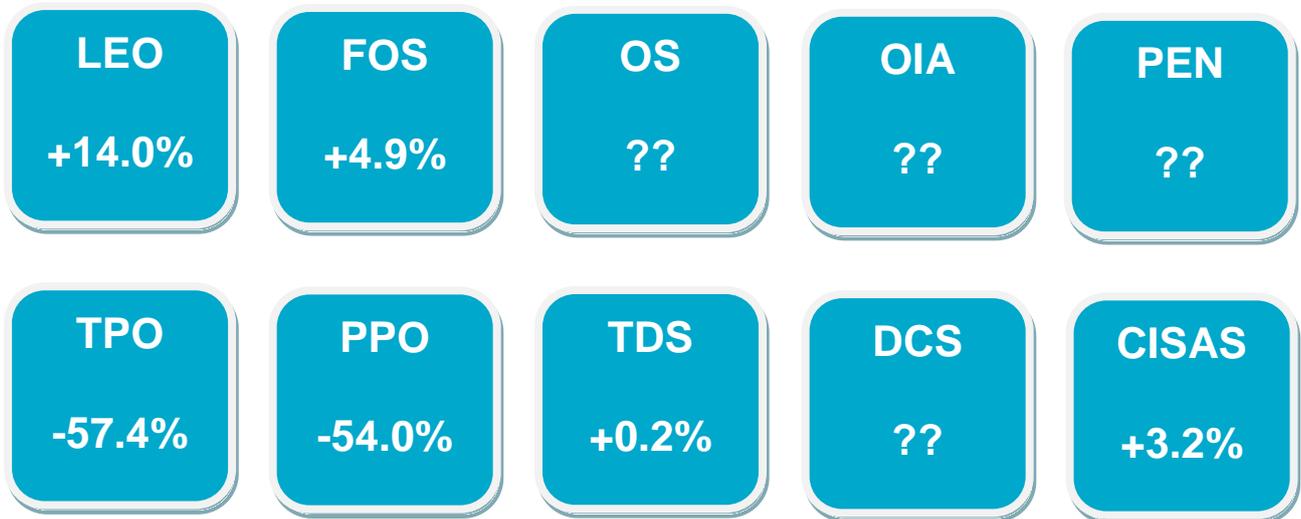
**Chart 6 – Case resolution times, 2012-13**



**Selected others, 2012-13**

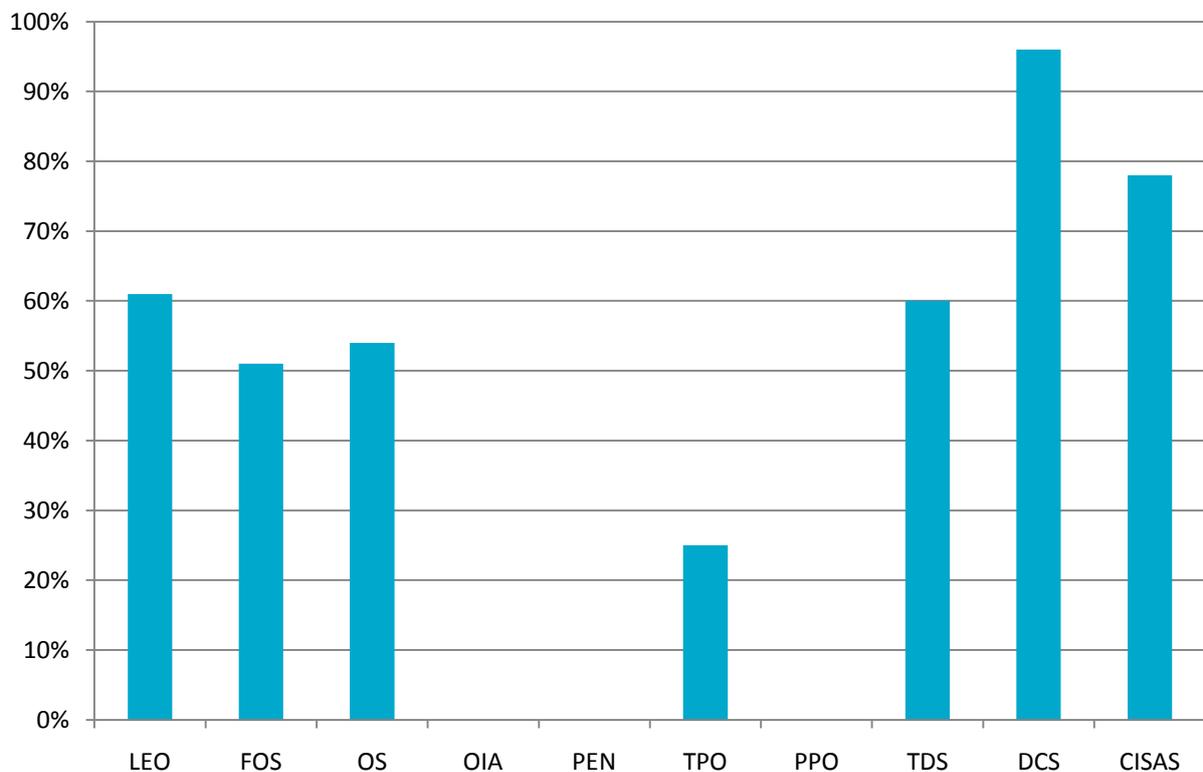
| Scheme | Measure                                                                                                  |
|--------|----------------------------------------------------------------------------------------------------------|
| OS     | 90% of complaints resolved within six weeks                                                              |
| PEN    | Average time of 9.6 months                                                                               |
| OIA    | Average time of 228 days                                                                                 |
| TDS    | Completes over 95% of its adjudications within 28 days of receiving the parties' consent to adjudication |
| DCS    | Average resolution time of 7.5 days (2011-12 Annual Report)                                              |
| CISAS  | 92% of cases completed within 6 weeks of application                                                     |

**Chart 7 – % change in cases resolved within three months, 2011-13**

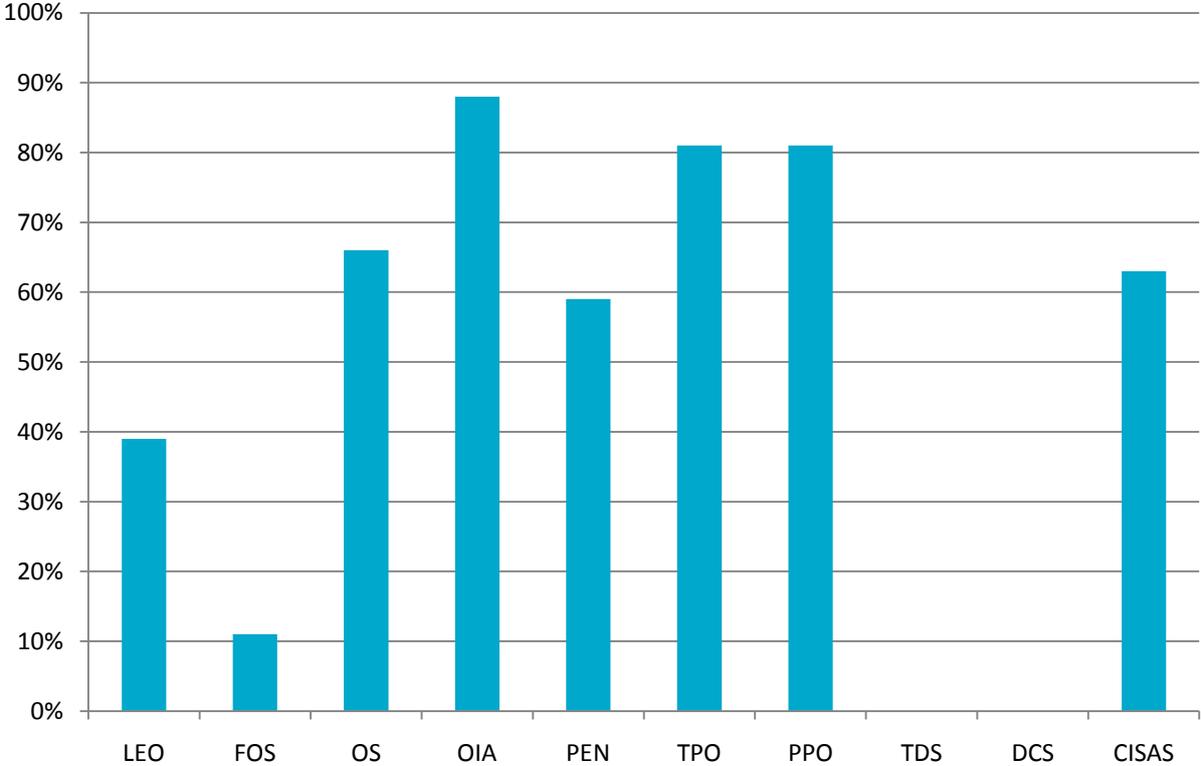


\*LEO: 2012-13 difference used. It started receiving complaints in October 2010 so the first cases going to Ombudsman decision did not occur until early 2011. 2011-12 to 2012-13 is 7% increase.

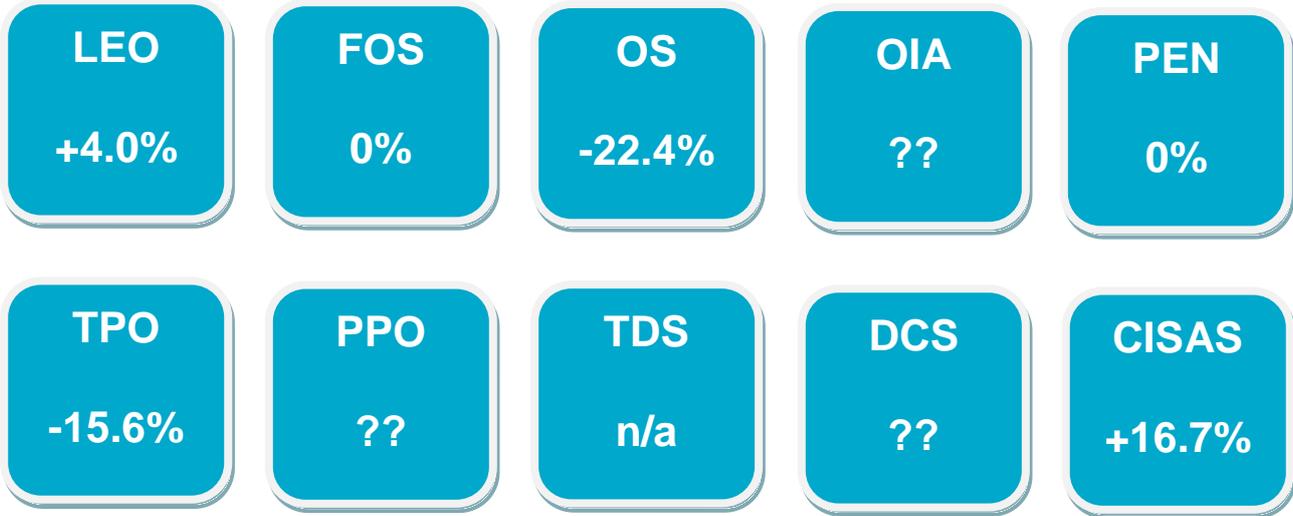
**Chart 8 – Complainants satisfied with timeliness (most recent survey)**



**Chart 9 – Cases requiring formal ombudsman decision, 2012-13**



**Chart 10 – % change in cases requiring formal ombudsman decision, 2011-13**



\*LEO: 2012-13 difference used. It started receiving complaints in October 2010 so the first cases going to Ombudsman decision did not occur until early 2011.

# 6 Quality

## Why this is important

- 6.1. Quality in the context of a redress scheme involves a range of things, including the accuracy and fairness of decisions, and all aspects of the user experience. The latter embraces the efficiency of the process, treatment of the parties by staff, and the clarity and timeliness of communications. All this is important to underpin public confidence that redress schemes are as impartial as they claim and offer a professional service. The reputation of a scheme for fairness and quality is important to reassure complainants, but also to encourage potential future users.

## The Legal Ombudsman's current approach

- 6.2. In 2013/14 the Legal Ombudsman revised its quality framework to focus on quality improvement. It also altered its quality KPI to reflect what its customers believe the quality of service has been. This information is obtained through an independent customer satisfaction survey conducted on a quarterly basis. Satisfaction with service is influenced by customers' satisfaction with outcome to such an extent, that the Legal Ombudsman reports the KPI separately for those who were satisfied with their outcome and those who were not.

## Fairness

- 6.3. Chart 11 presents the proportion of cases where a remedy of some kind is awarded, e.g. an apology, putting things right or compensation etc. There are important differences in reporting: some base their figures on 'uphold' rates only in cases involving decisions, whereas others include cases resolved through informal mechanisms (leading to sometimes far higher remedy rates). These figures should be used very cautiously due to differences between the schemes, for example in their emphasis on informal resolution, the categorisation of case outcomes, the emotive nature of complaints, whether the facts are fairly obvious and the demographic of complainants.
- 6.4. Ombudsman schemes are not meant to be 'consumer champions' but must act impartially in deciding what is fair and reasonable in all the circumstances. So it would not be appropriate to put a number on the proportion of cases that should produce a remedy or to use this as a proxy for fairness. These figures should be seen as context rather than for comparing the fairness of schemes. Although if only a small minority of cases led to a remedy it could raise concerns about false expectations among complainants, while if the figure was very high this might reflect poorly on firms' internal complaints handling. Even so, it is important to look at fairness in an environment where some

ADR bodies are competing for work, as businesses will be attracted to those schemes making the fewest awards.

- 6.5. 'Uphold rates' vary considerably across the schemes. In legal services, 32% of decisions were at least partially upheld. Despite having lower uphold rates than some other schemes, complainant perceptions of fairness are relatively high. The uphold rate may explain why fewer complainants than respondents (57% v 62%) consider that the Legal Ombudsman's investigation process was fair and impartial. Less positively, in nearly 70% of cases where an ombudsman made a decision, the complainant rejected it. This is made up of people who 'lose' their case and those who 'win' but consider the remedy to be insufficient. The Legal Ombudsman counts the absence of an acceptance or rejection, as a rejection.
- 6.6. Similar data is not available for other schemes so it is not possible to make comparisons. However, looking at legal services in isolation, the data suggests quite high complainant discontent with case outcomes. It is possible this reflects false expectations about what the scheme can deliver, the often high stakes or emotional nature of legal disputes, or the litigious environment in which the Legal Ombudsman operates. A particular issue in legal services may be a difficulty in putting an appropriate value any emotional detriment suffered, whereas financial remedies are easier to put a more precise figure to.

## Customer service

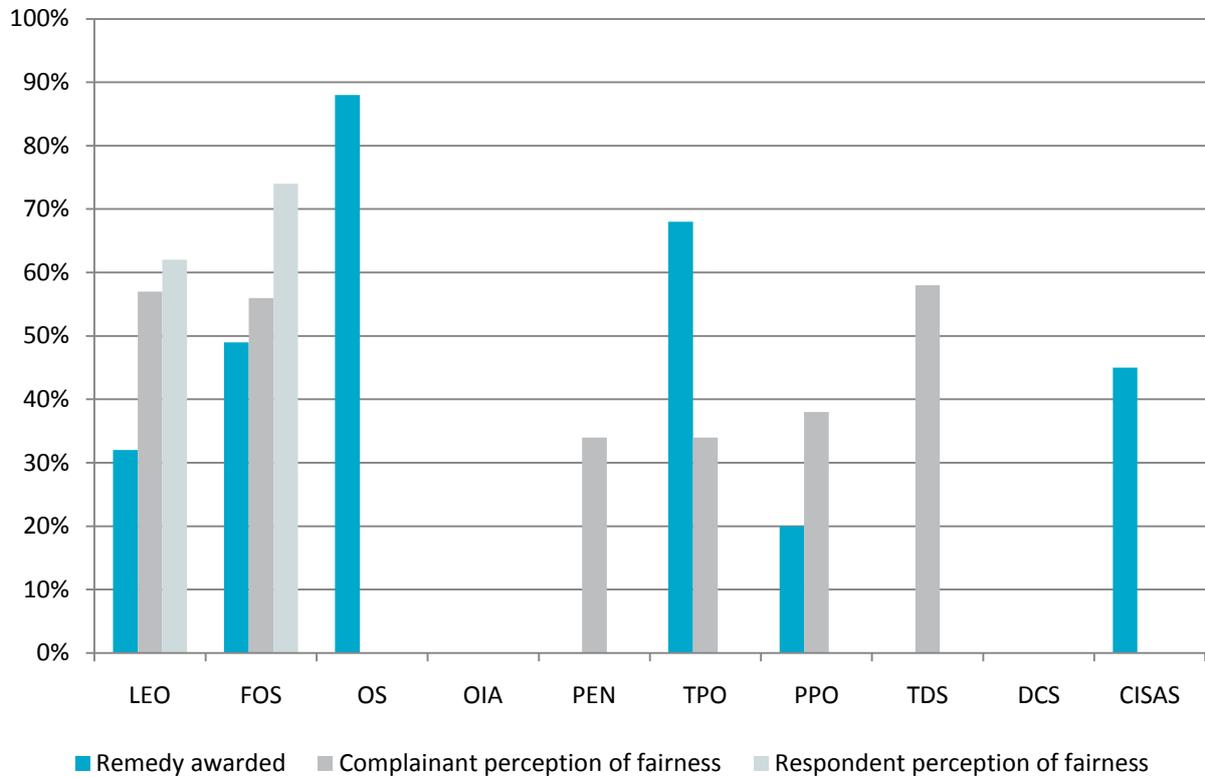
- 6.7. The scheme's users ultimately judge the quality of service. ADR schemes are increasingly surveying a sample of complainants about their experience. We are pleased that the Legal Ombudsman publishes its survey data on an annual basis. The practice of most other schemes is to include a selection of statistics in annual reports. We would encourage full publication of such surveys as otherwise a perception could arise that schemes are only disclosing those results which show their performance in a positive light.
- 6.8. The customer satisfaction surveys ask differently worded questions, which makes comparisons difficult. However, it has been possible to identify broadly some similar topics, see Chart 12. An important contextual point is that the complaint outcome, which varies somewhat across schemes, colours users' views about quality of service. This produced very marked differences in the Legal Ombudsman's ratings. During 2012/13, 97% of consumers satisfied with the case outcome were satisfied with the service compared to 42% who were dissatisfied with the outcome. Among lawyers the gap was similar (95% versus 38%).
- 6.9. The Legal Ombudsman's overall consumer advocacy rating (those who would recommend its service) is 54%. The Financial Ombudsman and Ombudsman Services have the same advocacy ratings despite widely differing case outcomes. This suggests that the way complainants are treated can help to reduce any disappointment people may feel about the decision.
- 6.10. Chart 13 compares the consumer and lawyer response for Legal Ombudsman users, and Chart 14 provides data on individual aspects of customer service across schemes. The latter suggests there is a reasonable degree of agreement among consumers and lawyers about the scheme's strengths and weaknesses. Being kept updated on the progress of the cases and staff understanding of the complaint get lower scores than other aspects of

service. These are both areas where the data suggests that other schemes outperform the Legal Ombudsman. They are also features that are likely to influence perceptions of fairness.

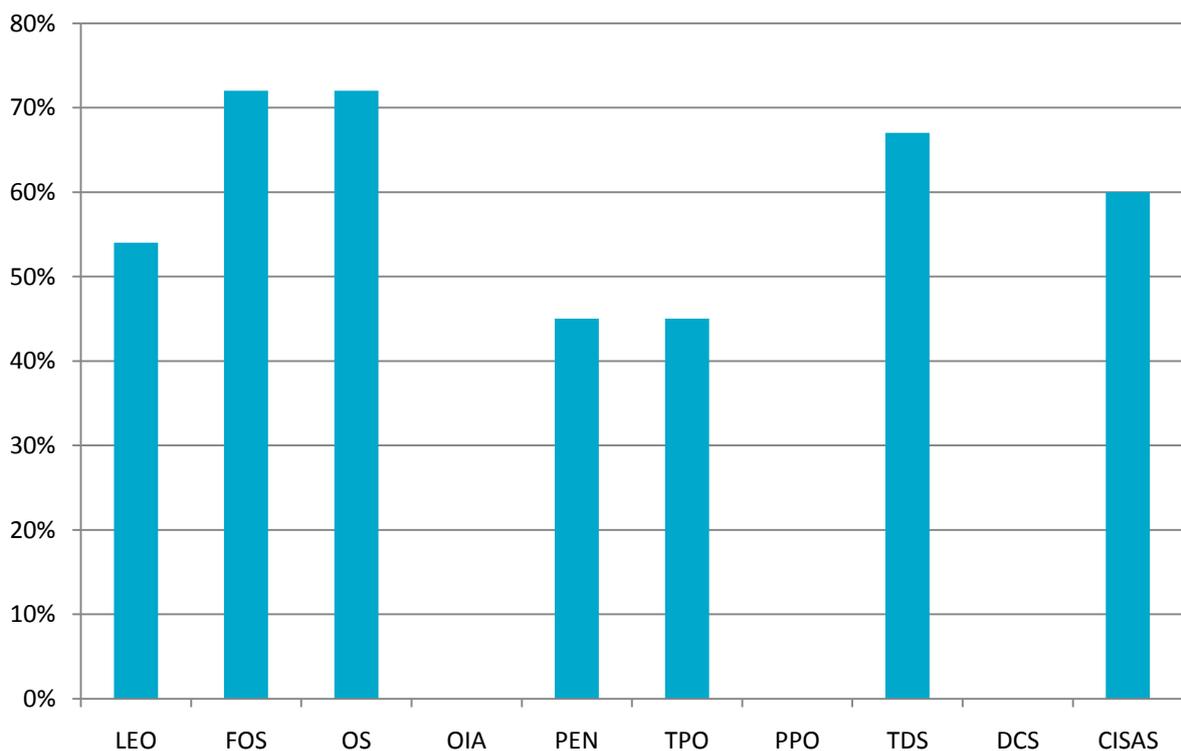
## Complaints

- 6.11. Most schemes have a procedure that enables consumers to complain about the *service* they were given. If the consumer remains dissatisfied, this can then normally be escalated to an independent reviewer. The complaints procedure is not meant to be a mechanism for appealing the case decision, but instead focuses on the way in which the scheme handled the case. Of course, consumers may rightly or wrongly link the service element to the case outcome and file a complaint.
- 6.12. Unlike some other schemes, the Legal Ombudsman does not publish data on numbers of service complaints in its annual report, but it did provide data for this study. Chart 15 records complaints as a proportion of all cases accepted for investigation. This shows that service complaints generally represent a fraction of caseload for all schemes, but the Legal Ombudsman received 282 such complaints, the equivalent of nearly 3% of all cases investigated – a higher proportion than other bodies.
- 6.13. The Service Complaint Adjudicator for the Legal Ombudsman reports that he reviewed and reported on 56 service complaints that were referred to him during 2012-13. This represented an increase on the previous year, though it represented just 0.7% of the scheme's caseload. Of the complaints reviewed, 18 were upheld in whole or in part. The Adjudicator has commented that the Legal Ombudsman's internal reviewers have become less defensive and better at taking an impartial view. Moreover,
- over the last three months of the year the number of cases referred to him declined markedly. The Adjudicator's impression is that the quality of investigations has improved as the scheme has settled down and its staff gained experience and confidence.
- 6.14. Ultimately, consumers have the option of seeking judicial review, although this is dependent on being able to finance a claim. The Legal Ombudsman does not publish data on this in its annual report. Information for this study indicates 25 judicial review applications were made during 2012-13. This compares to 19 at the Financial Ombudsman and 9 at the OIA. The high number is likely to reflect that the Legal Ombudsman operates in a legal environment – almost all were brought by lawyers. The organisation has not lost a judicial review to date.

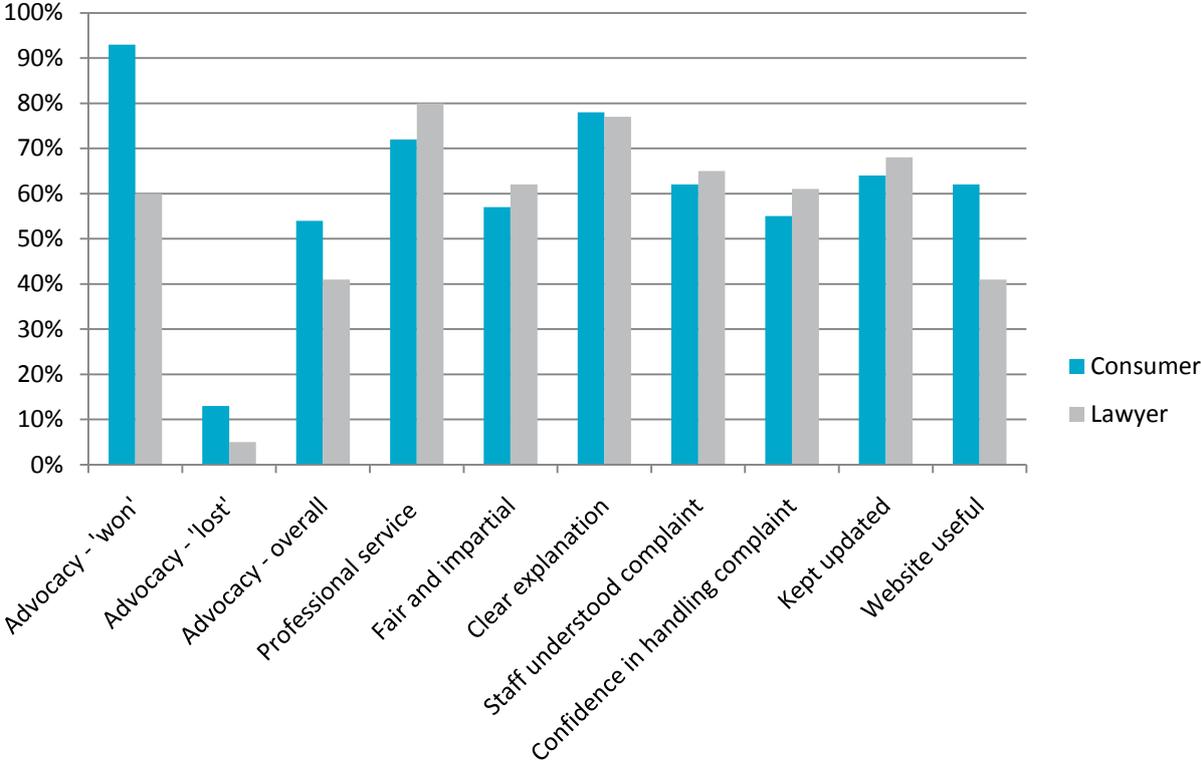
**Chart 11 – Award of remedies and perceptions of fairness, 2012-13**



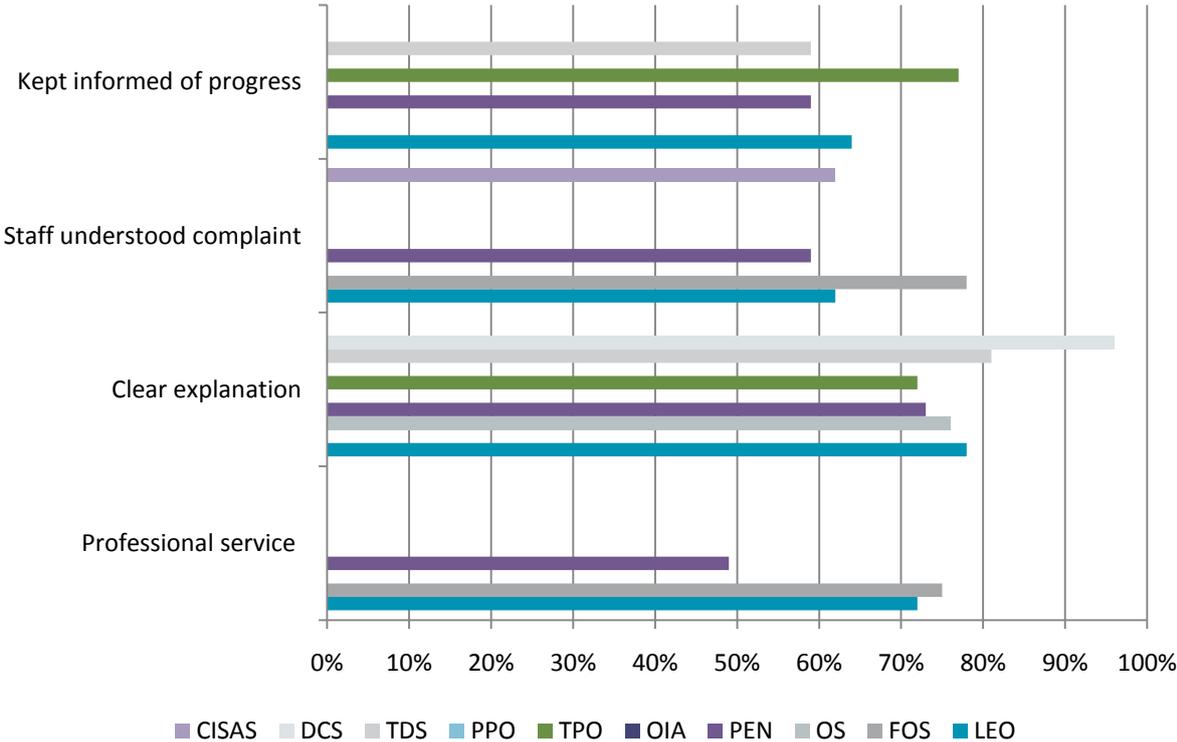
**Chart 12 – Overall advocacy (most recent survey)**



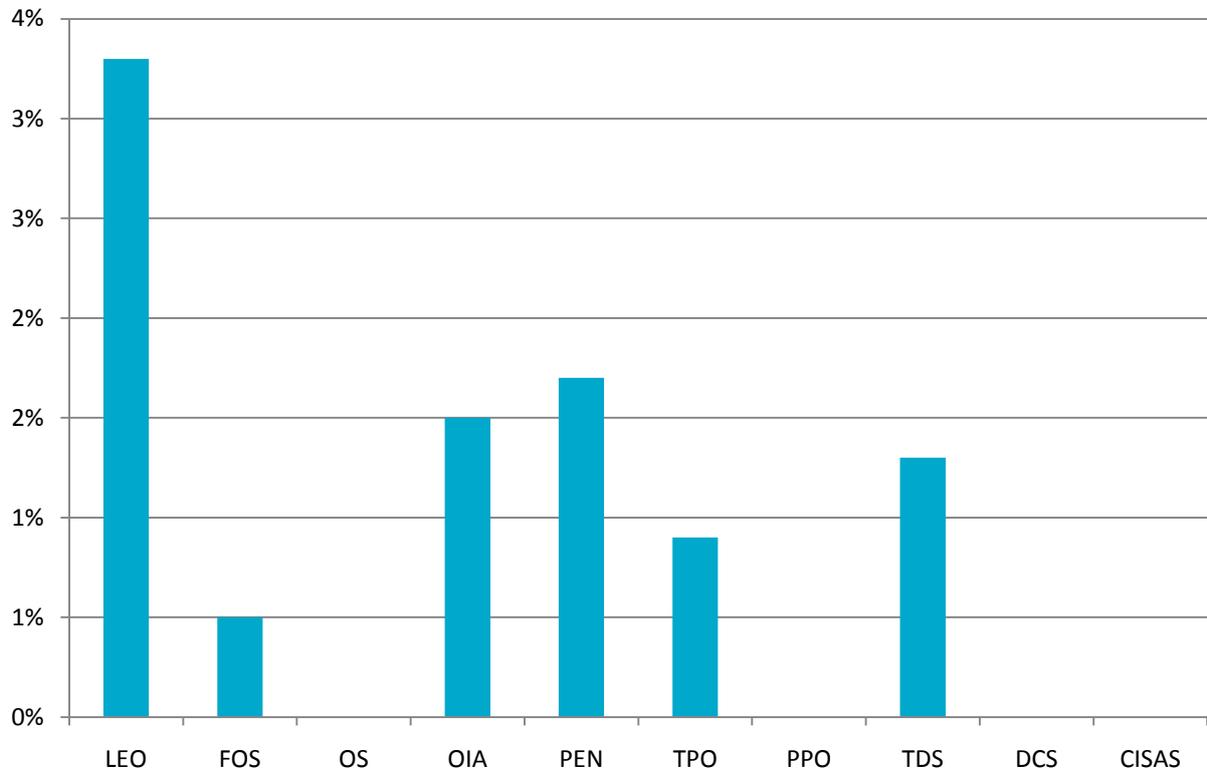
**Chart 13 – Consumer and lawyer service satisfaction (most recent survey)**



**Chart 14 – Customer service measures (most recent survey)**



**Chart 15 – Service complaints as proportion of caseload, 2012-13**



# 7 Cost

## Why this is important

- 7.1. Ombudsmen need to be well-funded in order to deliver an excellent standard of service for their users and to enable investment in activities that add value, such as improving accessibility and using complaints data to help raise standards. At the same time, the costs of the scheme are ultimately paid for by consumers as industry passes these on through the prices of their services. Therefore, it is important that schemes work efficiently and seek opportunities where possible to reduce their costs.

## Unit cost

- 7.2. Unit cost is the standard measure used by schemes to demonstrate efficiency. It is usually calculated as expenditure divided by cases completed. Chart 16 presents the unit cost for each scheme; Chart 17 shows the three year trend. The huge range in unit cost across the schemes – from £270 to £3,073 – is striking. The Legal Ombudsman's unit cost was £2,168 in 2012-13. One scheme has a higher unit cost, but the unit cost of the Legal Ombudsman's nearest comparators, when seen in terms of type of complaint, are lower.
- 7.3. When the Legal Ombudsman was set up, a deliberate strategy was agreed with the LSB to keep costs higher than absolutely required to mitigate the risk of being unable to meet the demand

produced by a new scheme. Now the likely demand levels are clear after three years experience, being much lower than anticipated, the organisation is bringing its costs down. Nevertheless, concerns about the Legal Ombudsman's unit cost remain.

- 7.4. Many factors relating to the complaints function influence unit cost including case volumes and volatility, complexity of the matter, the time taken to resolve complaints and the need for formal ombudsman decisions. Mass identical complaints requiring a standardised approach will be cheaper to deal with than complex and dissimilar complaints where bespoke treatment is needed. The degree of added-value activities is another important factor. Of course, other key sources of expenditure are staffing, accommodation and IT costs. Against this, some schemes have sources of income, for example through sales of complaints-handling courses.
- 7.5. The schemes allow consumers to complain via different routes – online, by telephone, post – but seem to have different preferences and may guide consumers towards one route over another. The Legal Ombudsman and Financial Ombudsman emphasise the telephone route in their publicity materials, while Ombudsman Services encourages users to go through an online complaints wizard to check the service can help them. It would be

useful for the ADR community to analyse the efficiency of the various business process models.

- 7.6. In relation to these factors, while case volumes have been stable the Legal Ombudsman has accepted far fewer complaints than it anticipated when setting up the scheme. It has turned away quite high volumes of complaints due to gaps in redress and exclusions within its scheme rules. Legal services disputes can be complex; despite this case resolution times are better than its nearest counterparts, although they are slower than other schemes. Far more cases require formal ombudsman decisions than it would like. The ratio of cases completed to staff – see Chart 18 – is similar to most other schemes.
- 7.7. The unit cost only goes so far in enabling conclusions about the relative efficiency of ADR schemes. A detailed expenditure breakdown would help us to compare where budgets are spent, but varied reporting conventions used in financial accounts, where available, make this impossible. However, we can provide some information on staff costs as a proportion of expenditure – see Chart 19. This indicates that the Legal Ombudsman spends a relatively low proportion of its budget on staff costs.

## Reducing its costs

- 7.8. The Legal Ombudsman is in the middle of implementing a costs reduction programme. It told us that its unit cost in 2012-13 is 5% lower than the previous financial year and that it anticipates reducing this by a further 9.6% in 2013-14. Depending on volumes remaining stable, the Legal Ombudsman plans to continue to drive efficiency and to reduce unit cost by at least a further 5% to 6% in 2014-15. Ultimately the Legal Ombudsman is
- aiming to reduce its unit cost from 2011-12 levels of £2,164 per case down to around £1,500 per case by 2015/16 – a reduction of 31%. None of this improved unit cost allows for the additional economies of scale that increased volume would provide whether in the form of the addition of the planned Claims Management jurisdiction or of other activities, or whether simply as a result of increased economic activity in the legal sector. It considers that a unit cost of £1,000 is an achievable target if it receives a meaningful increase in the volume of complaints it deals with.
- 7.9. In theory, larger complaint volumes should help to reduce unit cost by achieving better economies of scale, but the evidence shows this is not necessarily so in the short term. The Financial Ombudsman's unit cost increased from £484 to £720 following a sharp rise in PPI complaints. In order to manage this increased demand the scheme recruited new staff, but it takes time before new case handlers become as productive as established staff. To help it to manage the volatilities in its caseload, the Financial Ombudsman has said it will continue to keep under review the balance between its permanent staff and those it recruits on short-term contracts. This is important learning as the Legal Ombudsman prepares for claims management cases where likely volumes are uncertain.
- 7.10. Like others, the Legal Ombudsman has indicated that it is conscious of the need to explore the possibility of differential pricing models, as part of its plans for a voluntary scheme and to prepare for taking on other jurisdictions. For example, it might charge based on the different complaint pathways that providers may elect to use, for example a more light touch process rather than

a full blown ombudsman model. This would enable greater flexibility in service provision and the ability to charge based on the true cost incurred by the scheme.

## Case fees

- 7.11. The high unit cost may inhibit the Legal Ombudsman from obtaining a larger proportion of its income from case fees. Currently, less than 2% of income is from this source with the rest coming from a general levy on the profession. The £400 case fee paid by law firms does not reflect the cost of the service and amounts to a large cross-subsidy. The Panel and the Law Society have both called for a stronger ‘polluter pays’ element to the scheme, as the Legal Services Act intended to happen, for reasons of fairness and to provide a better incentive for firms to deal with complaints properly in house. The Legal Ombudsman has recently removed the two ‘free’ cases element, which may help matters.
- 7.12. The contrast between the Legal Ombudsman and other schemes, where case fees are charged, is striking. The Financial Ombudsman and Ombudsman Service receives more than 60% of income from case fees. Of course, the fragmented legal services market is very different to the small number of big firms in the utilities and financial services markets who can better absorb these charges (although there are also many smaller financial services entities like IFAs, credit unions and credit lenders).
- 7.13. The Legal Services Act is prescriptive about when case fees may be charged. It would be unaffordable for law firms to pay the full costs of dealing with their complaints and such high costs could encourage commercial decisions to

‘pay off’ unjustified complaints rather than seek an impartial adjudication. Despite all this, reducing the unit cost would allow the Legal Ombudsman to receive a higher proportion of income from case fees and so create stronger behavioural incentives for law firms.

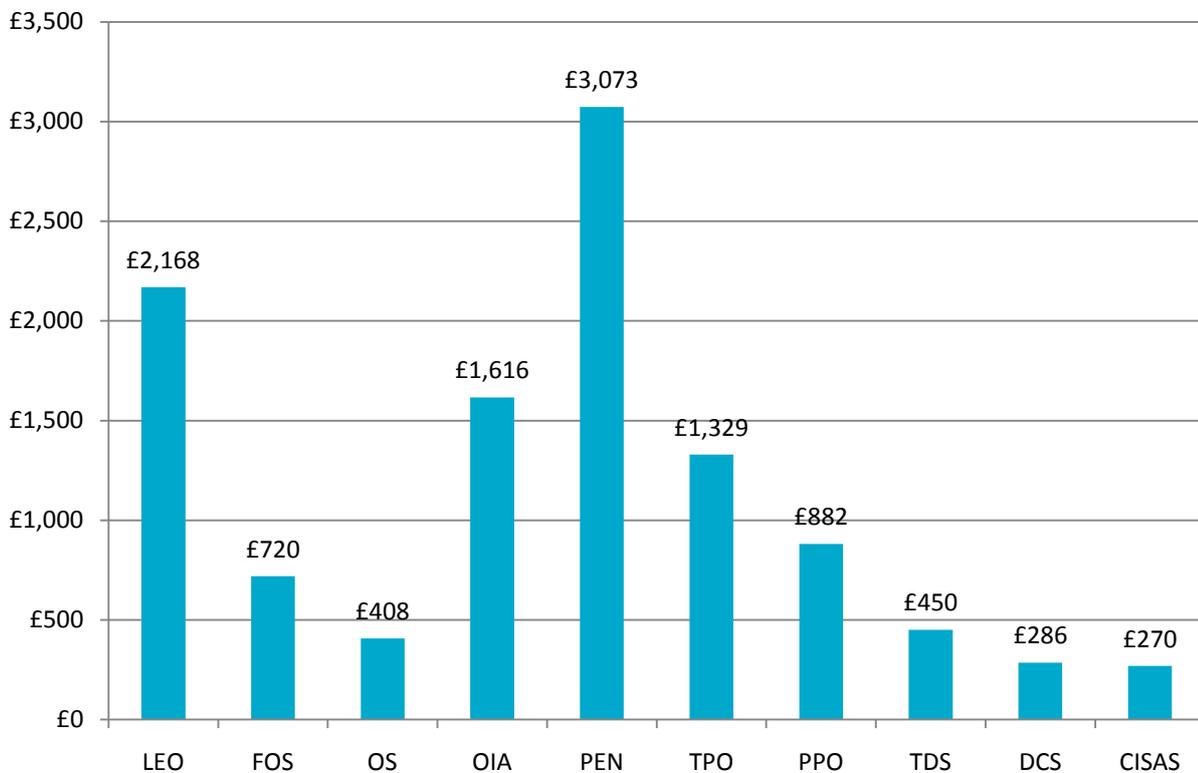
## Wider implications

- 7.14. Reducing unit cost is not just important for minimising costs for lawyers and consumers, but relates to the Legal Ombudsman’s ambitions to extend its jurisdiction and establish a voluntary scheme. In relation to the latter, the reality is that unregulated providers have far cheaper alternatives to the Legal Ombudsman. While there is value in being able to say to customers that they can access the same redress as for regulated lawyers, the financial considerations may trump this and the public interest objective of a single location for legal services complaints.
- 7.15. The size of the difference means it is unlikely to be enough for the Legal Ombudsman to continue to find ways of shaving its unit cost; instead some radical changes are needed to its process model before it is competitive. While the Legal Services Act offers flexibility in how the Legal Ombudsman operates a voluntary scheme and does not require the same costs to be charged, the Legal Ombudsman’s discussion paper suggests an intention to base it on the existing processes used for its mandatory jurisdiction. The Panel would question whether this strategy is the right one in the context of reducing its unit cost.
- 7.16. Focusing on reducing costs is valid, but in approving the Legal Ombudsman’s annual budget, the LSB should not fall into the trap of knowing ‘*the price of everything and the value of nothing*’. It

is not in the interests of consumers or of justice to have a cut-price redress system. There are genuine reasons why legal services complaints require more resources to deal with, but probably not to the degree indicated by the data. As previously stated, while earlier resolution techniques should be encouraged, care is needed that this is not at the expense of fair outcomes.

7.17. Moreover, we would not want the Legal Ombudsman to skimp on activities that add value – making sure its services are accessible to all and making legal services better by using the learning from complaints data. As using complaints to make services better should improve economic efficiency and outcomes for consumers, in our view, neglecting this function would be a false economy.

**Chart 16 – Unit cost, 2012-13**

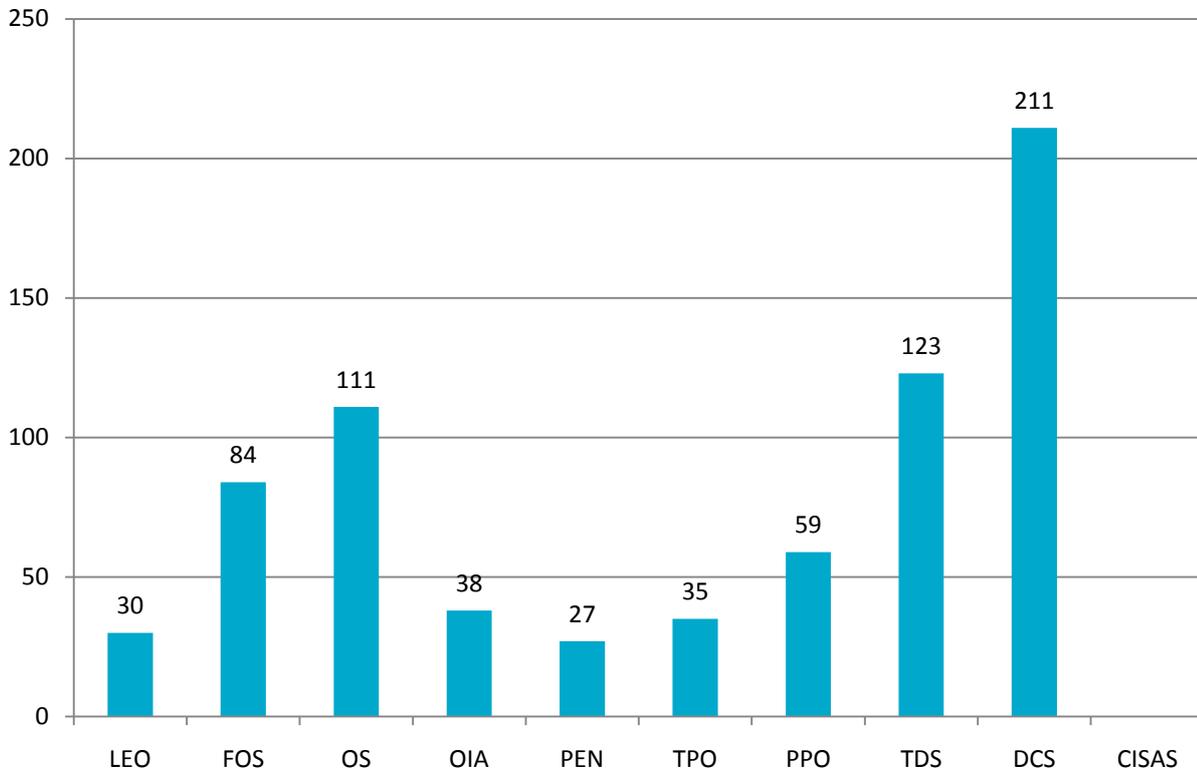


**Chart 17 – % change in unit cost, 2011-13**

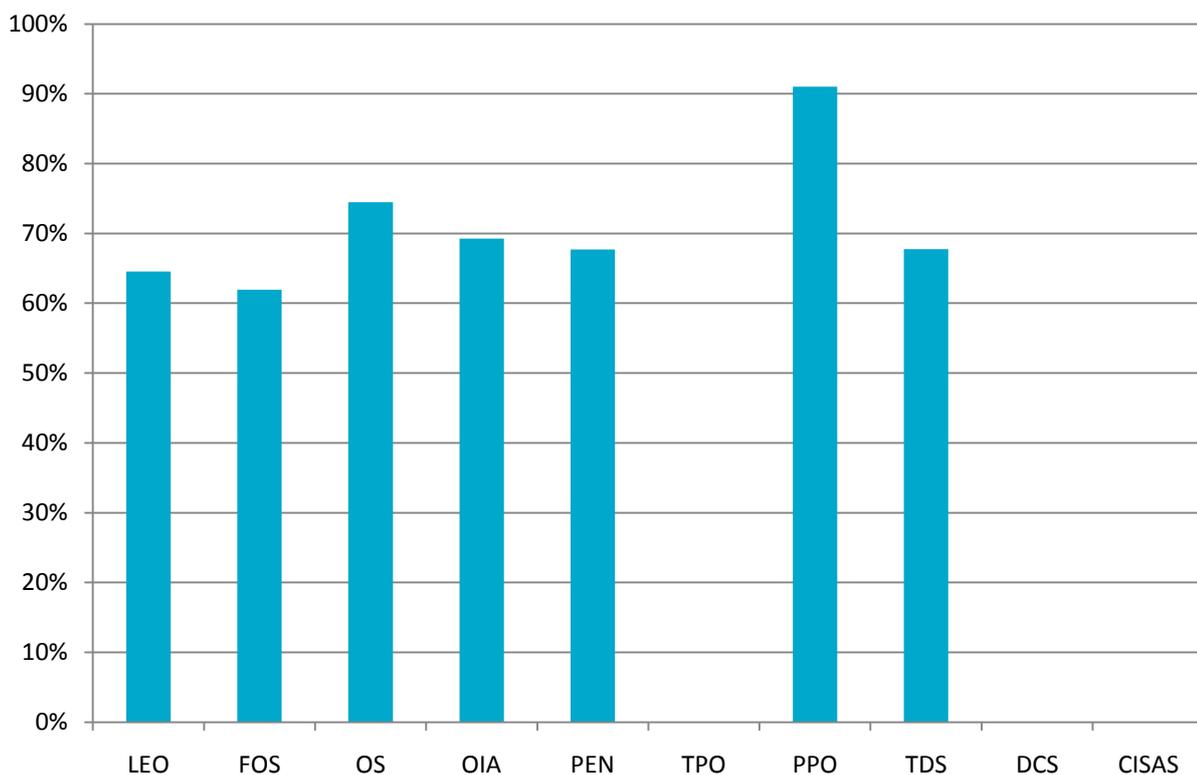


\*LEO: 2012-13 difference used. It started receiving complaints in October 2010 so the first cases going to Ombudsman decision did not occur until early 2011.

**Chart 18 – Ratio of cases resolved to staff, 2012-13**



**Chart 19 – Staff costs as % of expenditure, 2012-13**



# 8 Wider reflections

## Future directions in redress

- 8.1. This report focuses on legal services, but the findings should be of interest to all concerned with consumer redress. Below we offer some wider reflections raised by the benchmarking exercise, which we hope will stimulate discussion in the sector. There is not scope to explore these themes in detail, but our aim is to open up questions for debate and suggest areas for further research.

### Transparency

- 8.2. A first wider comment is about the need for greater transparency. The Legal Ombudsman has been fully open with us about its data, but unfortunately the same was not true of all schemes. There is a great deal of variability in the amount and type of performance data that is made publically available and sometimes this felt chosen selectively. While some schemes helped us to fill data gaps, others declined to share data beyond that already published. Differences in data collection mean gaps are inevitable, but sometimes data was refused on the grounds that we found less convincing, for example, that it had not been audited or was commercially confidential. All schemes do not deserve to be tarred with the same brush, but we urge the sector to accept collective responsibility for improving levels of transparency.

- 8.3. There is a big government agenda to promote transparency in public bodies. ADR schemes carry out an important public interest function and they should be accountable for their performance. This includes commercial organisations commissioned by sectoral regulators to carry out statutory functions. Moreover, redress schemes deal with complaints about behaviour by businesses which have been less than transparent in their own dealings and it is important that they are seen to lead by example. In an environment where schemes compete for the right to provide redress services, there are incentives to withhold data or present it in a misleading way. It will be important for the competent authority to insist on full disclosure of data and to collect this on a consistent basis.

### Common challenges

- 8.4. The study reveals some other common challenges facing ombudsmen, which would benefit from joined up thinking.
- 8.5. Timeliness is a key area of difference between most ombudsman schemes and other dispute resolution models. Many ombudsmen are trying informal resolution techniques to get faster. However, while speedier redress would benefit consumers, taken too far this risks losing part of what gives the ombudsman model added value and may not be what consumers want.

- 8.6. Another issue is the relatively small proportion of contacts that convert to complaints. Not all of this is wasted effort, but one frequent cause is people who approach the scheme before they have tried complaining to the provider. The Legal Ombudsman's research suggests that perceptions about the quality of first-tier complaints handling is the main reason together with the need for clearer consumer information about the process. If replicated in other sectors, this suggests regulators need to focus on incentives for firms to handle complaints better. Information materials and complaining skills might also be a consumer education priority.
- 8.7. A linked issue is the low proportion of consumers who recall finding out about the ADR scheme from their provider, despite sectoral regulators requiring businesses to signpost their customers to the relevant schemes. It is unclear the extent to which this is an issue of straight non-compliance, poor design of regulatory requirements or a consumer education issue. This problem would benefit from further research, including insights from behavioural economics.

### Promoting public awareness

- 8.8. Case volumes across the schemes in this report have increased by 130% in the last three years. However, there may still be an issue of latent demand: while ADR schemes express a wish to raise awareness among the public, they also assert that they are not in the business of shopping for complaints. This position has become an article of faith among schemes, who worry this might compromise their impartiality or appear as blurring into regulation. Commercially operated schemes may also need to factor the appearance of financial incentives, which could run both ways: while more complaints would boost income, this may annoy the providers who fund them. This is salient when providers have freedom to choose their ADR scheme.
- 8.9. While schemes should manage public expectations, a high public profile would build public confidence and deter bad practice. This position also offers fertile ground for claims management companies, who have no such inhibitions when offering to make complaints on the consumer's behalf. While most visible in financial services, Ombudsman Services and the Civil Aviation Authority have also reported increased numbers of complaints via claims management companies.
- 8.10. A more proactive approach to publication of complaints data would also help to raise awareness. This is outside the complaints-handling focus of the report, but it is clear that not all schemes are delivering this, despite the Government's default policy being that they should – see Annex 3. And where data is made available, it is generally not widely promoted. Again, there is a nervousness among ombudsmen about being regulators which is behind this. Especially where schemes compete for business, there is an understandable reluctance not to pursue this approach. Government needs to address this as its policy goal of informed consumers driving competition by rewarding high quality providers is being frustrated.

### Rationalisation or competition

- 8.11. The ADR Directive should see redress schemes handling larger volumes of complaints overall, but it is unclear how responsibilities will be allocated. There is some appetite to use this moment to rationalise the whole consumer redress landscape, perhaps around just three schemes for private sector complaints. A scenario just as likely, given the

general direction of Government policy, is to invite public and private institutions to compete for this work. This could be a commissioning model with a contract awarded to provide redress in certain areas, or to follow the model operating in some sectors now, where multiple redress schemes operate in each area and businesses choose which one to subscribe to on a contractual basis.

- 8.12. Our benchmarking study lends some support to the rationalisation option. Figures on cost generally show that scale does make for lower unit cost. Efficiency is impacted by fluctuating case volumes, but greater scale should help to smooth the peaks and troughs. Many schemes find that they have to signpost consumers elsewhere due to complaints being outside of jurisdiction caused by gaps in redress and multiple sectoral schemes producing confusion. This supports a more joined-up system that is easier for consumers to use and is in line with the Government's policies to empower consumers to make markets work and streamline the institutional landscape in the consumer arena.
- 8.13. However, although like for like comparisons are difficult and available data is limited, alternative models to ombudsmen featured in this report, appear to achieve quick and cheap redress, user perceptions of fairness are comparable despite their less inquisitorial approach, and advocacy rates are at the high end. This suggests that competition may lead to innovation and greater efficiencies. Yet the aim should be to make sure competition works in the consumer interest. For example, it would be easy to focus on headline statistics around unit cost and time, but forget the less visible aspects of the ombudsmen model that add value, such as widening access for

vulnerable consumers and using complaints data to raise standards.

- 8.14. In this debate, the right balance also has to be found between simplifying the landscape and promoting efficiency through competition. The former lends itself to joining schemes up, whereas the latter goes towards creating more redress schemes. While there are discussions about introducing a single portal to mask complexity behind the scenes, this ultimately may offer an imperfect short term fix. Government needs to find a solution that delivers the benefits of both aims. The best compromise might be a commissioning model, which uses appropriate choice criteria, with competition for monopoly rights over wide areas that make sense from a consumer journey perspective.
- 8.15. The ombudsman is just one of a range of dispute resolution models and it may not be necessary to turn to this in every consumer situation. At a recent event hosted by the Legal Ombudsman, research was cited showing that the ombudsmen model is especially useful when there is a need to equalise a power imbalance between the parties. The ombudsman model is marked out by its focus on using complaints data to raise industry standards and promoting access to under-represented groups. Therefore, in certain sectors – and legal services is one – there is a public interest case to favour the ombudsman model of redress. However, in arenas where these factors are less evident, alternative models may be sufficient.
- 8.16. The ADR Directive therefore presents both an opportunity and a threat to the Legal Ombudsman, and indeed the ombudsman model in general. While features of the ombudsman model add value and these features explain why it comes at a higher cost, efficiencies need constant vigilance and these

added benefits need to be clearly evidenced if it is to remain the dispute resolution model of choice in a future consumer landscape.

## Questions

- 8.17. In carrying out the benchmarking exercise, and during the course of this report, the Panel has raised a number of reflections and questions which go to the heart of the future of consumer redress schemes.
- 8.18. We suggest the following questions in particular now warrant further debate and research and that there is real scope for addressing these questions collaboratively among schemes:
- What are the key underlying drivers of performance in ADR bodies?
  - How can numbers of premature complaints be reduced?
  - To what extent should schemes seek to deal with complaints through informal resolution methods?
  - Are there better ways, whether through support or communication, to enable complainants to accept decisions that find against them?
- How can ADR schemes achieve a higher public profile without compromising their impartiality?
  - How can signposting rules work more effectively so that there is higher consumer recall of schemes?
  - Is publication of complaints data changing provider behaviour?
  - How can Government simplify the consumer redress landscape while ensuring that ADR bodies innovate and become more efficient?
  - If ADR bodies must compete for work, how can we ensure this is fair and works in the consumer interest?
  - What scope should ADR bodies have to explore differential pricing?
  - When is the ombudsman model necessary, and when would other dispute resolution models suffice?
  - How can ombudsman schemes quantify the benefits of added value activities, e.g. standards raising?

# Glossary

|              |                                                          |
|--------------|----------------------------------------------------------|
| <b>ADR</b>   | Alternative Dispute Resolution                           |
| <b>CISAS</b> | Communications and Internet Services Adjudication Scheme |
| <b>DCS</b>   | Dental Complaints Service                                |
| <b>FOS</b>   | Financial Ombudsman Service                              |
| <b>LEO</b>   | Legal Ombudsman                                          |
| <b>OIA</b>   | Office of the Independent Adjudicator                    |
| <b>OS</b>    | Ombudsman Services                                       |
| <b>PEN</b>   | Pensions Ombudsman                                       |
| <b>PPO</b>   | Prisons and Probation Ombudsman                          |
| <b>TDS</b>   | Tenancy Deposit Scheme                                   |
| <b>TPO</b>   | The Property Ombudsman                                   |

# Annex 1 – Defining an ombudsman scheme

## Reproduced from Ombudsman Association website

In the majority of cases, the principal features of an ombudsman scheme are:

- Ombudsman schemes resolve complaints. They are not regulators, though some of their decisions may be seen as precedents and have wider effect
- The ombudsman model is used to resolve complaints made by someone ‘small’ (citizen/consumer) against something ‘big’ (public body or commercial business)
- Ombudsman scheme procedures are designed to redress the difference between the resources and expertise available to the citizen/consumer and those available to the body/business
- Access to ombudsman schemes is free for citizens/consumers, and they are not at risk of an order for costs. Ombudsman schemes handle enquiries as well as complaints, because dealing with an enquiry may head off a complaint (for example, by resolving a misunderstanding)
- The citizen/consumer first complains to the body/business, accessing the ombudsman scheme if dissatisfied with the body/business’s response (or if it does not respond within a reasonable time)
- When dealing with complaints, ombudsman schemes seek to achieve a fair resolution at the earliest possible stage – rather than working towards an assumed future hearing
- Ombudsman schemes use flexible and informal procedures – resolving cases by mediation, recommendation or decision as appropriate
- Ombudsman schemes do not just rely on the evidence the parties volunteer. They actively investigate cases (using their specialist expertise) – calling for the information they require
- So the outcome is not affected by how well either of the parties presents his/her/its case, and representation by lawyers (or others) is not necessary
- Ombudsman scheme recommendations/decisions are based on what is fair in the circumstances, taking account of good practice as well as law
- Ombudsman schemes publicly feed back the general lessons from cases they have handled, so stakeholders (including government/regulators) can take steps to improve things for the future
- Because there is a flexible and informal process, and representation is not necessary, the costs of an average ombudsman case are significantly less than an equivalent case in a court or tribunal

# Annex 2 – Scheme processes overview

## **Legal Ombudsman (LEO)**

1. Consumer complains to law firm and must allow 8 weeks for response
2. Consumer complains to Legal Ombudsman and case allocated to an Investigator
3. Early resolution attempted
4. Investigator issues Recommendation Report. If both parties agree, the case is closed as an informal resolution
5. If either party disagrees with the Recommendation Report, reasons must be provided within 10 working days
6. Comments summarised and sent, with the Recommendation Report, to an Ombudsman
7. Ombudsman makes final decision

## **Financial Ombudsman Service (FOS)**

1. Consumer complains to business and must allow 8 weeks for response
2. Consumer complaints to Financial Ombudsman by completing complaints form
3. Adjudicator offers initial opinion in attempting early resolution, over the phone or in writing
4. Consumer or business may ask for a review
5. Ombudsman carries out independent review of complaint and makes final decision

## **Ombudsman Services (OS)**

1. Consumer complains to business and must allow 8 weeks for response
2. Consumer contacts Ombudsman Services who agree main points of complaint, and what reasonable resolution could be achieved. Authority to proceed may be given over phone
3. Early resolution attempted if success looks possible. If both parties agree to the proposed resolution this becomes the ombudsman's decision and is confirmed in writing
4. If at step 2 the complaint looks more complex and likely to take longer than 5 days to resolve, Ombudsman Services obtains more information from company and prepares an investigation plan. Ombudsman Services discusses proposed resolution with consumer

and agreement between consumer and company is sought. If both parties agree to the resolution this becomes the ombudsman's decision and is confirmed in writing

5. If early resolution is unsuccessful, Ombudsman Services makes decision and explains reasons. Both parties have the opportunity to correct errors in fact or provide new information
6. Final decision made

### **Office of the Independent Adjudicator (OIA)**

1. Student completes internal complaints or appeals procedures of the university
2. University issues a Completion of Procedures Letter to student
3. Student sends Complaint Form to OIA within 3 months of date of CoPL
4. Eligibility reviewed
5. Review by case-handler, fully transparent process with all information shared with all parties. Opportunities sought for settlement at all stages.
6. Both parties have opportunity to comment on Complaint Outcome
7. Final Decision issued
8. Compliance with recommendations monitored
9. Extreme instances of non compliance published in annual report.
10. All decisions subject to Judicial Review

### **Pensions Ombudsman (PEN)**

1. Consumer completes internal complaints procedure
2. Consumer is usually required to obtain advice and assistance from the Pensions Advisory Service before approaching PEN
3. Early resolution attempted
4. Investigator's Opinion or Ombudsman's Provisional Decision is issued and both parties are sent a copy for consideration
5. Where an Investigator's Opinion is issued and accepted by all the parties case is closed. If not case is referred to an ombudsman for determination
6. Where the ombudsman issues a provisional decision all parties will be invited to comment on it before the matter is finalised by formal determination

### **Property Ombudsman (PO)**

1. Consumer complains to business, which should issue a final viewpoint letter
2. Consumer complains to Property Ombudsman by completing Complaints Form
3. Early resolution attempted

4. Case Management Team contacts firm to obtain file and formal response to complaint
5. Case allocated to Case Officer who produces report with recommendation for the Ombudsman
6. Ombudsman considers report and issues his Proposed Decision to the unsupported party first and then the supported party
7. Each party has the opportunity to accept or represent against the Proposed Decision
8. Following consideration of any new evidence, Ombudsman issues Final Decision

### **Prisons and Probation Ombudsman (PPO)**

1. Consumers completes internal complaints procedure
2. Consumer makes complaint in writing and this is allocated to an Investigator
3. Investigator considers prospects of early resolution and may try to negotiate settlement
4. If early resolution unsuccessful, full investigation started and evidence gathered
5. Investigator makes recommendation to Assistant Ombudsman
6. A final decision is made by an Assistant or Deputy Ombudsman
7. If complaint warrants it, a full report is written and a draft is sent to both parties to check for errors in fact. A final copy of the report is issued, which may contain recommendations aimed at the organisation complained about

### **Tenancy Deposit Scheme (TDS)**

1. If tenant wishes to challenge proposed apportionment of the deposit, they should do so within 20 working days of the end of the tenancy. If there is an agent, they must try to negotiate a settlement between the parties within 10 working days
2. If no agreement, either tenant or landlord can refer the dispute to the Tenancy Deposit Scheme by completing the Dispute Application Form and providing supporting evidence. There is no opportunity to send new evidence at a later stage
3. On receipt of the form, the other party is contacted and given 10 working days to say if they consent to adjudication. Both parties must consent to adjudication, otherwise the dispute may instead be dealt with in court
4. They are asked to complete the Dispute Response Form and provide supporting evidence. The deposit holder is asked to send the amount in dispute to the scheme
5. An Adjudicator considers the evidence and makes a decision within 28 days how the deposit should be apportioned. They write a report detailing the reasons for their decision and pay the money to each party accordingly within 5-10 working days of publishing the report

### **Dental Complaints Service (DCS)**

1. Patient complains to dental professional
2. Consumer complains to Dental Complaints Service
3. Early resolution attempted
4. If resolution can't be reached and both patient and dental professional are in agreement, a panel meeting is arranged. The panel consists of two lay members and a dental professional. They will hear both sides of the complaint and work towards facilitating an amicable resolution. If an agreement can't be reached, the panel will make a recommendation in order to resolve the complaint

### **Communications and Internet Services Adjudication Scheme (CISAS)**

1. Consumer complains to business
2. Consumer complains to CISAS by completing application form
3. CISAS sends the application form to the company and gives them 14 days to respond
4. CISAS sends the company's response to the consumer and gives them 7 days to respond
5. CISAS makes a decision within the next three weeks

# Annex 3 – Publication of complaints data

The Government's consumer strategy sets an expectation that regulators, departments and public service providers release complaints data naming providers. After much deliberation, from 1 April 2012 the Legal Ombudsman started to publish data from cases that have received an ombudsman's decision.

Table 1 shows the progress made by each scheme in delivering on the Government's policy. While this falls outside the complaints-handling focus of this report, the information is included here due to the high interest among policymakers in this topic.

| Scheme | Policy                                                                                                                                                                                                                                                                                                          |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LEO    | Formal ombudsman decisions only, including if remedy awarded, quarterly                                                                                                                                                                                                                                         |
| FOS    | New and resolved cases above threshold of 30 cases, including uphold rates, updated in six-month periods                                                                                                                                                                                                        |
| OS     | From autumn 2013, quarterly data for energy firms only on: complaint forms issued; cases resolved; complaint type; most common value of financial award; how complainant heard about OS; early resolution; outside terms of reference; complaints accepted after 8 weeks/deadlock letter/ombudsman's discretion |
| PPO    | Complaint numbers, uphold rates, prison population context – in annual report                                                                                                                                                                                                                                   |
| OIA    | Annual letters to each university on complaint volumes and outcomes                                                                                                                                                                                                                                             |
| PEN    | Full text of all determinations – complainant also named; no aggregated data                                                                                                                                                                                                                                    |
| TPO    | Annual Report names the agents expelled from TPO in that year and explains that the expulsions were publicised in the local media as well as on its website and via national trade press                                                                                                                        |
| TDS    | None                                                                                                                                                                                                                                                                                                            |
| DCS    | None                                                                                                                                                                                                                                                                                                            |
| CISAS  | None                                                                                                                                                                                                                                                                                                            |

# Annex 4 – Data tables

For all tables below, note that TPO and OIA data is for the calendar year period

**Chart 1 – Expenditure, 2012-13**

| LEO         | FOS          | OS         | OIA        | PEN        | TPO        | PPO        | TDS        | DCS      | CISAS   |
|-------------|--------------|------------|------------|------------|------------|------------|------------|----------|---------|
| £16,657,000 | £160,800,000 | £8,017,565 | £2,950,993 | £2,932,325 | £2,363,920 | £1,818,734 | £4,028,716 | £604,000 | Unknown |

Notes

PPO: apportioned to complaints handling function; i.e. excluding fatal incidents investigations (see also below)

TDS: this is the total administrative expenditure for TDS and not just that which relates to its dispute resolution functions

DCS: figure shown is for budget, expenditure figure unavailable

**Chart 2 – % change in expenditure, 2011-13**

|         | LEO         | FOS          | OS         | PPO        | OIA        | PEN        | TPO        | DCS       | TDS        | CISAS   |
|---------|-------------|--------------|------------|------------|------------|------------|------------|-----------|------------|---------|
| 2010-11 | n/a         | £106,800,000 | £6,006,768 | £2,153,397 | £2,086,578 | £2,678,353 | £1,710,460 | To follow | £2,813,711 | Unknown |
| 2011-12 | £17,304,000 | £107,000,000 | £6,808,868 | £1,916,176 | £2,415,212 | £2,760,136 | £2,027,972 | To follow | £3,544,931 | Unknown |
| 2012-13 | £16,657,000 | £160,800,000 | £8,017,565 | £1,818,734 | £2,950,993 | £2,932,325 | £2,363,920 | £604,000  | £4,028,716 | Unknown |
| % 11-13 | n/a         | 50.6%        | 33.5%      | -15.5%     | 41.4%      | 9.5%       | 38.2%      | To follow | 43.2%      | Unknown |
| % 12-13 | -3.7%       | 50.3%        | 17.8%      | -5.1%      | 22.2%      | 6.2%       | 16.6%      | To follow | 13.6%      | Unknown |

Notes

LEO: not recorded since first full year of operation was 2011-12 (see also below)

**Chart 3 – Caseload based on all enquiries, 2012-13**

|                      | LEO    | FOS       | OS      | OIA   | PEN   | TPO     | PPO     | TDS     | DCS     | CISAS   |
|----------------------|--------|-----------|---------|-------|-------|---------|---------|---------|---------|---------|
| Individual contacts  | 36,668 | 2,161,439 | 122,589 | 3,144 | 2,798 | 15,782  | 5,374   | 143,502 | Unknown | 6387    |
| Outside jurisdiction | 5,575  | Unknown   | 10,518  | 338   | 260   | 3,707   | Unknown | Unknown | Unknown | Unknown |
| Premature            | 9,594  | Unknown   | 78,408  | 142   | 781   | Unknown | 2,183   | Unknown | Unknown | Unknown |
| Other/unknown        | 13,069 | 2,161,439 | 33,663  | 994   | 683   | 10,105  | 376     | 143,502 | Unknown | 3258    |
| Accepted             | 8,430  | 508,881   | 26,970  | 1,670 | 1,074 | 1,970   | 2,815   | 8,948   | 2,110   | 3129    |

Notes

LEO: Individual contacts – differs from annual report figures which include repeat contacts

FOS: Individual contacts - includes repeat contacts

OIA: Outside jurisdiction – this is all ineligible cases and includes those outside jurisdiction (England and Wales institutions); those about institutions that do not subscribe to the Scheme, those about areas OIA cannot look at (e.g. admissions) and those that were out of time

PEN: Individual contacts - includes repeat contacts. Premature contacts includes cases submitted to the Pensions Advisory Service for advice and assistance.

TDS: figure represents adjudicated disputes. In the Chart, the figure for disputes resolved by TDS (caseload) is compared against the volume of enquiries made to TDS’ customer service centre. These enquiries do not solely reflect enquiries related to potential disputes that end in adjudication.

**Chart 4 – % change in case volumes, 2011-13**

|         | LEO   | FOS     | OS     | OIA   | PEN   | TPO   | PPO   | TDS   | DCS   | CISAS  |
|---------|-------|---------|--------|-------|-------|-------|-------|-------|-------|--------|
| 2010-11 | n/a   | 206,121 | 17,031 | 1,192 | 915   | 1,318 | 2,561 | 8,527 | 1,559 | 1,300  |
| 2011-12 | 8,420 | 264,375 | 20,999 | 1,350 | 939   | 1,427 | 2,667 | 8,461 | 1,887 | 2,025  |
| 2012-13 | 8,430 | 508,881 | 30,647 | 1,670 | 1,074 | 1,970 | 2,815 | 8,948 | 2,110 | 3,129  |
| % 11-13 | n/a   | 146.9%  | 79.9%  | 40.1% | 17.4% | 49.5% | 9.9%  | 4.9%  | 35.3% | 140.7% |
| % 12-13 | 0.1%  | 92.5%   | 45.9%  | 23.7% | 14.4% | 38.1% | 5.5%  | 5.8%  | 11.8% | 54.5%  |

### Chart 5 – Signposting to scheme by providers (most recent survey)

| LEO | FOS | OS      | OIA     | PEN     | TPO | PPO     | TDS     | DCS | CISAS |
|-----|-----|---------|---------|---------|-----|---------|---------|-----|-------|
| 27% | 23% | Unknown | Unknown | Unknown | 34% | Unknown | Unknown | 8%  | 17%   |

Notes

TPO: Based on survey data. Separate compliance checks data shows: tenants 51%; landlords 69%; buyers 93%; sellers 96%.

### Chart 6 – Case resolution times, 2012-13

|           | LEO  | FOS | OS      | OIA | PEN     | TPO  | PPO | TDS   | DCS     | CISAS |
|-----------|------|-----|---------|-----|---------|------|-----|-------|---------|-------|
| 3 months  | 57%  | 43% | Unknown | 24% | Unknown | 26%  | 29% | 95% + | Unknown | 98%   |
| 6 months  | 93%  | 73% | Unknown | 36% | 20%     | 74%  | 72% | 100%  | Unknown | 100%  |
| 12 months | 100% | 89% | Unknown | 84% | 58%     | 100% | 97% | 100%  | Unknown | 100%  |

Notes

FOS: The clock starts once a case has been ‘converted’ that means when it moves from FOS’ customer contact department through to its casework team as a case that is ready to be investigated. The clock stops on the date the case is closed on FOS’ system

OS: Most recent KPI Performance Report – 97% under six weeks; 1% more than 8 weeks. Clock starts once a complainant has confirmed that the complaint form OS generates is accurate and ends once OS have issued a provisional decision, or an agreed informal resolution

OIA: In addition, average time of 228 days from receipt of complaint to closure

PEN: In addition, average time of 9.6 months. For investigations the clock starts from the date of the contact and ends when the case is closed as a result of a resolution, determination, withdrawal or discontinuance.

TPO: Clock starts when the Ombudsman receives the information he requires to investigate the complaint; prior to this point the complaint is deemed an enquiry. The complaint stops when the case is closed (i.e. when the TPO’s processes are finished and the case requires no further work). Case closed does not mean when the Ombudsman has made his final decision. It is the point that his final decision has been accepted or rejected and, importantly, if a financial award has been made, when that award has been paid

PPO: Clock starts when the complaint correspondence is first received to the point at which an investigation is complete and is shared with the complainant

TDS: Currently completes over 95% of its adjudications within 28 days of receiving the parties’ consent to adjudication. Clock starts from when TDS have received all the evidence from both parties and their consent to adjudication.

CISAS: 92% of cases completed within six weeks of application; 2% completed more than 8 weeks after application

**Chart 7 – % cases resolved within three months, 2011-13**

|         | LEO   | FOS   | OS      | OIA     | PEN     | TPO    | PPO    | TDS     | DCS     | CISAS |
|---------|-------|-------|---------|---------|---------|--------|--------|---------|---------|-------|
| 2010-11 | n/a   | 41%   | Unknown | Unknown | Unknown | 61%    | 63%    | Unknown | Unknown | 95%   |
| 2011-12 | 50%   | 28%   | Unknown | Unknown | Unknown | 53%    | 53%    | Unknown | Unknown | 96%   |
| 2012-13 | 57%   | 43%   | Unknown | Unknown | Unknown | 26%    | 29%    | 95%+    | Unknown | 98%   |
| % 11-13 | n/a   | 4.9%  | Unknown | Unknown | Unknown | -57.4% | -54.0% | Unknown | Unknown | 3.2%  |
| % 12-13 | 14.0% | 53.6% | Unknown | Unknown | Unknown | -50.9% | -45.3% | Unknown | Unknown | 2.1%  |

Notes

CISAS: In 2010, there were 85% done within 6 weeks, 10% done between 6-8 weeks, and 5% in over 8 weeks. In 2011, there were 87% done within 6 weeks, 9% done between 6-8 weeks, and 4% in over 8 weeks

TDS: In 2011-12 it resolved 98.4% of disputes in less than 28 days compared to 98.6% in 2012-13. This is an increase of 0.2%

**Chart 8 – Complainants satisfied with timeliness (most recent survey)**

| LEO | FOS | OS  | OIA     | PEN     | TPO | PPO     | TDS   | DCS | CISAS |
|-----|-----|-----|---------|---------|-----|---------|-------|-----|-------|
| 61% | 51% | 54% | Unknown | Unknown | 25% | Unknown | 60% + | 96% | 78%   |

**Chart 9 – Cases requiring formal ombudsman decision, 2012-13**

| LEO | FOS | OS  | OIA | PEN | TPO | PPO | TDS | DCS     | CISAS |
|-----|-----|-----|-----|-----|-----|-----|-----|---------|-------|
| 39% | 11% | 66% | 88% | 59% | 81% | 81% | n/a | Unknown | 63%   |

Notes

OS: not all necessarily reviewed via an ombudsman route, but a final determination

TDS: does not have an informal method of resolving disputes, which means that all cases accepted for dispute resolution proceed to an adjudication decision. In 2012-13 over 90% of the disputes raised with TDS proceeded to an adjudication decision, those that did not were either resolved between the parties or rejected as not falling within the scheme’s rules

**Chart 10 – % change in cases requiring formal ombudsman decision, 2011-13**

|         | LEO   | FOS   | OS     | OIA     | PEN  | PPO     | TPO    | TDS     | DCS     | CISAS |
|---------|-------|-------|--------|---------|------|---------|--------|---------|---------|-------|
| 2010-11 | n/a   | 11%   | 85%    | Unknown | 59%  | Unknown | 96%    | Unknown | Unknown | 54%   |
| 2011-12 | 35%   | 9%    | 67%    | Unknown | 58%  | Unknown | 93%    | Unknown | Unknown | 62%   |
| 2012-13 | 39%   | 11%   | 66%    | Unknown | 59%  | 81%     | 81%    | Unknown | Unknown | 63%   |
| % 11-13 | n/a   | 0.0%  | -22.4% | Unknown | 0.0% | Unknown | -15.6% | Unknown | Unknown | 16.7% |
| % 12-13 | 11.4% | 22.2% | -1.5%  | Unknown | 1.7% | Unknown | -12.9% | Unknown | Unknown | 1.6%  |

Notes

FOS: Annual report records rise in case volumes requiring ombudsman decisions of 18.5% (20,540 in 2011-12 to 24,332 in 2012-13)

**Chart 11 – Cases where remedies are awarded and perceptions of fairness, 2012-13**

|                               | LEO | FOS | OS      | OIA     | PEN     | TPO | PPO | TDS     | DCS     | CISAS   |
|-------------------------------|-----|-----|---------|---------|---------|-----|-----|---------|---------|---------|
| Remedy awarded                | 32% | 49% | 88%     | Unknown | Unknown | 68% | 20% | Unknown | Unknown | 45%     |
| Complainant perceived as fair | 57% | 56% | Unknown | Unknown | 34%     | 34% | 38% | 58%     | Unknown | Unknown |

**Chart 12 – Overall advocacy (most recent survey)**

| LEO | FOS | OS  | OIA     | PEN | TPO | PPO     | TDS | DCS     | CISAS |
|-----|-----|-----|---------|-----|-----|---------|-----|---------|-------|
| 54% | 72% | 72% | Unknown | 45% | 45% | Unknown | 67% | Unknown | 60%   |

**Chart 13 – Consumer and lawyer satisfaction (most recent survey)**

|                                  | Consumer | Lawyer |
|----------------------------------|----------|--------|
| Advocacy - 'won'                 | 93%      | 60%    |
| Advocacy - 'lost'                | 13%      | 5%     |
| Advocacy - overall               | 54%      | 41%    |
| Professional service             | 72%      | 80%    |
| Fair and impartial               | 57%      | 62%    |
| Clear explanation                | 78%      | 77%    |
| Staff understood complaint       | 62%      | 65%    |
| Confidence in handling complaint | 55%      | 61%    |
| Kept updated                     | 64%      | 68%    |
| Website useful                   | 62%      | 41%    |

**Chart 14 – Customer service measures (most recent survey)**

|                            | LEO | FOS     | OS      | OIA     | PEN | TPO     | PPO     | TDS     | DCS     | CISAS   |
|----------------------------|-----|---------|---------|---------|-----|---------|---------|---------|---------|---------|
| Professional service       | 72% | 75%     | Unknown | Unknown | 49% | Unknown | Unknown | Unknown | Unknown | Unknown |
| Clear explanation          | 78% | Unknown | 76%     | Unknown | 73% | 72%     | Unknown | 81%     | 96%     | Unknown |
| Staff understood complaint | 62% | Unknown | Unknown | Unknown | 59% | Unknown | Unknown | Unknown | Unknown | 62%     |
| Kept informed of progress  | 64% | Unknown | Unknown | Unknown | 59% | 77%     | Unknown | 59%     | Unknown | Unknown |

**Chart 15 – Service complaints as a proportion of caseload, 2012-13**

| LEO  | FOS  | OS      | OIA  | PEN  | TPO  | PPO     | TDS  | DCS     | CISAS   |
|------|------|---------|------|------|------|---------|------|---------|---------|
| 3.3% | 0.5% | Unknown | 1.9% | 1.7% | 0.9% | Unknown | 1.3% | Unknown | Unknown |

Notes

TDS: Based on first six months of 2013-14 and then annualised; equivalent data unavailable for 2012-13 period.

**Chart 16 – Unit cost, 2012-13**

|                     | LEO    | FOS  | OS   | OIA    | PEN    | TPO    | PPO  | TDS  | DCS  | CISAS   |
|---------------------|--------|------|------|--------|--------|--------|------|------|------|---------|
| Based on complaints | £2,168 | £720 | £408 | £1,616 | £3,073 | £1,329 | £882 | £450 | £286 | £270    |
| Based on contacts   | £454   | £74  | £65  | £939   | £1,048 | £133   | £338 | £28  | £272 | Unknown |

Notes

PPO: apportioned to complaints handling function; i.e. excluding fatal incidents investigations (see also below)

TPO: operates a membership department and code of practice, which means true unit cost is lower. TPO calculates its own unit cost figures as £133 which include all individual enquiries as well as complaints resolved

**Chart 17 – % change in unit cost, 2011-13**

|         | LEO    | FOS   | OS      | OIA    | PEN    | TPO       | PPO  | TDS   | DCS     | CISAS  |
|---------|--------|-------|---------|--------|--------|-----------|------|-------|---------|--------|
| 2010-11 | £2,014 | £639  | Unknown | £2,545 | £3,162 | £1,579    | £830 | £329  | Unknown | £301   |
| 2011-12 | £2,281 | £484  | £373    | £1,632 | £3,108 | £1,799    | £812 | £418  | Unknown | £294   |
| 2012-13 | £2,168 | £720  | £408    | £1,616 | £3,073 | £1,329    | £882 | £450  | Unknown | £270   |
| % 11-13 | 7.6%   | 12.7% | Unknown | -36.5% | -2.8%  | -15.8%    | 6.3% | 36.8% | Unknown | -10.3% |
| % 12-13 | -5.0%  | 48.8% | 9.4%    | -1.0%  | -1.1%  | To follow | 8.6% | 7.7%  | Unknown | -8.2%  |

**Chart 18 – Ratio of cases resolved to staff, 2012-13**

|           | LEO | FOS   | OS  | OIA | PEN | TPO | PPO | TDS | DCS | CISAS   |
|-----------|-----|-------|-----|-----|-----|-----|-----|-----|-----|---------|
| Headcount | 258 | 2,672 | 177 | 47  | 36  | 51  | 40  | 73  | 10  | Unknown |
| Ratio     | 30  | 84    | 111 | 38  | 27  | 35  | 59  | 123 | 211 | Unknown |

Notes

FOS: Recruited heavily during the time period so the number of FTE was very different at the start of the year to the end of the year

**Chart 19 – Staff costs as % of expenditure, 2012-13**

| LEO   | FOS   | OS    | OIA   | PEN   | TPO     | PPO   | TDS   | DCS     | CISAS   |
|-------|-------|-------|-------|-------|---------|-------|-------|---------|---------|
| 64.5% | 61.9% | 74.4% | 69.3% | 67.7% | Unknown | 91.0% | 67.7% | Unknown | Unknown |

**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.**

**Consumer Panel Members**

Elisabeth Davies (Chair)

Jeff Bell

Andy Foster

Emma Harrison

Frances Harrison

Paul Munden

Neil Wightman

Catherine Wolthuizen

**Secretariat**

Steve Brooker

Harriet Gamper



Legal Services Board  
Victoria House  
Southampton Row  
London WC1B 4AD

T 020 7271 0076

[www.legalservicesconsumerpanel.org.uk](http://www.legalservicesconsumerpanel.org.uk)