



# Case scenarios

## INTRODUCTION

The following case scenarios illustrate the approach the Legal Ombudsman (LeO) will take to its jurisdiction when it considers complaints about the service provided by ICAEW accredited probate firms.

Under the Legal Services Act 2007 LeO potentially has jurisdiction over any service provided by an accredited firm and could for example consider complaints about audit and insolvency. However, LeO has indicated it will only consider complaints about the 'legal activities' supplied by an accredited firm. And as a general rule, the activities listed as 'accountancy services' in Annex 2 to the **ICAEW council's statement** on engaging in public practice will be viewed as non-legal activities. Therefore, they will generally fall outside the scope of LeO's jurisdiction.

However, LeO has also advised that where the service provided to a client contains a significant degree of legal advice, or the provision of representation in connection with the law or the resolution of legal disputes, it may consider the complaint. So, accredited firms will need to consider when taking on clients whether the engagement is likely to involve a significant degree of legal advice or legal representation irrespective of the type of accountancy service offered. This is particularly important as firms have a duty under ICAEW's Probate Regulations to highlight the availability of the Legal Ombudsman at the commencement of the engagement and at any time when a complaint arises. If LeO's jurisdiction is triggered, complaints will need to be handled in accordance with chapter 7 of the Probate Regulations.

ICAEW's **Practice Assurance Standard No2** requires firms to inform all clients in writing of the basis for calculating their fees and their complaints procedure, including the client's right to complain to ICAEW. We find the best way to communicate this information to clients is to include it in an engagement letter or attached terms of business. The terms of the letter of engagement will be critical in determining the scope of the engagement and whether it will fall within LeO's jurisdiction.

In the following scenarios all firms are accredited for probate.

## THE PROVISION OF TAX ADVICE AND ASSISTANCE

### Scenario 1

Firm A is an ICAEW accredited probate firm. It has five principals, one of whom is an individual who is authorised for probate work. The firm is instructed by the sole director of a small business whose turnover for its last accounting period was ca. £450k. The director has asked the firm to assist her in calculating the company's corporation tax liability and completing the company tax return to HMRC. The engagement is supervised by the principal who is authorised for probate. Unfortunately, the firm made an administrative error which resulted in a greater corporation tax liability for the client than necessary. The error only came to light six months after the submission of the return and payment of the tax. In this scenario LeO's jurisdiction would not be triggered, as the calculation of tax and assistance in the completion of tax returns is part of standard

accountancy practice. The firm would need to reference that there is no route of redress via LeO and therefore should use paragraph A in the decision path document.

## **Scenario 2**

The following year Firm A is instructed by an elderly client, Mr X. Mr X has substantial assets and wants advice on appropriate tax planning to minimise the future inheritance tax (IHT) liability for his estate. Another principal at the firm deals with the engagement. After the initial meeting Mr X becomes unhappy with the service he's receiving from the firm. Over the course of 3 weeks he tries repeatedly to contact his accountant, but his calls go unanswered. He also receives an invoice for the initial meeting that was far greater than anticipated. He decides to complain.

In this scenario LeO would have jurisdiction and the firm would need to deal with Mr X's complaint in accordance with chapter 7 of the ICAEW Probate Regulations. By its nature the engagement is likely to involve a significant degree of legal advice on the application of relevant tax law. Although the principal dealing with the engagement is not himself an 'authorised individual', as the firm is accredited for probate work it should have signposted the availability to LeO in the initial engagement letter.

As there is a degree of legal advice in the service, there is a possibility that it could be considered significant by the ombudsman, though the initial view is that it would not be. Therefore paragraph E in the decision document should be used to denote there is unlikely to be redress through the ombudsman but not rule it out completely.

## **Scenario 3**

A sole trader engages Firm A to assist him with his income tax return. The engagement is dealt with by one of the firm's employees under the supervision of another principal.

The client provides the firm with a list of expenses, but does not include certain advertising costs that have been incurred during the year. Later the client learns from a business contact that these expenses would have been deductible. He decides to complain on grounds that the firm failed to make full enquiries and did not advise that advertising expenses could have been claimed to reduce the sole trader's taxable profit.

In this scenario although the firm is accredited for probate, LeO's jurisdiction is not triggered in this scenario as advice on the completion of income tax returns is part of standard accountancy practice and entails little in the way of legal advice. The firm would need to reference that there is no route of redress via LeO and therefore should use paragraph A in the Decision path document.

## **ADVICE OR CONSULTANCY ON ACCOUNTING AND FINANCIAL REPORTING SYSTEMS**

### **Scenario 4**

A company engages Firm B to provide professional advice on its payroll and financial reporting systems. The company had a turnover in the last accounting year of £3.5m.

The engagement is dealt with by a principal who is not authorised for probate. Later the directors of the company are concerned that the advice provided is not as in depth as they would have liked and expected. They do not consider that they've had value for money and decide to complain.

In this scenario although the firm is accredited for probate, LeO's jurisdiction is not triggered as advice on accounting and financial reporting systems is part of standard accountancy practice. In any event the client would not be eligible to make a complaint to LeO as its turnover exceeds £1m.

The firm would need to reference that there is no route of redress via LeO and therefore should use paragraph A in the decision path document.

## REPRESENTATION OF A CLIENT IN A TAX INVESTIGATION OR PROCEEDINGS

### Scenario 5

Firm C is instructed by a client to act as her agent in an investigation by HMRC into an aspect of her latest income tax return. The firm is instructed to liaise and correspond with HMRC on the client's behalf.

Firm C is authorised to conduct probate work and both principals are authorised individuals. The client's engagement, however, is dealt with by a non-authorised employee at the firm. The client complains that the firm has not kept her sufficiently up to date on developments, which has caused her unnecessary stress and inconvenience.

In this scenario although the firm is accredited for probate, LeO's jurisdiction is not triggered. Acting as an agent for clients in dealings with HMRC is part of standard accountancy practice. Note however, that should the role as agent develop into advocacy, then that would be construed as a legal service and fall under LeO jurisdiction.

As there is a degree of legal advice in the service, there is a possibility that it could be considered significant by the ombudsman, though the initial view is that it would not be. Therefore paragraph E should be used to denote there is unlikely to be redress through the ombudsman but not rule it out completely.

### Scenario 6

The client of Firm C (In scenario 5 above) is unhappy with the final decision taken by HMRC and decides to appeal to the Tax Chamber of the First-tier Tribunal. Firm C agrees to act on her behalf but is late in submitting documentation in accordance with the tribunal's rules.

In this scenario the client's new instructions have meant that the engagement now involves a significant degree of legal representation. The firm should confirm the scope of the new instructions with the client in writing and signpost the availability of LeO if the client wishes to complain.

As there is a degree of legal advice in the service, there is a possibility that it could be considered significant by the ombudsman, though the initial view is that it would not be. Therefore paragraph E in the decision document should be used to denote there is unlikely to be redress through the ombudsman but not rule it out completely.

## BUSINESS FUNDING ADVICE

### Scenario 7

The partners of a small partnership engage Firm D to provide general business and accounting advice. They also seek advice on the best source of funding for their business, which is looking to move into new markets. Firm D is able to provide this funding advice as it is licensed to provide non-mainstream investment advice in accordance with ICAEW's Designated Professional Body arrangements.

Later the client becomes aware that the firm has received commission for a referral it has made during the engagement to a third party. As the firm didn't disclose the commission and obtain the client's consent to retain the fees, the partners decide to complain.

In this scenario although the firm is accredited for probate, LeO's jurisdiction is not triggered. General business advice, including the provision of funding advice, is part of standard accountancy practice. The complaint also involves an allegation of potential misconduct under ICAEW's Disciplinary Byelaws. The firm would need to reference that there is no route of redress via LeO and therefore should use paragraph A in the decision path document.

### **Scenario 8**

Another client who is looking to set up a business engages Firm D. The client wants advice on the business structure that would most suit his needs and the tax implications of adopting each structure. A solicitor at the firm provides this advice, both verbally and in writing, but after some delay. The client is also unhappy with the fees charged for the work.

In this scenario the engagement involves a degree of legal advice in terms of both business and tax law. As such, LeO's jurisdiction maybe triggered and the firm should perhaps have signposted the client to LeO both at the outset of the engagement and when handling the complaint. The fact the advice was provided by a solicitor however would lean LeO towards considering this was a legal service under their jurisdiction.

As there is a degree of legal advice in the service, there is a possibility that it could be considered significant by the ombudsman, though the initial view is that it would not be. Therefore paragraph E in the decision document should be used to denote there is unlikely to be redress through the ombudsman but not rule it out completely. Debt counselling

### **Scenario 9**

Firm E is instructed by a sole trader of a small business in financial difficulties. He has asked the firm to provide him with general business advice and advise him on setting up payment plans with his business creditors. The sole trader becomes concerned that the firm is not carrying out his instructions as quickly as he would expect. In this scenario although the firm is accredited for probate, LeO's jurisdiction is not triggered. The provision of business advice and this type of debt counselling is part of standard accountancy practice. As the firm is authorised for consumer credit activities by the Financial Conduct Authority, the firm ought to have signposted the Financial Ombudsman Service in its letter of engagement if the client wishes to complain at a later date. The firm would need to reference that there is no route of redress via LeO and therefore should use paragraph A in the Decision path document.

### **Scenario 10**

Firm E is instructed by an individual in financial difficulties. He seeks advice on his options for avoiding personal bankruptcy, including the possibility of entering into an individual voluntary arrangement (IVA). During the course of the engagement, the firm provides debt counselling advice on sums due to be paid by the client under various credit agreements.

In this scenario—the client's instructions involve a degree of legal advice. Partly due to the provision of options and specific reference to Insolvency legislation (which an IVA involves). However given that both the FOS and the Insolvency gateway also have jurisdiction in this area, one of these bodies should normally be referred to in the engagement letter. No referral to LeO.

The firm would need to reference that there is no route of redress via LeO and therefore should use paragraph A in the decision path document.