

**Legal Services Commission Response to a Consultation Paper from the Office of Legal Complaints on their Draft Scheme Rules
25 November 2009**

Introduction

The Legal Services Commission (LSC) is a non-departmental public body sponsored by the Ministry of Justice (MoJ). The LSC is the biggest single purchaser of legal services in England and Wales with an annual spend of £2.1 billion. We are responsible for the delivery of civil and criminal legal aid and the development of community legal services.

We are pleased to be given the opportunity to respond to your consultation paper entitled "*Scheme rules consultation draft*" and the opportunity to attend the discussion forum held on 6 November 2009.

The Chair of the LSC, Sir Bill Callaghan and I recently met with your Chief Ombudsman, Adam Sampson, to discuss how our organisations can best work together to improve client satisfaction. My letter dated 24 September 2009 is attached herewith for your information and we look forward to working with the Office of Legal Complaints in the future.

Response

Our response to the above consultation is given as below:

Question 1 – Should we include some additional guidance in the scheme rules about how in-house complaints handling inter-relates to the Ombudsman scheme? If you agree, what form should this take? More generally, what can we do to promote good customer service in the legal profession? Please give examples and reasons.

We would say that, most definitely, you should include guidance on in-house complaints handling. It would enable solicitors to fully understand what you would expect of an in-house process and is more likely to lead to a consistent approach to complaints across the authorised persons covered by your scheme. Our experience is that solicitors seem clear about their obligations as laid out in the solicitors' code of conduct, but anything that you can do to promote good practice would be a good thing.

At the same time, however, we think it important to guard against seeming to impose uniformity on them, or dictate to them. An idea would be to work with a small group of solicitors and barristers perhaps, to develop guidance together.

The LSC also has guidance on handling in-house complaints, in section G of our Standard Quality Mark (SQM). As part of our on-going dialogue with you, it may be useful for us to take you through these as another way of achieving consistency of approach.

A clear process flow should be included so that Providers can easily follow the route from internal complaint through to the Ombudsman.

Question 2 – Should the OLC ask the Lord Chancellor to consider exercising this power to include the others we have suggested? Should we include anyone else? Please give your reasons why and why not.

On the face of it, we would agree that the suggested additions to the people from who you would accept complaints are good ones. However, as “the devil is in the detail”, we wondered how you would define clubs, associations and societies? Would they need to be set up in a formal way, with a committee, a charter and a formal structure for example? Without wanting to make anything more bureaucratic, it would be a sensible idea to provide definitions.

We are pleased that you are considering allowing complaints on behalf of people who are not able to represent themselves, as the LSC is committed to equal access for all. The idea of allowing this representation to be undertaken without any legal authority being obtained must surely be the correct way of thinking.

Question 3 – Are there any gaps in who can come to the ombudsman scheme? Should we ask the Lord Chancellor to consider including anyone else and, if so, whom and why?

We cannot think of any additional groups or people who should be included in the scheme, and think the idea of excluding lawyers themselves makes sense as they have their own regulatory bodies.

What I would add, however, is that whilst you believe your scheme is easy to use and understand, which I would say was the case, there will always be people who feel they want or need legal advice when dealing with you. Therefore, it makes sense to allow representation by lawyers for complainants.

On the subject of excluded complaints, we think that there is scope here for possible confusion for the public. In many cases it is hard for a member of the public to differentiate between a service failure and an issue of misconduct. As far as they are concerned, they will have had a bad experience with a lawyer and they will turn to the Office for Legal Complaints. We think that you should try to provide a clear definition in any literature that you are producing, with examples of what a service failure might be. If you still receive complaints that should more properly be addressed by the SRA or the Bar Council, will you be developing a swift referral process, or going back to the complainant and asking them to re-direct their complaint? This could impact on your aim of having a swift, straightforward and non-bureaucratic process.

Question 4 – What do you think about the current proposal for the time limit to bring a complaint? If you think it should be different, please say what time limits you would include and why.

We would say that the original proposal of 6 years would be far too long and we agree with the new proposal of 1 year from the act/omission or from when the complainant becomes aware that there is cause for complaint.

However, the examples that you gave in the consultation covering paper could cause confusion when referred back to the section on excluded complaints. In the case of complaints about conveyancing, these would surely be issues of misconduct or negligence rather than service failures. This perhaps highlights the need for a robust definition.

Question 5 – Do you have any comments on the approach to resolving disputes set out in the scheme rules?

There does not appear to be any mention in the scheme rules of whether or not there will be an appeals procedure if the complainant is not satisfied with the response. If you are not intending to have one, then this should be clear in the rules. Other than this, we find the approach to be clear and straightforward.

Question 6 – The scheme rules also set out a framework for our ongoing relationship with approved regulators. Is this framework sufficient? If you think we should include anything additional, what form should it take?

We think that it is fundamental that your relationship with the approved regulators is open, honest and founded on trust. Therefore, it is essential to get the ground rules for that relationship right from the start. The framework is sufficient at the moment, but it would be healthy if both sides were prepared to review and amend the working relationship if it was felt to be necessary.

Question 7 – Are there any other points or issues you wish to raise in relation to the draft scheme rules? Do you think there is anything missing? Is there anything you disagree with? Please give your reasons.

We do not have any additional points to raise.

Case fees versus a levy:

Peter Jones of our Strategic Development Team attended your discussion forum on 6 November. We agree with the principal conclusion of that meeting, namely that the OLC's proposal regarding the initial balance between case fees and levy is a good starting point. There should be a low, flat initial fee (waived in the first two instances in any year), with an additional fee if the legal practitioner chooses to contest the initial determination of an OLC decision maker. We also agree with the conclusion of the discussion that you must analyse the spread of complaints you receive once OLC takes charge,

and examine what the impact would be of any change in charging structure you might wish to propose later. With that in mind, we do not think it is appropriate to follow the suggestion made at the meeting that OLC should signal an intention to move towards a greater reliance on case fees, as this would risk pre-empting the findings of your analysis.

Key factors we would ask you to consider are whether complaints are more prevalent in a particular category of law, or arise disproportionately from a particular size of organisation. It will be important that you take into account the diversity impact that any change in charging structure might have, both on practitioners and on clients. As Peter mentioned at the meeting we would request that you also look at the complaints profile of legal aid providers, and consider the impact of any increase upon them and their clients.

Legal aid firms are in a different position from others, since they are expected to take on clients that other firms might not consider a good proposition – including some who may be difficult to deal with and prone to making complaints. We would not want the OLC's charging system to conflict with the social inclusion aims of legal aid contracts, or lead to legal aid firms bearing a disproportionate level of cost.

If complaints prove to be relatively evenly spread across categories and provider groups, it would perhaps indicate that the behaviour of individual practitioners or organisations is the key determinant of complaints volumes, and a heavier reliance on case fees makes sense. If there were indications that the number of complaints often is not an effect of the actions of authorised persons, this would suggest a heavier reliance on a levy.

At the discussion forum, it was also suggested that the information OLC gathers from complaints should be used to inform the development of regulation and its enforcement. If complaints regularly reveal failures to comply with particular regulatory requirements, this would be a powerful signal that regulatory enforcement is not effective. If many complaints arise from behaviour that does not conflict with regulation, this may indicate a need for regulators to extend their requirements further.

I hope you will find this response useful. If you have any queries about its contents, please do not hesitate to contact Jayne Elliott, Head of Shared Services at jayne.elliott@legalservices.gov.uk

Yours sincerely

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