



**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**Office of Legal Complaints – Scheme Rules**

**Response of the Bar Standards Board**

**Introduction**

1. The Bar Standards Board (BSB) welcomes the opportunity to comment upon the Office of Legal Complaints (OLC) proposed scheme rules. As the OLC will be aware, the BSB provided detailed comments on the early version of the scheme rules at the informal consultation stage. A copy of those comments is attached for ease of reference.
2. The BSB is encouraged to note that the majority of its substantive concerns have been addressed in the revised scheme rules now subject to consultation. The BSB will therefore only re-iterate those concerns that have not been addressed or those where some residual concern remains.

**Our response**

**In-house complaints handling**

**Q1**

3. The BSB notes that whether or not prescriptive principles of in-house complaints handling are introduced is a matter for the LSB. The LSB has yet to set out publicly its view in this regard and the BSB therefore has no additional comments to make at this stage.

**Extension of the complainant category**

**Q2 and Q3**

4. The BSB has no additional comments to make.

## **Time limits**

### **Q4**

5. The BSB is pleased to note that the time limit has been reduced to 12 months. However, the BSB's preference would be for a greater degree of clarity over when exceptions to the 12 month time limit would be made. Under the Complaints Rules at Annex J to the Bar's Code of Conduct, paragraph 11(c) makes it clear that complaints made after six months of the act or omission complained of would be dismissed unless the complaint is of sufficient seriousness to justify waiving that limit or there are exceptional circumstances which justify further consideration of the complaint. The current draft of the scheme rules is less explicit and the BSB would suggest that in the spirit of fairness, transparency and consistency the rules (and any accompanying guidance) should set out very clearly the criteria for waiving the time limit. Such an approach would be both in the interests of the complainant and the barrister complained of.
  
6. It is arguable that a six month time period complemented by clear and fair criteria for extending the time limit would be sufficient for the type and range of complaints investigated by the OLC. Timely investigation and resolution of complaints is in the interests of both the complainant and those complained about, and a six month limit should be sufficient for the great majority of complaints. It has the added benefit of according with the current time frames of both the BSB and the Legal Complaints Service.

## **Informal resolution**

### **Q5**

7. The BSB has no additional comments to make.

## **Relationship with Approved Regulators**

### **Q6**

8. The BSB has no additional comments to make . the detail of the relationship should be included in the memoranda of understanding between the organisations.

## Any other points

9. As mentioned in the introduction many of the points raised by the BSB in their response to the informal consultation have been addressed by the OLC. However, the following remain:
10. **Rule 5.8 – Referral to court** – the BSB has no experience of referrals to court in a complaints handling context. Whilst the BSB does not object to the inclusion of the rule it would welcome clarification as to the circumstances in which this rule (and the accompanying rules 5.9-5.11) would be used and why the OLC considers their inclusion in the scheme rules necessary.
11. **Rule 5.12** – the BSB considers that this rule should include a caveat that referral to another complaints scheme excludes referral to an Approved Regulator.
12. **Rule 5.33** – the BSB considers that this rule should contain greater detail of the circumstances in which a hearing will take place and some indication of the nature of the hearing. In the absence of such further detail, the rule should make specific reference to hearings taking place in accordance with OLC guidelines.
13. **Rule 5.37** – the BSB is concerned to note that this rule still includes the words *but is not bound by* in relation to taking into account Approved Regulators' rules of conduct when determining what is fair and reasonable. The BSB contests that the OLC should be bound by the Approved Regulators' conduct rules for the reasons set out in paragraph 65 of its response to the informal consultation paper. Principally that if the OLC is not bound, then barristers who have acted fully in accordance with the requirement of the Bar's Code could still be liable to have complaints upheld against them. This would be unreasonable and create an unnecessary level of uncertainty for barristers for how they should behave. Indeed it could result in the OLC, without consultation with the LSB, BSB or other Approved Regulators, ostensibly creating new rules of professional conduct. If the OLC believes that an Approved Regulators' conduct rules are not fair or reasonable, the appropriate channel for raising this should not be via an individual complaint but with the LSB.
14. The BSB also believes that this rule should make it clear that good practice guidelines issued by Approved Regulators would also be taken into account.

15. **Rule 5.61** – In the BSB initial response clarification was sought on what is meant by any right of privacy of any complainant involved. The BSB would welcome an answer as to what privacy rights this rule refers.

## **Conclusion**

16. The BSB is broadly content with the revised scheme rules and in particular the reduced time limit for receipt of complaints. The balance between rigorous rules and sufficient flexibility has been achieved and should support the OLC's desire for a complaints system which encourages informal and prompt resolution of service complaints.

17. As the OLC's complaints handling remit is limited to service complaints, with conduct matters remaining the sole preserve of the Approved Regulators, it is important that the various scheme or complaints rules are compatible either through the drafting of the rules themselves or via memoranda of understanding. With that in mind, the BSB and OLC have developed a strong working relationship grounded in openness and a mutual desire for effective complaints handling. Continued open communication will be critical if this relationship is to be maintained.

18. The BSB would be happy to expand on any of the points raised in this, and the annexed, response and looks forward to receiving the OLC's comments on the specific points raised in paragraphs 10-15 above.

**Bar Standards Board**  
**December 2009**