



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus' response to OLC's consultation paper on Draft Scheme Rules

December 2009

Executive summary

The Office of Legal Complaints (OLC) was established by the Legal Services Act 2007 as part of a new regulatory framework for legal services in England and Wales. For the first time, consumers can go to a single independent Ombudsman scheme to resolve disputes involving a lawyer. The OLC's draft scheme rules, sets out the framework for how disputes will be resolved and we welcome the opportunity to comment on it.

The OLC will be an important part of the new regulatory framework as it will be the main point of contact for consumers. It is therefore important that the OLC puts the needs of consumers, including those who are vulnerable and disadvantaged, at the heart of its plans. The OLC should be at the cutting edge of consumer redress and accessibility, drawing on the best practice among the various ombudsman schemes in other sectors.

It is important for the OLC to be an evolving organisation; one that is willing to ensure that lessons learnt are disseminated among legal practitioners. This will boost consumer confidence and is likely to be reflected in improved customer service and care within the legal profession in general.

Our key concern with the draft scheme rules is the time limit set for consumers to bring complaints. Consumer Focus is strongly against the proposed one year time limit. We are not convinced by the arguments against the initial proposal of six and three years, most of which centres around surmountable 'practical' issues. Moreover, we are not reassured by the assertion that a shorter time limit will be mitigated by the Ombudsman's discretion.

Another concern noted below is the lack of clarity about the transitional arrangements to the OLC. While we appreciate that the finer details of transitional arrangements are not appropriate for inclusion in the draft scheme rules, we are concerned about the blanket assertion that previous consumer complaints will not be considered by the OLC. It is important that the OLC facilitates a smooth transition between the existing complaint bodies and the OLC, with consumers' needs being paramount in any transitional arrangements.

Consumer Focus is keen to avoid the regulatory maze and confusion that blighted the existing regime, but notes that there may be some unavoidable overlap in the new regulatory framework. The onus is on the OLC to ensure that the negative effects of overlap and duplication are minimised. More importantly, the OLC should ensure that consumers are clear about which arm of the regulatory body is responsible for what.

We note that the new regulatory framework allows for Alternative Business Structures (ABS). This allows other professionals such as accountants and surveyors to practice within a law firm. Consumer Focus supported ABS and welcomes it; however, ABS raises new challenges about how complaints from these bodies are managed. We are clear that the OLC should have oversight over such complaints and that clients of such firms should be able to make complaints to the OLC regardless of whether these complaints are legal or not.

Answers to the questions asked in the draft scheme rules

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

The benefits of an efficient and effective in-house complaint handling mechanism cannot be emphasised enough. We know that where possible and appropriate, consumers prefer a quick and fair resolution to their dispute, as closely as possible to the decision maker, without recourse to another body. There are also advantages for businesses who have the opportunity to resolve the dispute quickly, keep the custom of the consumer, learn from the incident and, where necessary, put mechanisms in place to prevent re-occurrences. In addition, dispute resolution at the first tier stage is generally cheaper for firms as there is a reduced burden on the profession to finance the OLC. Indeed, effective in-house complaint handling is also advantageous to the OLC whose workload will in part be determined by the number of cases not successfully resolved at the first tier stage.

Consumer Focus accepts that the nature of the current regulatory framework means that the Legal Services Board (LSB) has responsibility for setting requirements for in-house complaint handling, while the OLC has oversight over complaints that proceed from the first stage. We believe it is important that both stages comply with accepted principles of good complaint handling identified by the British and Irish Ombudsman Association¹. If in-house complaint handling falls short, it is likely to have a negative impact on the workload of the Ombudsman scheme as mentioned above. We therefore agree that there should be guidance in the draft scheme rules about how both procedures interrelate and impact on one another. There should also be guidance on good practice principles which consumers should expect from an in-house procedure. The consultation documents state that if the LSB sets any principles about in-house complaint handling, then the OLC will include it in the draft scheme rule. Although we welcome this statement, Consumer Focus is of the opinion that it is important that OLC and LSB work together to set these principles and that as a matter of course these principles should be included in the draft scheme rules.

It is important to note that consumers will not necessarily make a distinction between complaints overseen by the LSB and those overseen by the OLC, therefore, the OLC should make its role (as the primary point of consumer focus within the new framework) clear.

Consumer Focus believes that the OLC has a role to play in ensuring that in-house complaint handling is effective, efficient, monitored, evaluated and that best practice is gathered and shared with the profession. It is important that the OLC (working in conjunction with the Front Line Regulators and the LSB) is seen to adopt a robust line on in-house complaint handling.

¹ BIOA identifies seven principles of good complaint handling, clarity of purpose, accessibility, flexibility, openness and transparency, proportionality, efficiency and quality outcomes.

Good customer service in the profession

Consumer Focus welcomes the OLC's desire to promote good customer service. We believe the points noted below will contribute towards promoting a culture of good practice for customers.

Sophisticated target setting: It is important that the OLC builds on the target setting in operation. The OLC must ensure that target setting incorporates sophisticated performance measures. These key performance measures will enable the OLC to determine the form, nature and characteristics of complaints and will in turn ensure that solutions and measures are appropriately targeted to problem areas.

Educating consumers: The OLC has an important role to play in educating consumers about its existence and about the standards of service consumers should expect from regulated suppliers. Consumer education will have a positive effect on consumers' confidence and their ability to challenge poor performances; in turn this will contribute to good customer service in the profession.

Sharing knowledge: It is important that the lessons learnt are used to improve the service provided and inform activities of training, regulation and enforcement.

Tackling poor performance: It is important that the OLC takes a tough stance on serial poor performance and that appropriate measures are put in place to deter poor performances.

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 or why not.

Consumer Focus does not in principle disagree with the OLC's proposal to accept complaints from micro enterprise, charities and trustees, as long as they meet the specified criteria. We also agree that complaints from clubs and associations should be accepted.

However, we do have slight concerns about the extra burden this is likely to place on the OLC and the OLC's capacity to take on these additional complaints. Consumer Focus is unaware of the projection of complaints emanating from these bodies and although we understand the arguments put forward for including them in the scheme, we note that unlike individual consumers, such bodies, regardless of how small their turnover is, often have more resources when compared to individual consumers. We hope that the OLC puts additional resources in place to ensure that it is well placed to deal with these complaints.

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?

At present, Consumer Focus does not believe that there are gaps in who can bring a case to the Ombudsman Scheme. However, it is important that the OLC retains flexibility to determine, and ask the Lord Chancellor about, others who may need to be permitted to bring a case to the Ombudsman.

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 limit you would include and why.

Consumer Focus is strongly against the proposal to set the time limit for bringing a complaint to one year. This will cause unjustifiable detriment to consumers. The OLC's consultation document rightly notes that there are some legal complaints that do not come to light until years after the event, conveyancing was used as an example, but there are likely to be more, for example, writing a client's will. If the Ombudsman scheme is going to be a realistic and fair mechanism for resolving consumer complaints, then there has to be adequate time limits; one which allows consumers to discover a wrong, determine how they wish to proceed with redress, learn about the OLC and make a complaint. We do not believe the proposed one year limit is adequate for this process.

More importantly, Consumer Focus does not think that the case against the original proposal of six years and three years (in line with the Limitation period in England and Wales) has been made. We are not convinced by the assertion that there may be 'practical' issues with respect to the six/three year time limit originally proposed. It is worth noting that practical issues are more likely to put off consumers from bringing a complaint in the first instance. We see no reason why issues of practicalities should automatically preclude a consumer from bringing a complaint. The only person this policy will benefit is the alleged offender. We are not at all reassured by the assertion that discretion will be used alongside a shorter timeframe. Indeed the OLC can choose to retain the original time frame and use its discretion not to take a case if practical issues preclude it from doing so.

We are disappointed that the OLC only looked at the time limits used by two ombudsman schemes. We also note that there appears to be no analysis to determine whether complaints heard by these schemes are comparable to legal complaints, or indeed whether they are good practice. We would like to note that the Financial Ombudsman Scheme uses the time limit of six and three years as originally proposed. In our opinion, this is good practice. More importantly, we are unaware that this preferential time limit causes insurmountable problems for the Financial Ombudsman Scheme. We urge the OLC not to limit the time limit to one year.

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

Consumer Focus supports the proposal to resolve disputes informally where possible and appropriate. We are however concerned that there may be an imbalance of power between a legal professional and an individual consumer where conciliation is being used, particularly where vulnerable and disadvantaged consumer are concerned. These issues are not insurmountable, but we would like to see clear guidance on how the interest of consumers will be protected in these circumstances.

Issues missing from the draft scheme rules

Consumer Focus notes that the draft scheme rules does not state how complaints arising from Alternative Business Structures will be handled. Consumers ought to be clear about this issue, especially as they are unlikely to make a distinction between various strands of the service obtained in a mixed firm. Consumers are likely to perceive the service received from a mixed firm as service procured from a law firm, more so as some of these services will be designed to be seamless. It is therefore important that the OLC takes a leadership role in managing these complaints and we hope to see detailed proposals about how these complaints will be progressed on the face of the draft scheme rules.

We appreciate that this issue may pose certain challenges, but we do not think these challenges are insurmountable. We are keen to avoid a regulatory maze, and as such make a number of suggestions going forward. Firstly, it is important that ABS have the same requirements to handle in-house complaints. Secondly, in the interest of clarity, consumers should be able to complain to the OLC about services provided by ABS whether or not they are legal. For example, a client should be able to complain about an accountant operating within an ABS. In such cases, it would be appropriate for the OLC to deal with issues regarding how the accountancy service was delivered, while issues about the accountant's conduct would be referred to the accountant's professional body.

Consumer Focus also notes that there is little mention of transitional arrangements for existing complaints. While we accept that a lot of these issues are not appropriate for the face of the draft scheme rules, we are concerned about the blanket statement in the consultation document which states that the OLC will not deal with previous complaints. We find this statement particularly unsatisfactory when it is still unclear how such complaints will be handled. Putting consumers at the heart of this new scheme will require careful consideration about how transitional issues are handled.

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By Lola Bello

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From a textphone, call 18001 020 7799 7900

From a telephone, call 18002 0207 799 7900

Consumer Focus

4th Floor
Artillery House
Artillery Row
London SW1P 1RT

Tel: 020 7799 7900

Fax: 020 7799 7901

Media Team: 020 7799 8004/ 8005 / 8006