

## LCS RESPONSE TO OLC'S DRAFT BUSINESS PLAN

### Key Assumptions

We recognise that any new organisation needs to make a number of assumptions at an early stage in order to provide the basis for planning the start up process.

Whilst not providing the answers, the experience of LCS may help to inform such assumptions and contribute to the start up of the OLC. Below we provide information that may help inform some of the key assumptions to assist the OLC in the important task of creating the new Ombudsman scheme.

### Demand

We agree with the OLC that an increase in receipts and contact is inevitable, especially in the early days of the ombudsman scheme. In addition to the factors already identified in the draft business plan, our experiences suggest that the following may also increase receipts:

*Categorisation of types of contact* – The LCS determines in the region of 14,000 complaints a year. However, this figure only represents a small proportion of all the contact we receive. In addition to formal complaints we also handle a further 11,000 written enquiries (by email and letter) and 260 telephone enquiries each day, or approximately 65,000 calls per annum. This type of contact covers a vast range of issues, many related to complaints against solicitors, but a significant proportion requiring signposting to alternative organisations. However, the OLC may categorise some of these contacts differently to us, which, whilst not increasing the overall work, could affect the figures attributed to complaints.

Over time OLC may be able to reduce these numbers with improved public awareness of the role of the ombudsman scheme. However, in the short term these types of enquiries are likely to increase due to questions raised about the new scheme. The OLC will undoubtedly be contacted in its first few months by customers who have already been through the LCS system and are looking for a second opportunity to complain.

*Increased Compensatory limit*- The doubling of the compensation available to £30,000 will bring many issues that were outside of the jurisdiction of LCS and previously pursued through negligence claims, within the jurisdiction of the OLC. Our interpretation of the scheme rules suggests that the OLC may become the preferred venue for professional negligence matters. There appears to be little to lose by pursuing a claim through the OLC as the consumer could choose to reject the ombudsman's determination and pursue a civil claim instead. We would expect many lawyers to advise their clients to pursue a complaint before bringing a negligence claim. We do believe that it could increase the numbers and complexity of complaints being made to the OLC. Additionally, some customers may choose not to bring their high value complaint to us in the latter few months as they prefer to wait for the higher limit to be available.

*Time limits* . We were pleased to see that the feedback we and others provided on the scheme rules was helpful in forming your time limits for

accepting complaints. As time limits referred to in the current draft of the Scheme Rules are longer than those operated by LCS (the rules propose 12 months, we operate at 6 months), it will be important to consider the impact that this may have on numbers of complaints. Whilst we are unable to offer any firm figures, we are aware of a significant number of callers to our helpline who have a complaint that would fall outside of our time scales but within those of OLC. It is therefore relevant to take this into account when using LCS receipts as a baseline figure for future OLC receipts.

*Return customers:* If LCS data is not shared with OLC there is the real possibility that previous failed complainants will attempt to pursue their complaint with the OLC thereby unnecessarily tying up the time and resources of the OLC in coming to the conclusion that the matter has previously been dealt with

*The expansion of powers* . the widening of the scope of complaints to include ~~act~~ or omission and ~~good practice~~ represents a higher standard than used by LCS

### **Streamlined complaints handling process**

The draft business plan identifies that resource and time savings can be made from streamlining the complaints process. We have undertaken similar exercises ourselves and have seen the benefits of ensuring that each stage of the process adds value and moves the complaint forward. We would welcome any developments that resolve complaints more quickly, whilst ensuring a fair outcome for the parties. We can see that OLC have already identified suitable opportunities to streamline complaints handling.

The draft scheme rules provide greater detail on the complaints process and highlight a number of changes that may have the potential to extend the average length of time that it takes to reach a final decision on matters. In particular these are:

- the statutory requirement that certain decisions are made by ombudsmen;
- the statutory requirement that precludes the delegation of these functions;
- the possible need for a consumer to seek legal advice prior to accepting an ombudsman's decision where this would prevent them from pursuing other legal remedies;
- the increase in the level of compensation.

We appreciate that these are all circumstances created by the Legal Services Act. The OLC will therefore be limited in how much they can streamline these elements. We therefore believe that any assumption on the benefits of streamlined processes will need to take these factors into account.

### **Ombudsman decisions**

We note that there is an expectation that only a minority of complaints will result in a determination by an Ombudsman. We believe that it is important that the business process enables many complaints to be resolved without an Ombudsman's decision. We have seen the benefits of increased use of informal resolution in terms of

customer satisfaction, speed and flexibility of outcomes. Currently only around 9% of complaints result in a finding by an adjudicator.

We have identified one key area where the Legal Services Act may limit the ability of the OLC to resolve matters without recourse to an Ombudsman. The Act sets out those decisions that **must** be made by an ombudsman and that such decisions cannot be delegated to anyone other than an Ombudsman.

The table below identifies those complaints that we have concluded without an adjudicator's input but that we believe **would** require an Ombudsman's decision. These figures are in addition to the 839 matters that were considered by an adjudicator. The figures quoted are for October 2008 to September 2009.

Final Outcome	No of matters
Complaint/Allegation not upheld	3098
Complaint/Allegation outside our jurisdiction	1181
Within jurisdiction but investigation declined	864
Sols reasonable offer	436
Complaint/Allegation noted - Ongoing other action	319
Customer to seek advice/gather evidence	276
Customer to pursue legal remedy	268
Complaints Outside LCS time limits	216
Complaint/Allegation noted - Ongoing probate	93
Complaint/Allegation upheld but no action	66
Complaint/Allegation not upheld - Original decision rescinded	4
Alternative Legal Remedy	3
Request for Deeds by Lending Institution	3
<b>Grand Total</b>	<b>6827</b>

There are undoubtedly some complaints within these figures that based on the draft scheme rules the OLC would not have jurisdiction to consider. However, if these are balanced by the proposed changes in time scales for accepting complaints it may be a reasonable inference that there will be a net increase in the number of receipts.

We appreciate that the OLC can not change what is contained within the Legal Services Act and we are not necessarily saying that the approach set out by the Act is wrong. However, we consider it is essential that the resourcing around the ombudsman function is based upon the effect that the Act will have. We hope that the information provided above is helpful in beginning to identify the numbers of matters that may require Ombudsman input.

### **OLC business process**

We recognise that what works well for LCS under our jurisdiction may not be suitable or appropriate under the Ombudsman scheme. We therefore have only commented

on those aspects of the business process where we believe our experiences provide relevant information to the work of the OLC. In doing so we are mindful that although the jurisdiction is changing certain elements of consumer complaints will not change considerably. The issues of complaint that are raised, the consumers that complain and the people or firms that are the subject of the complaints are likely to remain fairly constant, subject to market changes.

We appreciate that the draft business plan is only intended to set out the high level business processes and not the detail of what will happen to a complaint. It is therefore difficult to comment in detail on each of the stages of the process. We are keen to share information and our experiences to help to inform the creation of those more detailed processes and would welcome any discussions in this area.

### **Contact stage**

Our experience is that accuracy at the initial stages of a file is vital in terms of managing the parties' expectations, filtering for efficiency and determining the direction of any investigation. Complaints are often referred in a very raw form. As a result considerable time can be required to establish whether a complaint falls within our jurisdiction and what the issues of complaint are. OLC is likely to encounter the same challenges and therefore the Contact Stage will need to have sufficient expertise and skills to address the broad range of issues that initial contact provides. The skills needed at first contact to draw out the key issues and to determine to whom to pass a complaint on to are key.

Below we have set out a couple of real examples that illustrate the types of complex or problematic issues that we address at initial contact stage:

#### **Case Study- Designations**

A complaint was made in relation to a disputed estate. The complaint was being made on behalf of one of the beneficiaries. The issues related to four different firms and concerned the administration of the estate, a number of related litigation matters and the conveyancing of a property. The complaints covered events during the previous 39 years. The letter of complaint required detailed and time consuming analysis in order to establish the outline of the issues. A lengthy follow up call was needed to establish the relationship to each of the firms before it could be determined whether LCS had any jurisdiction to investigate.

We believe that the suggested input of ombudsmen at the contact stage will help to address some of the more complex issues that arise. Alternatively, expertise can be embedded within teams and units which could decrease the reliance on ombudsman.

An added complexity, which can appear at the initial contact stage, are those matters where telephone or written contact is not a suitable method to progress a complaint. We have worked with a wide range of circumstances where face to face contact is the only way of addressing the consumer's concerns. Whilst we have used a network of local conciliation officers, there may be a range of ways that these needs could be addressed. We felt that it may be useful to share an example of the type of situation where OLC may need to have face to face contact with a consumer.

## Case Study- Local Conciliation Officers

The legal matter was quite complicated and had been ongoing for a number of years so there was a large volume of documentation. The reason a local conciliation officer was requested was because the customer's husband and 2 of her 3 sons have Asperger's syndrome. This meant that she could not have long telephone conversations as her family required a lot of support. The local conciliation officer was able to meet with her at her house and assist her in formulating the complaint, whilst still allowing the customer to care for her family.

### Allocation stage

The allocation of a complaint is very important in ensuring that it is dealt with by people with the right skills and knowledge for that particular file. This has been especially important in some of our high profile work with immigration, investment business and coal health complaints.

Whilst appreciating that much of the detail will not sit within the business plan, the model adopted in the draft business plan appears to have the potential to duplicate the elements of the Contact Stage. When following a case through the outline process there seems to be scope for a file to have been considered by a number of different people before resolution of the complaint is started.

Over the last few years we have sought to reduce the number of times that a file is passed between different staff members, as we saw it led to delays, errors and dissatisfaction by customers. We identified the benefits of one person retaining overall control and responsibility for a file. At the same time we encouraged caseworkers to seek guidance and assistance, when it was needed, from peers and other colleagues. The key element to this approach was that the involvement of others was primarily led by the caseworker themselves, based upon the needs and issues that arose in a particular complaint. We have found that this has led to reduced duplication of work whilst still ensuring that the right level of expertise is involved at all stages of the matter.

### Resolution stage

We have assumed that one of the key objectives at this stage is to facilitate an informal and speedy resolution, as this is the approach adopted by many ombudsman schemes, and indeed LCS. Successful resolution of a high proportion of complaints by agreement between the parties needs to be underpinned by the evidence gathering process. Both parties, and especially the consumer, look for a steer from us as an experienced complaints handler. It is very unusual for a consumer to have a clear idea about the level of redress they are seeking or to accept an offer without some reassurance that it is fair.

The high level nature of the OLC business plan may have incorrectly suggested that informal resolution and investigation are mutually exclusive processes. Our

experience is that by ring-fencing resolution from the investigation, this can lead to less consistency of decision making, and tends to increase the overall length of time taken to investigate a matter. We have found that cases can be resolved more quickly and effectively when the informal resolution and the investigative process work hand in hand. We have also identified that the work carried out during the investigative stage can lead to complaints being informally resolved in circumstances where even the most skilled mediator would have considered this unlikely.

## **Decision stage**

We note the view that only a minority of cases will go to an ombudsman for a decision and that the ombudsman team is expected to comprise 3 to 5 staff. However for the reasons set out earlier we consider that a greater number of cases could proceed to the Decision Stage than the draft business plan suggests.

Whilst we do not face limits on the delegation of decision making, we wonder if the use of some of our specific casework tools has enabled us to significantly reduce the number of complaints that we determine by formal adjudication. These are listed below:

*Guidance on Compensation* - When seeking to informally resolve a complaint we found that many customers wanted to be satisfied that that they were agreeing to a figure that was fair and representative of what an adjudicator might award. We produced a document, known as the Guidance on Compensation, which gathered together examples of previous awards and broadly categorised the impact of poor services. This guidance is now an integral part of our approach to resolving complaints. It provides reassurance to consumers that they are agreeing to a resolution that is reasonable. Feedback from the profession has also shown that the guidance can be a useful tool for them to use when seeking to resolve the complaint in-house.

*Costs recovery powers* - Whilst our costs recovery powers have been important in ensuring that the providers of inadequate professional service contribute towards the costs of LCS we have found that these same powers have helped to encourage the early resolution of complaints.

Where a complaint is resolved without the need for an adjudicator's decision we will not seek to recover the costs of our investigation. Costs recovery only occurs where the complaint is upheld on adjudication. Prior to the enactment of these powers we found that a small but significant number of solicitors would accept that there had been poor service but would be unwilling to resolve the complaint. There was a view held that by going to adjudication they might have to pay less compensation. As there were no cost implications to this, solicitors rightly felt that they had very little to lose.

By operating our cost recovery powers in the way we do we have seen the numbers of adjudicated matters drop. Depending upon how OLC operate their case fees policy the numbers of matters requiring an ombudsman's decision may increase.

## **Enforcement stage**

We note that the decision can be enforced either by the complainant or by the ombudsman. Our experience has shown that compliance with adjudicated decisions can be problematic and time consuming. It will therefore be essential that it is properly resourced with staff that have the skills and expertise to carry out this function.

The types of challenges that we have faced, which the OLC may also encounter are:

- bankruptcy of the individuals concerned
- inability to contact the individuals concerned
- judicial review of the decision
- disputes between partners over who is responsible for paying an award
- reluctance by indemnity insurers to cover payment

These are all issues that can be time consuming and can significantly increase the resource used on an individual complaint.

The Legal Services Act gives the approved regulators a key role in ensuring compliance with an Ombudsman's decision. With many regulators adopting a risk based approach to determine any action they take on regulatory matters, we have sometimes found that non-compliance with our decisions can be overlooked when regulatory action is being considered. Whilst this may be understandable when regulators are faced with increasing allegations of fraud greater numbers of firms facing closure, a lack of regulatory action will leave consumers facing delay or a lack of redress.

We therefore believe that a key element in the Enforcement Stage will be the interaction with the approved regulators. It will be essential for regulators to clearly understand the OLC's expectations of them in relation to non-compliance with Ombudsman decisions. Regulators will need to be appropriately funded to carry out this task otherwise the OLC could incur greater costs in seeking to enforce decisions.

## **Other issues**

### **Service complaints and judicial reviews**

An area of work that can be both challenging and resource intensive is where there is dissatisfaction with the decisions made or the service provided when handling a complaint. This work breaks down into two broad areas; *service complaints*, which are more usually made by consumers; *judicial review*, which has predominantly been brought by subject solicitors.

We believe that there are two key factors that may increase OLC's work in this area, especially in the early days of operation.

*New jurisdiction* - over a number of years we have seen challenges to our powers and jurisdiction under the Solicitors Act. Judicial review has been used as a tool to either challenge our approach or to seek clarity on the correct interpretation of our statutory powers. This process will arguably begin afresh once the OLC begins to operate its new statutory powers. There will certainly be circumstances where the Legal Services Act could be open to

interpretation. It would seem reasonable to assume that such issues would find their way into the courts by way of judicial review.

*No rights of appeal* - consumers are currently able to refer their matter to the Legal Services Ombudsman (LSO) for further consideration. Positively, the OLC has removed the need for this route which will improve timeliness. However, this may result in a slight increase in service complaints or judicial reviews (the LSO was judicially reviewed more frequently than LCS were).

We have found that service complaints can often be made as a result of difficulties in trying to meet customers' needs. Whilst we believe that our processes are sufficiently flexible and our staff suitably trained to identify and respond to many of our customers' needs, we also recognise that sometimes significant time and work is needed to ensure that we meet both our legal obligations to make reasonable adjustments and our desire to provide a high quality service to all our customers.

Below we have provided an example of just one situation where reasonable adjustments were required. We would be happy to share further information on the range of needs that our customers have.

#### **Case study- Reasonable adjustments**

As part of the reasonable adjustments agreed with the customer and a representative from Equality and Human Rights Commission we agreed that:

- we would provide in advance of every telephone call a summary of the issues that we wish to discuss with the customer;
- we would send copies of attendance notes of any telephone conversation or meetings we have with the customer;
- we would significantly extend our usual timescales for responding to correspondence.

Whilst these adjustments were not difficult to accommodate this did lead to the file progressing outside of our usual time scales.

## **IT**

We are pleased that the OLC will take the opportunity to make use of technological improvements to increase the speed and effectiveness of the service. Quite rightly, the draft business plan recognises the benefits that this could bring. The new system will need to be sufficiently flexible to support the OLC model adopted at the outcome of the consultation process, and to allow development of processes moving forwards in order that the IT meets the needs of the complaint handling process.

Realising return on investment can be difficult, and systems do not always provide the resource savings that are expected. We certainly agree that better work management systems and newer technology have the potential to save time. In particular that time savings may be possible if the IT system is able track complaints from the moment of receipt so that a more proportional approach is taken to each file with files being filtered to a swifter and earlier decision. However our experience

shows that the key points in the investigation of a complaint that require the most time are not greatly influenced by technology. They are

- the review of the initial contact
- determining the issues and evidence required
- reviewing the evidence provided and
- decision making

Whilst we consider that some of these key stages also involve contact with the parties and a better IT system may impact here, this may not necessarily be the case. Certainly our experience is that the caseworkers who are able to process files accurately and in a timely way do so by using tailored communications and their own skills. Increased use of templates or standard communication has the potential to increase rework.

The roll out of IT is key to the start up of OLC, and it will be important therefore to prioritise managing the risks to successful delivery and implementation identified in the Plan and to ensure that the level of priority reflects the fundamental importance of IT to the timely commencement of complaint handling by the OLC.

The purchase of an up to date, first rate commercial off the shelf (COTS) system which is already in use in other similar schemes and applications will help to minimise the risk of unplanned delay. A key requirement is that it should be able to support electronic or web-based processes and to minimise the use of paper throughout the case management process. To this end, the stated intention of the OLC to adapt it only where necessary for its purposes is welcome, in that it should mean as little customisation as possible. Any compromise should avoid impacting the quality of service.

The timeframe as set out requires IT suppliers to be identified by end November 2010, with design and architecture sign off in Q2 2010 and full systems availability in Q4 2010. This timeline appears tight, with little time for full volume systems testing. Indeed, the key front end systems testing and the sign-off of all front end deliverables are both scheduled to occur in Q2. It may be helpful to bring forward the schedule for testing if at all possible.

A strong dependency exists relating to the interface with the approved regulators and the necessary data transfer capabilities. In view of the potential complexities and the need for successful interaction between disparate IT systems and applications, the timeframe is challenging and will need careful planning and management to ensure it is adhered to. The approved regulators will need to be fully appraised of and conversant with the OLC's detailed data and technical requirements as soon as possible, to assist them in designing their own interfaces. This represents a structural dependency which they cannot themselves take the lead on.

Based on our experience in complaint handling and case management, we would consider a key requirement for any new IT system to be its capability in relation to knowledge management (KM). This is identified in the Plan as key to the success of the new scheme but the link to the IT and communications infrastructure is not made explicit, other than to say that it will need to interact with it. We feel that this linkage is a fundamental requirement for successful case management, especially given the OLC's objective of being as paperless as possible.

This could be achieved by having the data warehousing requirement as part of the system specification for the complaint handling application itself, or dynamically

accessible within a wider IT architecture, based on principles of dynamic systems integration within a modular case management environment.

The other interactions that will need to be provided for, with systems such as finance and HR, may be no less critical but they are not necessarily part of a case management work flow. Consequently, it may be possible to manage these linkages as part of a wider IT environment where interaction is limited to data exchange.

## **People**

We welcome the news that the OLC intends to employ 300 . 350 staff (LCS currently employs 350 staff) which is an indicator of planned efficiencies. LCS staff are looking forward to the opportunity to move there, and we await details of how the Minister's TUPE commitment will be implemented in practice. The LCS currently has a large pool of highly technical and skilled staff working at all levels throughout the organisation both in case working as well as support functions. Staff at LCS represent a vast knowledge base and therefore would be very useful to the OLC.

We were interested to see the OLC organogram and the proposed high level structure of the new organisation. Whilst we do not fully know the scope of each position as illustrated, we were surprised at the number of support functions listed. For example under Head of Public Affairs six positions are listed . currently three of those positions within LCS amount to just one full time post. Similarly a full-time FOI position does not correlate with our experience. These ~~additional~~posts will of course have increased cost implications. Furthermore we would comment that it may be possible to outsource functions such as IT and facilities.

In relation to facilities specifically, we would not necessarily expect to see a team fulfilling this function for an organisation/premises of the proposed size. These days, in many organisations an office manager, as part of a wider remit, would be responsible for facilities management. However, it may be that, in line with other organisations, the facilities team will include additional areas such as post room and reception/security. Moreover, since the OLC will not be conducting monetary transactions it is envisaged that the finances of the organisation would not be overly complicated and we therefore question the establishment of a finance team. A number of industry sectors carry out research on appropriate ratios between support and operational staff which will assist in informing the OLC on a balanced structure.

The OLC should ensure that staff should undergo E&D training and be well equipped to deal with vulnerable clients. Our experience at allocation informs us that it is at this stage any reasonable adjustments that are required for disabled users or language barriers, need to be identified and steps taken to address these effectively. This will also need to be linked into the IT system.

LCS staff recognise that the OLC will be a new organisation with a new culture. The LCS staff represent a flexible workforce and are open to change, having seen a number of changes over the years particularly a significant cultural shift just over 3 years ago. In 2006 a new Board was introduced, stronger targets were implemented, coaching was increased and a culture of open communications was introduced. To all these changes staff responded very well, evidenced by the significant improved service levels achieved over the last 3 years.

We have considered the milestones and the subsequent timings you have indicated, and wonder if such advance start dates are necessary. Prior to vestment there will

be no complaints coming in, and indeed after vestment the numbers will take some time to build up. In the event of substantial LCS staff numbers having been recruited into the OLC, we feel it is probably sufficient for wave 1 to take place in Q3 and the remainder in Q4 to minimise disruption to the capacity of LCS in advance of vesting.

Recruitment will need to fully consider equality and diversity (E&D) issues to ensure that all walks of life and diversity are fully embraced. The process should reflect current flexible working practices whilst ensuring scope for longer opening hours to improve accessibility.

## **Full Operation**

Once the organisation is established, an important function of the OLC will be to inform and educate the profession in the way it manages and handles complaints. We would like to briefly share our experience in this area and hope this will assist you in the development of suitable initiatives in fulfilling this function.

In May 2007 the LCS launched its three year Improvement Agenda, with three strategic objectives. Our third objective is to improve standards within the profession to reduce the number of complaints they produce.+ This objective represented the commitment of LCS to go further than simply working reactively to handle complaints when they arise to a position where we could help the profession prevent complaints from arising. The *Raising Standards* programme was established in order to deliver against this objective. The programme achieved the following capabilities:

- A practical guide to resolving complaints
- Client care award
- National complaints handling seminars
- Information for solicitors on the LCS website
- Outreach work

These initiatives were delivered at little cost to LCS and therefore represented immense value for money.