

## **RESPONSE OF THE LEGAL COMPLAINTS SERVICE TO THE OFFICE FOR LEGAL COMPLAINTS CONSULTATION ON DRAFT SCHEME RULES**

We thank you for the opportunity to comment on the Office for Legal Complaints (OLC) proposed Scheme Rules. In framing our response we are mindful of the concurrently running consultation on the Business Plan and as there are some common areas of interest within both documents we have restricted our comments to one or other document to avoid repetition.

Following on from the initial draft consultation, we are pleased to see that the Scheme Rules have incorporated some of our evidence-based comments such as the amendment to proposed time limits. As ever we would be more than happy to provide you with further details underlying any of the comments in our response, based on our experience, to assist in the development of an efficient consumer focussed scheme.

### **Who can complain about what**

In respect of paragraph 2.1 a) we would like to make the observation about the exclusion of many clients who are companies from access to the OLC. It will not be unusual for the complaint client to be the smaller of the two businesses involved in the solicitor client relation with less commercial know how or power.

The rules at 2.1 e) and 2.2 enable personal representatives and/or residuary beneficiaries to continue a complaint made by the deceased. The personal representative will also be the client in the administration and can also therefore raise a complaint about that. However, it is not clear how a RB can raise a complaint about the way in which an estate is administered by an authorised person. In addition, we are unclear as to what remedies would be available to each class of beneficiary. Our experience indicates that consideration needs to be given to an authorised person's obligations to a third party.

### **What they can complain about**

At the moment the LCS does not consider the quality of advice, unless patently wrong, or question the professional judgement of a solicitor. The measure of what is fair and reasonable (rule 5.37) is what the ombudsman considers to have been good practice at the time of the act or omission. Good is a higher standard than the reasonable service test employed by LCS. The rules therefore suggest that the quality of decision making will be investigated and determined. This in turn suggests that the Scheme Rules will require a high standard of understanding, analytical, legal and investigative caseworker skills.

### **When complaints can be referred to the Ombudsman service**

We wonder if at 4.2 c) in respect of the irretrievable breakdown of the complainant/lawyer relationship given might be usefully expanded to include the situation when there is a breakdown in the relationship between the person bringing the complaint and the person with responsibility for complaints handling at the firm.

At 4.4 there is a requirement that the complainant has 6 months from the authorised person's last written response to raise a complaint with the OLC and 4.5 states that this must also be within 1 year of the act or omission (or date of knowledge). When read

together this seems to mean that the complainant may have to bring their complaint to the attention of the firm during the retainer. Our experience is that many retainers last a number of years and the complaints raised often include issues that have arisen throughout the life of the file. Some consumers are reluctant to raise their concerns until the end of the matter or the end of the retainer. or it may be that minor errors have a cumulative impact and it is only after a period of time that a complaint is raised. We think that arguments around the date of knowledge would increase and that far more emphasis would have to be placed on the consumers understanding of the consequences if they are not to be significantly disadvantaged by time running from the act or omission itself.

### **How the Ombudsman service will deal with complaints**

In respect of former partnerships the members of the partnership are not jointly and severally liable for one another's actions. Our experience has been that enforceability of decisions where our investigation has been limited to contacting a single former partner has been very difficult/not pursued. It is also likely to be subject to challenge by the former partners who have not had the opportunity for comment.

The ombudsman function of determining a complaint or dismissing it without consideration of its merits cannot be delegated (1.9). It appears to us that the statutory requirement is that any closure other than the matter being withdrawn, abandoned or informally resolved requires an ombudsman decision or determination. This requirement, coupled with the amount of ombudsman input envisaged into the initial stages of the life of a matter and during the investigation, seems to require a significant number of very experienced staff as Ombudsman. With that in mind we would like to make the observation that there are a significant number of decisions that may require ombudsman input which are not listed under grounds for dismissal or determinations and awards.

In addition, in respect of out-of-time complaints. these decisions are currently made by caseworkers within LCS. In the period July 2009 to September 2009, LCS excluded 221 files under the Complaints Acceptance Policy (CAP). in addition to these files there will have been a further number in which we exercised our discretion to investigate. Over a year the OLC might reasonably expect to receive around 850 CAP matters plus possibly 300 files where a discretion is to be exercised, making a total of 1,150 files which require decisions to be made and communicated by an Ombudsman.

### **Grounds for dismissal**

The dismissal of a complaint without an investigation is rightly, in our view, limited to ombudsmen. However, our experience is that it is very difficult to make a decision without the consideration of merits and it is our view that this will be particularly so in respect of paragraphs 5.7 b) and c) of the scheme rules. To be able to make a decision with certainty we think it would be necessary to consider if and to what extent there has been poor service and examine the reasonableness of the offer by considering the consequences of the act or omission.

The level of guidance it would be reasonable to offer the customer (5.7 g) will, in our view, need to be detailed, legal and of a very high calibre. We note that one of the grounds for dismissal is that another avenue, rather than the Ombudsman service, would be more suitable. Each of these alternatives will have different powers of redress which, when considered with the finality of any decision, means that the caseworker providing

this guidance during the investigation will need a good deal of expertise, including legal knowledge. This is in addition to the skills and experience required by the ombudsman making the determination unless they are the same person.

### **Determination of awards**

Under 5.38 b) we note compensation may be paid for ~~loss suffered~~ and which is also enshrined within the Legal Services Act. However, it would be useful for the meaning behind the phrase to be clearly defined and whether the loss must have been incurred. Our experience is that many of our customers are not in a position to spend the money needed to put something right before receiving an award of compensation. In reaching our decision we do not need require the customer to have actually incurred any expenditure at the time of the complaint but we do need to establish the financial effects caused by poor service.