

**A Response to a Consultation Paper on the Office for Legal Complaints'  
Scheme Rules**

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**Q1 In-house Complaints Handling**

**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 it take?**

- Yes. There should be a general requirement that a complainant must exhaust a lawyer's internal complaints procedure before approaching the OLC but there should be discretion to waive such a requirement for good reason, for example, because a complainant feels intimidated by the lawyer, or because of discrimination, or because there is a conflict of interests, etc.

**What can we do to promote good customer service in the legal profession?**

- Given the imminent introduction of the OLC, the Legal Complaints Service (LCS) shelved their proposed scheme for the publication of solicitors' complaints records. The scheme was something that I supported subject to it covering all complaints and their outcomes comprehensively. The OLC may wish to revisit this idea.
- The OLC could also consider a quality standard scheme for good service/complaints handling.
- The Approved Regulators have a role in ensuring standards of service are high within the legal profession. However, the OLC could assist Approved Regulators by sharing information. An effective system for picking up trends in complaints and feeding the information back to Approved Regulators and the LSB is crucial to that.
- Lawyers have continuing professional development (CPD) requirements. The OLC working with the legal professional bodies and the approved regulators could help to secure good customer service by ensuring training in client care to both students and lawyers is effectively provided.
- The OLC could advocate / support the approved regulators in requiring them to ensure there is mandatory reaccreditation in client care in areas such as costs, accounting, effective communications, client care letters etc; this should help improve customer service standards in areas where there are currently some shortcomings.

## **Q2 Who Can Complain?**

**Should the OLC ask the Lord Chancellor to consider exercising his power to include groups of people we have suggested and should we include anyone else?**

- The OLC proposes to ask the Lord Chancellor to include personal representatives and beneficiaries of estates as complainants. I support this but would emphasise that the ability to continue a complaint on behalf of a deceased complainant is not only an issue in probate cases. In complaints arising out of the British Coal litigation (minersq cases), widows and children of deceased miners were allowed to take forward complaints.

Given my experience in the minersqcases, the OLC may wish to consider asking the Lord Chancellor to allow them to accept complaints from next of kin for complainants/potential complainants who have passed away. Had the families of the miners been unable to take forward their complaints, cases of individual and public importance would have been excluded from the complaints process.

- The OLC are proposing to retain freedom to contact the complainant directly where that complainant is represented. I have had to deal with many complaints where professional bodies have bypassed complainant representatives and the complainant has then expressed dissatisfaction with the outcome of the complaint. I would suggest that where complainants are represented, the OLC should not make direct contact without prior consent of the complainant and full knowledge of the representative.

**Q3 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?**

- Under the current complaints handling system, complaints from the directors of companies are accepted. If corporate complainants are excluded from access to the OLC, it is possible that commercial law firms will avoid the rigours of a professional service complaints-handling system.

## **Q4 Time Limits**

**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?**

- I consider the proposed time limit of one year is reasonable. It corresponds with the time limit in comparable schemes including the Scottish Legal Complaints Commission (SLCC).

- The OLC may wish to consider specific provision for the extension of time limit in cases of public interest.
- The OLC provide that they will not look at complaints previously considered by existing entities. I would suggest that they retain the discretion to do so if it is in the public interest.

## **Q5 Our Approach to Resolving Complaints**

### **Do you have any comments on the approach to resolving disputes set out in the Scheme Rules?**

- It is proposed that many complaints to the OLC will be dealt with by informal resolution. Conciliated agreements, if handled properly, can deliver benefits to all parties to the complaint by achieving a reasonable outcome more quickly than through the formal determination process.

However, I have been concerned that within the current system. Conciliating complaints is sometimes used as a quick or easy way of disposing of a complaint. Consumer dissatisfaction with conciliated agreements under the current system was reflected in the results of an LCS survey reported in the Law Society Gazette on 1 February 2007. That survey found that only 51% of consumers thought that conciliated agreements were the best outcome; 70% felt that they had no option but to accept the offer made and 75% of solicitors felt they had no option but to offer compensation.

I have also dealt with cases where a few professional bodies have failed to explain the conciliation process; failed to adequately consult with the complainant; failed to give the complainant the opportunity to sleep on an offer; presented an offer as a fait accompli; bypassed complainant representatives; and failed to adopt a neutral stance when conciliating complaints.

Currently, the OLC give little information as to how complaints will be resolved by informal resolution. Therefore it is difficult to comment on how they could avoid these pitfalls. However, I would recommend that the OLC consider successful conciliation schemes carefully. I would direct the OLC to the SLCC scheme for conciliating cases which provides that complainant and lawyer will be given a written explanation of the nature and purpose of mediation and of the fact that mediation will be discontinued if either the complainant or the lawyer withdraws consent to it, or if, during it, the SLCC comes to the view that it is reasonably likely that the complaint constitutes not a service complaint but a conduct complaint.

- In relation to grounds for dismissal of a complaint, the OLC should take care with making determinations in respect of whether or not fair and

reasonable redress has already been made for a complaint. This is difficult to assess without an investigation to establish the full facts.

**Q6 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 something additional, what form should it take?**

- The OLC should clarify how third party (ie non client) complaints of professional misconduct will be dealt with. Presumably, these will be accepted and then referred to the Approved Regulators even though the complainant would not satisfy the definition of who can complain and what they can complain about, in the Scheme Rules?
- Under the OLC's Scheme Rules, I note that it is provided that parties may make representations in respect of the dismissal of complaints for one of the grounds set out in 5.7. However, there is no specific provision for representations to be made in respect of a determination about a conduct referral to an Approved Regulator. For consistency, the OLC should consider including this.

**General points**

- **Inclusive approach to the acceptance of complaints:** I have advocated that professional bodies adopt an inclusive approach to the acceptance of complaints. Perhaps this could be included as an ethos by the OLC so that where the Scheme Rules allow scope for interpretation, there is a presumption in favour of acceptance of the complaint.
- **Internal Review:** The Scheme Rules make no provision for internal review of standards either procedurally or substantively. The OLC may wish to consider such a scheme in order to avoid judicial review.
- **Conflict of interest:** I and SLCC currently have a reciprocal arrangement for dealing with cases where they have a conflict of interest. SLCC and OLC are likely to find it beneficial to have a similar arrangement. OLC should consider including provision for such referrals within the Scheme Rules.
- **Negligence cases:** OLC provide that negligence will be considered on a case by case basis. Litigation can be costly and my experience is that complainants can therefore, understandably, be tenacious in pursuing a negligence remedy through the complaints process. I would suggest that the OLC grasps the nettle and sets out how complaints containing negligence issues will be handled in the Scheme Rules. One possibility would be the establishment of an arbitration scheme to deal with small (i.e. under £30,000) negligence claims.

- **Confidential information:** The Scheme Rules provide that the OLC will accept information in confidence where it considers it necessary and fair. In my view, investigations should be as open and transparent as possible to ensure public confidence is retained. The presumption should therefore be in favour of disclosure.
- **Reasons for decisions:** Although there is no common law duty to give reasons, reasons for decisions should be based on an assessment of the facts and demonstrate that OLC decisions are proportionate, accountable, consistent, transparent and targeted. I consider that the OLC should provide that their reasons will satisfy this criteria in the Scheme Rules.
- **Public interest cases:** I consider that there should be specific provision for how genres of cases which raise issues of public interest and importance will be dealt with by the OLC.
- **Vesting date:** I have observed from the OLC's published business plan (October 2009) that the OLC do not intend to accept any existing complaints such as those being dealt with by the professional bodies and possibly even complaints which are being dealt with by lawyers at the first stage. I have a concern that, if this is the case, it could take an inordinate length of time for some complaints to filter through the old system. I believe it is in the consumers' interest for the OLC to start handling as many complaints as possible as soon as possible. It would therefore be helpful if greater clarity was given regarding how the vesting date would operate in practice.
- **Consumer Choice:** Consumer choice is at the heart of the reforms. I therefore believe that it would be in consumers' interest to have a choice as to whether complaints are handled under the existing or new complaint-handling regimes. I believe that a consumer should be given the option of having their complaint determined to the end under the existing regime or abandoning that complaint and being given the option of making a fresh complaint which would be determined by the OLC.