

OFFICE FOR LEGAL COMPLAINTS – DRAFT SCHEME RULES

CONSULTATION PAPER

RESPONSE ON BEHALF OF PERSONAL INJURY BAR ASSOCIATION

Introduction

This is the response of the Personal Injury Bar Association to the Consultation Paper from the Office for Legal Complaints on the Draft Scheme Rules. PIBA represents the interests of about 1500 personal injury barristers in private practice.

Q1 SHOULD WE INCLUDE SOME ADDITIONAL GUIDANCE IN THE SCHEME RULES ABOUT HOW IN-HOUSE COMPLAINTS HANDLING INTER RELATES TO THE OMBUDSMAN SCHEME? IF YOU AGREE WHAT FORM SHOULD THIS TAKE? MORE GENERALLY, WHAT CAN WE DO TO PROMOTE GOOD CUSTOMER SERVICE IN THE LEGAL PROFESSION? PLEASE GIVE EXAMPLES AND REASONS.

Response 1

Yes. PIBA considers that the primary objective of the Scheme should be good complaints handling. Reference to the Ombudsman service should be seen by the public and the profession as a last resort. Early dialogue between a potential complainant and, so far as the Bar is concerned, the barrister or his Chambers can lead to early resolution of the problem. We do not feel that this needs to be included in the rules which should in our view be kept as simple as reasonably possible. Such an aspiration could be included in any introduction to the rules which could also refer potential complainants to the relevant Approved Regulator's rules on handling complaints.

Q2. SHOULD THE OLC ASK THE LORD CHANCELLOR TO CONSIDER EXERCISING HIS POWER TO INCLUDE THE OTHERS WE HAVE

SUGGESTED? COULD WE INCLUDE ANYONE ELSE? PLEASE GIVE YOUR REASONS WHY OR WHY NOT

Response 2

PIBA does not believe that anyone else should be included so that they can bring a complaint to the Ombudsman scheme. PIBA is of the view that the other people suggested to be included by the OLC ensures that the net is wide enough to include all those who may reasonably wish to make use of the scheme.

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?.

Response 3

PIBA considers that the categories of people who can come to the scheme are wide enough and achieve the objective of ensuring that those who need to use the scheme can use it.

Q4. 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?.

Response 4

PIBA is of the view that complaints should be resolved as quickly as reasonably possible especially in view of the observations that evidence and memories disappear or become patchy over time. We agree that a one year time limit is sensible.

Q5. DO YOU HAVE ANY COMMENTS ON THE APPROACH TO RESOLVING DISPUTES SET OUT IN THE SCHEME RULES?.

Response 5

Broadly PIBA agrees with the approach to resolving complaints. Informal resolution we agree is a good way of dealing with complaints quickly. We see no problem in the Ombudsman acting as a quasi mediator within an informal approach which could well lead to the speedier resolution of complaints to the benefit of all involved.

We agree with the proposal not to exercise the power under Section 133(3)(e) of the Act (authorising the administration of oaths) but PIBA believes that any formal written document should be endorsed with a statement of truth or similar as included in witness statements under the Civil Procedure Rules.

PIBA is of the view that the grounds for dismissal under paragraph 5.7 do not contain any obvious gaps and are not too onerous. Under 5.7 dismissal is not mandatory and under paragraph 5.7(m) (Other Compelling Reasons) the Ombudsman is given power to õplug any gapsõ if indeed there are any.

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 THIS TAKE?

Response 6

The draft Scheme rules provide the framework for how the Ombudsman scheme and approved regulators will work together. PIBA agrees that there should be a strong relationship between the scheme and the approved regulators. Strong day to day

working arrangements we feel are very important. We do not however feel that additions to the framework are necessary and are firmly of the view that no further additions to the rules are necessary. They should be as short and simple as reasonably possible.

Q7. ARE THERE ANY OTHER POINTS OR ISSUES YOU WISH TO RAISE IN RELATION TO THE DRAFT SCHEME RULES? DO YOU THINK THERE IS ANYTHING MISSING? IS THERE ANYTHING YOU DISAGREE WITH? PLEASE GIVE YOUR REASONS.

Response 7

There are no other points or issues which PIBA wishes to raise. PIBA has already responded to the "Setting a Fair Case Fee" consultation paper.

Tim Newman
PIBA Secretary for and on behalf of PIBA
7th December 2009

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