

Responses of Sole Practitioners Group to Office of Legal Complaints consultation paper in relation to case fees.

This will be a general discussion of the principles involved from the perspective of the individual sole practitioner. Firstly the Sole Practitioners Group broadly appreciate and applaud the proposed conciliation based approach to legal complaints.

It is important that there is a mechanism for the relatively simple approach to the resolution of legal complaints to provide an easy remedy for the client, but at the same time that mechanism must not be rigid in such a way that providing a satisfactory remedy for the client, provides an unfair outcome for the practitioner.

Practitioners, and particularly sole practitioners have to face numerous pressures from their interaction with clients often in stressful circumstances which arise due to no fault of the practitioner, but often because of dissatisfaction by the client with the result of actions by a third party or a decision of the court, or dissatisfaction by the client with the extent of the fees that that client has incurred and a wish to avoid paying them.

Every client should be able to obtain legal advice and practitioners should not be put off giving that legal advice to potentially difficult clients or in potentially difficult circumstances, by the fact that it is easy for a client to pursue an unwarranted complaint against a practitioner, and that the complaints system will support the client in so doing.

On the other hand it must be a recognized fact that providing legal services will give rise to complaints and that those complaints must be faced. However the fact of a complaint itself, and in particular an unjustified complaint, is a significant penalty to a solicitor in having to face it, and provide a significant amount of unpaid work to deal with it.

Having done that and carried out their duty to the client and the OLC, it is then additionally unfair to the practitioner if the result of a fair response to the complaint, is a liability in costs which would be seen by that practitioner, at least, to be unfair.

As practitioners we accept that there has to be a levy on the profession to support the complaints system as provided by the Act.

The Act provides that the Scheme Rules shall provide as follows in respect of contribution to the OLC costs:

(1) Scheme rules must require respondents, in relation to complaints under the ombudsman scheme, to pay to the OLC such charges as may be specified in the rules.

This provision therefore allows the rules to provide for discretion as to the circumstances in which to charge fees and it presumably is on that basis that the proposal is made to waive fees in respect of the first two complaints. The Group accepts that as a reasonable proposal. The Act goes on to say:

*(2) The rules **must** provide for charges payable in relation to a complaint to be waived (or wholly refunded) where—*

(a) the complaint is determined or otherwise resolved in favour of the respondent, and

(b) the ombudsman is satisfied that the respondent took all reasonable steps to try to resolve the complaint under the respondent's complaints procedures

There are therefore two cases in which the rules must provide for no charges, firstly where the complaint is determined in favour of the respondent. This will satisfy the concerns of Sole Practitioners as to being penalised if they are not at fault.

More importantly the charges must be waived if the ombudsman is satisfied that the practitioner offered an appropriate remedy under the practitioners internal complaints procedures. This will go a long way to encouraging resolution at an early stage.

The Act makes further provision for the scheme rules to provide for the costs to be paid as between the parties as follows:

(h) for an ombudsman to award costs against the respondent in favour of the complainant;

This will presumably be an unlikely scenario because it will rarely be necessary for the complainant to need representation and incur costs in making a complaint. In addition there is provision:

(i) for an ombudsman to award costs against the complainant or the respondent in favour of the OLC for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the ombudsman's opinion that person acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;

No doubt such cases will be rare because such cases would have been dealt with on the basis whereby the LLC can make provision:

(a) for the whole or part of a complaint to be dismissed, in specified circumstances, without consideration of its merits;

In summary therefore the powers of the OLC in the Scheme Rules are to provide for charges to the OLC by a practitioner except where the practitioner is not at fault or has acted reasonably in trying to resolve the complaint in house. Additionally where either the client or practitioner has acted so unreasonably in relation to the complaint there can be a contribution ordered by either the client or the practitioner to the scheme rules if it is appropriate to make such an award.

These provisions of the Act have been democratically enacted and the Act directs the OLC to observe them.

The suggestion made by the OLC, at this stage, is that in normal cases, in the case of the first two complaints, presumably per annum, there should be no fee regardless of fault. One would hope that an ordinary sole practitioner, with the amount of caseload that a single practitioner could carry would not be unlucky enough to attract more than two complaints per year, and that if a sole practitioner did so the Lady Bracknell maxim, as to the loss of both parents, in the Importance of Being Ernest might apply.

In any event under the Scheme Rules which must be provided by the Act any contribution will not apply to a practitioner who has not been at fault and has made a reasonable effort to resolve the complaint in house.

It is suggested by at least one respondent to the consultation that after the initial trial period of say three years this "concession" to 2 such free cases might be reviewed. On the basis of the encouragement of conciliation is a new approach to the solution to legal complaints then this would seem reasonable on the basis that the OLC will be feeling its way.

The Group hopes that it will be accepted that it is easier to put over these views in a narrative form rather than in direct replies to the questions but the Groups views can no doubt be applied to the specific questions from this response.

In summary the emphasis should be

- Ease of resolution by encouraging in-house solutions, as the scheme rules must encourage by absolving fees in the case of a practitioner acting reasonably in respect of in-house resolution
- Relieving that charge where the solicitor is clearly not at fault at all in an individual case, as must be provided by the scheme rules
- The application of the scheme rules to impose charges in circumstances which are only clear and reasonable.
- The retention of the residual power in unusual cases of unreasonableness by a complainant to charge costs so as to deter unreasonable complaints.