

Scheme rules  
discussion paper

## Introduction

The Office for Legal Complaints has been established by the Legal Services Act 2007 to make sure users of legal services can go to an independent and impartial Ombudsman scheme to resolve disputes involving their lawyer. We will be the single point of entry for all consumer legal complaints.

The Act sought to put in place the recommendations of the Clementi review which encouraged radical change in regulation of the legal services market. We want to make the aims of the Act real so that users of legal services and their lawyers will have confidence in how complaints are resolved.

Putting in place our scheme rules is the first key step in doing this. Everything else we do will flow from how we set out our role as Ombudsman in the rules. The scheme rules themselves provide the framework for how we will resolve disputes and, drawing on the learning from complaints, inform good practice. The rules will underpin our decisions and our process.

We are keen to ensure that we get our scheme rules right both legally and to ensure that they capture the spirit of the Act, not just the words. The discussion draft of the scheme rules which we have set out here aims to fulfil the requirements of an Ombudsman scheme that resolves disputes impartially, quickly and fairly – we want to embody Ombudsman best practice. In addition to being independent, we have tried to make sure the rules reflect that we will be accessible, clear about our role, proportionate and efficient. These are key principles identified by the British and Irish Ombudsman Association as central to good complaints handling.

We are aware that there are a significant number of important decisions that will affect the scheme rules and how the Ombudsman scheme operates. For instance, we want people to be able to use our service, and so have tried to define who can come to us as broadly as we can. And we want to make sure that the Scheme Rules will work for us as we open our doors as well as into the future.

As many of these decisions are wide ranging and possibly complex we wanted to set out our thinking early in an informal way to ask for comments from a range of people to help us refine the rules. We have set out some broad questions to show some areas we are still thinking about – and we would like to work in an open, transparent and collaborative way with everyone who is interested to further develop the scheme rules.

We will consult formally as we are required to under the Act later in the autumn. We wanted to start discussion about our scheme rules with an informal consultation that includes a first draft of the scheme rules.

## Principles for in-house complaints handling

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### *Office for Legal Complaints*



LEGAL SERVICES  
BOARD

For consumers of legal services and their lawyers, a dispute starts before the Ombudsman gets involved. It starts when the client raises an issue with their lawyer – with the expectation that their concerns will be dealt with there and then. Our view is that most lawyers welcome this chance to put things right and that it is good for everyone involved to resolve these disputes quickly.

We think that it is important that the Ombudsman scheme helps to underpin principles of good in-house complaints handling and we are considering whether the scheme rules should include a chapter that focuses on how lawyers should handle a complaint when a client first raises one with them.

We have agreed with the Legal Services Board, the oversight regulator for legal services, that this discussion document represents a good opportunity for gathering views on what good principles for in-house complaints handling might be.

Ensuring that the entire legal services profession embeds principles of good in-house complaints handling is of significant interest to the LSB. In its Business Plan for 2009/10, the LSB describes a programme of work to improve the service delivered to consumers by making sure complaints are resolved effectively. One of the ways the LSB may do this is to exercise its power under section 112 of the Act to set requirements for in-house complaints handling procedures to be included in the rules set by Approved Regulators (ARs).

From an OLC perspective, we are aware that we will be asked to resolve complaints about a range of legal practitioners and firms who in turn work within differing regulatory frameworks. Both the LSB and the OLC believe that the systems that firms have in place for handling complaints will depend on their own circumstances and the requirements of the ARs. However, certain principles to inform good complaints handling should be common to all.

To help guide the discussion, we, the OLC and LSB, have described [below] some suggested principles for in-house complaints handling which might in turn develop into a common framework to guide

complaints handling across the profession. We would like to hear what you think of them and how far you think the rules of the ARs already comply with these principles.

Our starting point, which we believe that the profession, consumers and the ARs alike agree with, is that everyone has the right to expect a good service from their lawyer and to have things put right if they go wrong. The Act makes this point clear and so our scheme rules state that a lawyer should have an opportunity to resolve a complaint before the Ombudsman gets involved. The principles set out here propose that the process for handling a complaint should be clear and readily accessible to clients, as well as sensitive to their needs. They also make clear that the process should be well managed throughout, so that decisions are taken quickly and things put right where necessary.

Ultimately, we want in-house complaints handling and the system used by the Ombudsman to be coordinated so that complaints can be resolved swiftly and so that everyone involved clearly understands what they can expect at each stage of a complaint.

Both the OLC and the LSB would welcome comments on the suggested principles. We would be particularly interested to hear views about how far the ARs current rules already meet these principles and, if there are any gaps between current rules and suggested principles, whether there are any plans by the ARs to amend them. The LSB will, depending on the response to this consultation and the work identified in the LSB Business Plan, look at whether or not there is a need to introduce any requirements in this area.

### **Discussion draft – Principles for in-house complaints handling**

1. Legal practitioners must comply with their Approved Regulator's rules on handling complaints. The Approved Regulator's rules must include any requirements set by the Legal Services Board.
2. Legal practitioners must:
  - have an easily accessible, effective and transparent procedure for handling complaints promptly and fairly;
  - ensure that the procedure makes clear who is responsible for dealing with complaints in relation to services which are subcontracted or referred to another practitioner;
  - ensure and be able to demonstrate that all customer-facing members of staff know about, and act in accordance with, that procedure;

- ensure that, unless totally impracticable for operational reasons, the procedure ensures that complaints are dealt with by someone other than the person complained against;
  - enable a complainant – including someone representing a client, such as a relative, advisory body or trades union or another practitioner who has made a referral – to make a complaint by any reasonable means.
3. Legal practitioners must communicate that procedure to clients by:
    - producing a clear, simple, short written summary (available on their websites where the entity and/or individual has one) which must include a postal address, phone number, fax number and e-mail address by which any complaint can be made and explain the availability of the Ombudsman service;
    - referring to the availability of that summary in any document that presents their services in detail;
    - telling relevant clients in writing about the availability of that summary when accepting instructions (unless the client has already been notified within the previous year);
    - telling relevant beneficiaries in writing about the availability of that summary when first contacting them about the estate/trust; and
    - providing relevant clients and beneficiaries with a copy of that summary on request, or if they make a complaint.

The principles included here incorporate recognised good practice in adopting articles 27.1 and 27.4 of the European services directive 2006/123/EC in order that people know how to raise a concern if they have one.

We also wish to be pragmatic, and in circumstances where a client uses a lawyer regularly we would not expect multiple notifications of how to contact their lawyer with any concerns.

4. Many complaints can be resolved quickly and informally to the complainant's satisfaction. But if a complaint is not resolved to the complainant's satisfaction within five business days of being received, legal practitioners must:
  - send the complainant a prompt written acknowledgement which sets out the legal practitioner's understanding of the complaint, identifies who will be investigating the complaint, and then keep the complainant informed of progress;

- investigate the complaint promptly and fairly so as to assess whether it is justified and, if so, what remedy is appropriate;
- take into account any relevant legislation, regulatory or other relevant guidance and any relevant guidance or decisions on similar complaints by the Ombudsman service;
- give the complainant a clear and fair written response, explaining the outcome of the investigation and any remedy offered;
- include, in the written response, a prominent explanation that the Ombudsman service is available if the complainant remains dissatisfied or, if that is not the case, why it is not and the other options available, such as a complaint to the relevant legal regulator on conduct issues or legal action for claims over the £30,000 limit;
- include, in that explanation, full contact details for the Ombudsman service and a warning that the complaint must be referred to the Ombudsman service within six months;
- provide this written response as soon as reasonably possible, and (unless there are exceptional circumstances that make this impracticable) in any event within eight weeks from the original complaint;
- if the complainant accepts the remedy that has been offered, provide that remedy promptly;
- keep a record of any complaint received, and the steps taken to resolve it, for [six years] from the time the complaint was made; and
- analyse individual complaints in order to meet any regulatory reporting requirements and to identify and correct any common causes of complaints.

In this section we are not suggesting that lawyers will be required to resolve all complaints within five (5) business days. Just the opposite – we believe it is sound to introduce a principle that says where a lawyer resolves a complaint informally within five working days, the obligations would not be as onerous. However, if it will take longer than five working days to resolve a dispute we would suggest it is appropriate to introduce more formal obligations on a lawyer, in part to help him or her demonstrate they are handling the complaint appropriately.

If the LSB were to consider setting requirements for in-house complaints handling, there may be merit in making sure that the time limits for in-house complaints handling and resolution by the Ombudsman service fit together. More detail on the proposed time limits for the Ombudsman scheme is set out in the discussion draft of the scheme rules.

**QA.** What do you think about the suggested principles to guide in-house complaints handling?

**QB.** Do you think that the current rules of the Approved Regulators already meet these principles? Can any gaps be easily rectified?

**QC.** As well as requirements in relation to the obligations Approved Regulators place on persons authorised by them, should the LSB consider placing obligations directly on ARs in relation to monitoring the effectiveness of those obligations and/or their relationship with the OLC, for example, in relation to disseminating best practice emerging from its work?

The remainder of this covering paper focuses on the discussion draft of the OLC's scheme rules.

# The scheme rules – discussion paper

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## Office for Legal Complaints

The OLC is required by section 115 of the Act to set scheme rules that put in place the framework for how we will propose to resolve disputes. We must say who can complain to us, what sorts of complaints we will and will not look at and also set out some procedures for how the scheme will operate in practice. These requirements are set out in the Act.

The discussion draft of the scheme rules sets out our proposed approach to our core role of resolving disputes involving lawyers. As we have focused on our core role, the rules do not propose to establish a voluntary jurisdiction at this stage (something that we may do so under section 164 of the Legal Services Act 2007).

The discussion draft that we have included here aims to bring together in one place a summary of the relevant provisions from the Act, relevant requirements from the LSB to approved regulators and the scheme rules made by the OLC.

The proposed scheme rules deal with complaints that are made after the OLC starts operating. Any transitional arrangements for complaints that are in process of being handled under the existing arrangements will be dealt with separately. Additionally, the provisions in the Act bringing claims management companies into the OLC jurisdiction are not due to come into effect at this stage.

We have aimed to provide enough (but not too much) detail on how we propose to handle complaints. This discussion draft does not cover, for instance, the way in which the rules are approved, how ombudsmen are appointed or how the OLC Board works. Additionally, while we set out our proposed approach to case fees in the rules, we are not consulting on our funding model.

As the primary version of the scheme rules will be published electronically on the OLC's website, defined terms are underlined. This indicates that there will be an electronic link directly to the relevant definition.

### Structure of the scheme rules

We would like your comments on the discussion draft of the scheme rules which is included with this paper. It is worth noting that the Act is fairly prescriptive about what we must include in the scheme rules. We have chosen a few areas to seek specific comments on in relation to the discussion draft of the scheme rules. We are not seeking to limit the discussion in any way and we welcome views on any aspects of

the draft scheme rules. We would also be interested in comparative information about the existing arrangements.

Much of the draft scheme rules summarises what the Act requires us to include in the rules and which is not able to be changed. We would ask for your comments on the parts of the rules which have come from us – the paragraphs marked **R** in the draft. We would also be interested in your views about the paragraphs marked **B** which we have drawn from the proposed approach of the LSB. The rules themselves provide the framework for how the Ombudsman scheme will resolve disputes. They set out the requirements and guidance about our overall proposed approach.

We have tried to write the rules as clearly as possible while also making sure they are legally robust. We would also like them to be in a form that is easy to use. We would like your comments about how we have structured the rules and if you think there might be a better way of presenting the rules to make sure everyone who will use our service understand them and what they are for.

We have structured the rules in a way that we feel sets an appropriate framework for resolving disputes by an Ombudsman scheme. We would ask you to consider the rules in the context of how other Ombudsman schemes set out their rules. We are not a court and would ask you not to look at our rules as if they were court rules.

### **Q1. Do you think the scheme rules are in an appropriate format and structure? What ways do you think they could be improved?**

The issues and questions that follow are in the same order as the headings in the discussion draft of the scheme rules.

### **Who can complain?**

Under the Act, the OLC can take complaints from individuals. The Lord Chancellor can extend the OLC's jurisdiction to other types of complainant if we, the Legal Services Board or its consumer panel ask him to.

Part of our role is to provide an alternative means of dispute resolution which is easy to understand, quick, independent and free for consumers of legal services with a dispute they would like help resolving. For this reason we believe that limiting the scope of who can complain only to individuals may mean that some small businesses, sole traders and charities that do not have deep pockets may be disadvantaged if they are not able to access the Ombudsman service.

The OLC are provisionally minded to ask the Lord Chancellor to include the following in our jurisdiction:

- a micro-enterprise – broadly speaking, this would include businesses that have fewer than 10 staff and a turnover or balance sheet value not exceeding € million (European Recommendation 2003/361/EC of 6 May 2003);
- a charity with annual income less than £1 million; and
- a trustee of a trust with a net asset value less than £1 million.

These are all groups of people eligible to use the Financial Ombudsman Service (FOS), using the definitions that will apply from 1 November 2009, and we would seek to use the same definitions. Including these categories adheres to good practice across Ombudsman schemes.

**Q2. Should the OLC ask the Lord Chancellor to consider exercising this power to include the others we have suggested? Should we include anyone else? Please give your reasons why or why not.**

We would also like to know if anyone else should be included so that they can bring a complaint to us. The Act states that the OLC can consider a complaint about services provided:

- to the complainant – the person who used the legal service;
- to another legal practitioner who procured them on behalf of the complainant; or
- to (or as) a personal representative/trustee where the complainant is a beneficiary of the estate/trust.

The Lord Chancellor can include other people so that we can consider their complaints. We would like to hear views on whether anyone else should be included. In particular, we would like to include personal representatives and beneficiaries of estates so that if a person dies before referring a complaint to the Ombudsman scheme, another person may continue the complaint and see it resolved. This may be especially important where the subject of the complaint is related to the estate that remains.

We can also see scenarios where a person may need assistance to complain, or have a complaint made on their behalf, for instance by their guardian or carer. We would like views on whether the current scheme rules capture these potentially complex situations.

**Q3. Should the OLC ask the Lord Chancellor to consider including anyone else and, if so, whom and why? What about receivers and guardians?**

In addition, under the Act, the OLC cannot take complaints from a public body (or someone acting for a public body), or from a legal practitioner who procured the services on behalf of someone else. The Lord Chancellor can exclude others. At this stage we do not propose to exclude anyone else.

**Q4. Should the OLC ask the Lord Chancellor to consider excluding anyone else and, if so, whom and why?**

### **Excluded complaints**

The Act states that in setting the scheme rules we may (but do not have to) exclude specified types of complaints. Even without this provision, the Act puts in place restrictions on the types of complaints the Ombudsman scheme can consider.

It is important to note here that the Ombudsman scheme has been established to resolve disputes about the service provided to a consumer by a lawyer. We have no role in investigating issues of misconduct or in disciplining lawyers – this is the role of regulators. We are committed to working with regulators to help them in their role.

We have included in the scheme rules at paragraph 5.7 an Ombudsman discretion to dismiss complaints without consideration of their merits. Beyond this, we have not yet identified any classes of complaint that we should exclude absolutely. For example, where a complaint is about professional negligence or judgement, we propose to consider (on a case-by-case basis) whether the issue is one that the Ombudsman scheme can deal with or whether the issue would be better dealt with in court.

**Q5. Should the OLC consider excluding any other types of complaints from its jurisdiction? Please give your reasons why or why not.**

### **Responding to a changing market**

We are aware that we will be resolving complaints about a range of legal practitioners and firms and that we are also working in a changing legal market. We are seeing the first Legal Disciplinary Partnerships come into being and we have tried to anticipate the introduction of Alternative Business Structures and new ways of lawyers providing legal services.

**Q6. Are the draft scheme rules sufficient to allow us to handle complaints effectively and efficiently as changes to the legal services market happen? Please give your reasons why or why not.**

### **Cooperating with the ombudsman service**

We expect that the majority of the profession will co-operate with us as we try to resolve complaints. However, we are aware that in some cases we will look to the approved regulators to support us in asking lawyers for their assistance in an investigation. We have set out what we think are reasonable expectations for co-operating with us. We would welcome comments on these proposed requirements. We are also interested to hear views from the ARs and other stakeholders about how far current arrangements match these requirements.

**Q7. What do you think about the suggested requirements for cooperating with the Ombudsman scheme? Do you think there is anything missing? If so, what is missing and why?**

**Q8. Do you think that the current rules of the Approved Regulators already meet these requirements?**

### **Time-frames for bringing a complaint**

In the discussion draft of the scheme rules we set out the timeframes in which we would generally expect a firm to resolve a complaint (within eight weeks) and the timeframes in which we would generally expect a consumer of legal services to make a complaint (within six years from the act/ omission or within three years from when the complainant should reasonably have known there was cause for complaint). The time limits from act/omission are similar, but not identical, to the court limitation period for contractual claims. These timeframes are also informed by good practice by other Ombudsman schemes.

We want to make sure people can access our service when things have gone wrong and believe that the time limits we propose are appropriate in the context of the nature of legal complaints. For instance, we know that we are likely to be asked to look at a lot of conveyancing complaints where problems often do not arise for many years after the event. Many consumers do not realise that there was poor service until they come to re-mortgage or sell their property. We do not want to exclude these potential complaints by being too prescriptive in our time limits.

We are aware that there will be a concern that evidence and memories disappear or become patchy over time and so there is a danger to long time frames in which to bring a complaint. However, we have said in the scheme rules that we should be able to dismiss a complaint if there is no evidence (see paragraph 5.7). With this, we think there is enough of a safeguard against a lack of evidence and therefore do not need to limit the timeframes for making a complaint in order to avoid this risk.

**Q9. Is there any reason why the OLC time limits should be different? If you think it should be different, please say what time limits you would include and why.**

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

This section of the discussion draft sets out when we may dismiss a complaint. We would be interested in your views about this section and in particular whether any aspects of it are too onerous or if there are any gaps.

In addition, we do not propose to exercise the power, under section 133(3)e) of the Act, to make a rule authorising the administration of oaths – we believe that it would be inconsistent with the informal nature of ombudsman proceedings to do this.

**Q10. Do you think there are any gaps in the section of the scheme rules that sets out how we will deal with complaints? If you think there are any gaps, please give your reasons.**

### **Informal resolution**

The role of the OLC and Ombudsman scheme is to resolve disputes and to inform good practice based on the learning from those complaints.

We would like to encourage informal resolution of complaints where possible. The Act asks us to resolve complaints quickly, and we are aware that some forms of informal resolution are likely to be an option to resolve some complaints. We are looking to good practice among Ombudsman schemes to inform our approach. We are interested in your views about how we can promote informal resolution of disputes in the context of complaints about lawyers.

**Q11. How can the Ombudsman for Legal Complaints promote informal resolution of complaints? Please give your reasons.**

### **Case fees payable by legal practitioners**

The scheme rules set out our proposed approach to case fees in chapter six. The rules set out the structure of the case fees, which we propose should be a flat fee. The structure of the case fee also includes the principle of a small number of 'free' cases each financial year. The Act asks us to include a case fee in the scheme rules and this structure would mean that the OLC would recover a proportion of its costs each year in this way.

We have not included amounts or numbers in this discussion draft of the scheme rules. We will consult on the figures at a later date. At this point we would like to hear views about the principles and structure of the case fee. We are aware that this is not the only

way of doing this, and are open to views about other ways in which the case fee could be structured.

**Q12.** Do you think our approach to the case fee is fair? Is there a better way of doing this? Please give your reasons.

### **General**

The Act allows us, in Schedule 15, to make arrangements with approved regulators if we would like their assistance in investigating or resolving a complaint. We have not specifically included how we might do this in the scheme rules and would like your views about whether we should include some more detail about this in the scheme rules.

**Q13.** What, if anything, should we include in the scheme rules in relation to seeking assistance from approved regulators? If you think we should include something, what form should this take?

We would like your comments on the discussion draft of the scheme rules which is included with this paper. We have tried to capture everything we need to in the scheme rules but are aware that there may be gaps. As we mentioned before, we are interested in your comments about the scheme rules generally, as well as on those areas we have highlighted here.

**Q14.** 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.

### **Discussion draft questions on principles for in-house complaints handling (questions posed jointly with LSB)**

**QA.** What do you think about the suggested principles to guide in-house complaints handling?

**QB.** Do you think that the current rules of the Approved Regulators already meet these principles? Can any gaps be easily rectified?

**QC.** As well as requirements in relation to the obligations Approved Regulators place on persons authorised by them, should the LSB consider placing obligations directly on ARs in relation to monitoring the effectiveness of those obligations and/or their relationship with the OLC, for example in relation to disseminating best practice emerging from its work?

### **Questions on the discussion draft of the scheme rules**

**Q1.** Do you think the scheme rules are in an appropriate format and structure? What ways do you think they could be improved?

**Q2.** Should the OLC ask the Lord Chancellor to consider exercising this power to include the others we have suggested? Should we include anyone else? Please give your reasons why or why not.

**Q3.** Should the OLC ask the Lord Chancellor to consider including anyone else and, if so, whom and why? What about receivers and guardians?

**Q4.** Should the OLC ask the Lord Chancellor to consider excluding anyone else and, if so, whom and why?

**Q5.** Should the OLC consider excluding any other types of complaints from its jurisdiction? Please give your reasons why or why not.

**Q6.** Are the draft scheme rules sufficient to allow us to handle complaints effectively and efficiently as changes to the legal services market happen? Please give your reasons why or why not.

**Q7.** What do you think about the suggested requirements for cooperating with the Ombudsman scheme? Do you think there is anything missing? If so, what is missing and why?

**Q8.** Do you think that the current rules of the Approved Regulators already meet these requirements?

**Q9.** Is there any reason why the OLC time limits should be different? If you think it should be different, please say what time limits you would include and why.

**Q10.** Do you think there are any gaps in the section of the scheme rules that sets out how we will deal with complaints? If you think there are any gaps, please give your reasons.

**Q11.** How can the Ombudsman for Legal Complaints promote informal resolution of complaints? Please give your reasons.

**Q12.** Do you think our approach to the case fee is fair? Is there a better way of doing this? Please give your reasons.

**Q13.** What, if anything, should we include in the scheme rules in relation to seeking assistance from approved regulators? If you think we should include something, what form should this take?

**Q14. 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.**

### **How to respond**

If you would like to send through your views on our this discussion draft of the scheme rules, our contact details are below. If possible, please send your responses electronically (in Microsoft word format) but hard copy responses by post or fax are also welcome.

This informal stage of our consultation will close on 4 September 2009. We will launch a formal consultation as we are required to under the Legal Services Act 2007 on 15 September 2009.

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As we indicated above, we are also keen to discuss the issues we have raised in this paper in other ways. We would welcome opportunities to meet stakeholders at discussion forums which we propose to hold or separately.

### **Proposed consultation timeline**

We want to work be open, accessible and clear in how we develop and discuss our approach.

This consultation is an important one as it is about the core of our work. We hope that all stakeholders will produce usable evidence, ideas and comments so as to provide positive outcomes for consumers of legal services, the legal services profession and public alike.

We noted that we would consult as we are required under section 205 of the Legal Services Act 2007 in the Autumn. This will require us to publish a (more refined) draft of our proposed scheme rules and invite comment. To that end, we intend to work to the following timetable which covers this current stage as well as a formal consultation period:

#### **24 July 2009 – 7 September 2009**

Launch informal discussion draft of the scheme rules. Post on our website, send discussion draft to stakeholder organisations and stakeholder meetings.

#### **15 September 2009 and through October 2009**

Launch formal consultation with revised Scheme Rules. One-on-one meetings with stakeholders about the thrust of our proposals (leaving the detailed responses to come later in the consultation cycle). Consultation workshop(s), with focus groups dedicated to proposals for the apportionment of costs. Consultation responses published as received.

#### **8 December 2009**

End of formal consultation period – deadline for detailed written submissions from stakeholders.

#### **Mid December**

Publication of consultation response summary and OLC response.

#### **Late December 2009**

Final Scheme Rules considered by OLC and LSB.

#### **January/ February 2010**

Scheme Rules to Ministry of Justice to seek Lord Chancellor approval for an inclusions/ exclusions under s.128 and s.130 and for any aspects to be included in the OLC Commencement Order.

For further information please contact:  
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