

5 February 2018

Response to Competition and Markets
Authority: legal services market study final
report

LEGAL
OMBUDSMAN

Introduction

1. The Legal Ombudsman was established by the Legal Services Act (2007). Our role is two-fold: to provide consumer protection and redress when things go wrong in transactions within the legal services market, and also to feed the lessons we learn from complaints back to the profession, regulators and policy makers to allow the market to develop and improve.
2. In this document, the Legal Ombudsman (LeO) responds to the Competition and Markets Authority's final report of its legal services market study. This response is from Rebecca Marsh, Chief Ombudsman, in consultation with the OLC Board.
3. The final report of the Competition and Markets Authority (CMA) on its legal services market study was issued in December 2016. It outlines findings and recommendations to address the issues individual consumers and small businesses experience when purchasing legal services in England and Wales.
4. At the Legal Ombudsman, we welcome the opportunity to respond to the final report and give our views on recommendations either made directly to us or those made to others where implementation would have a significant impact on our operations.

Response

Data collection about unauthorised providers

“LeO should consider whether it could generate a range of information (provider name, area of law, reason for complaint, etc) from the contacts it receives from consumers who have used unauthorised providers.”

5. We have considered this issue but have concluded that LeO would not be able to generate this range of information going forward.
6. We appreciate that generating this information would be beneficial in establishing the scope of the issue of unauthorised providers, and would help us to monitor the situation in future to inform any potential jurisdictional change.
7. However, while possible, collating this data would have cost implications for LeO and as we are funded by a levy from the profession, it would be inappropriate to use these funds to work on issues relating to those who have not had to pay. Therefore, there is a significant problem with establishing a budget for this work.
8. Moreover, it would not be possible to collect this information from all contacts and would be impracticable to take extra steps to obtain it. It would be counterintuitive to advise a consumer that their matter was something that LeO could not investigate and then ask

questions about the type of service provided. This would not be consistent with our general approach to collection of data at the contact stage, and might cause consumer confusion and frustration.

9. The Legal Ombudsman will therefore continue to provide data at current levels but decline to collect and provide further data on unauthorised providers unless specified funding is allocated for this. We will nevertheless keep the data we share under review and consider any cost-neutral ways to gather and share data on this issue.

Extension of redress to consumers using unauthorised providers

“We are recommending that the Ministry of Justice (MoJ) reviews whether there is a case for extending redress to consumers using unauthorised providers and, if so, how best to achieve that extension. This could be pursued by extending access to the LeO or through alternative arrangements such as the use of ADR or self-regulation. We note the importance of ensuring that any redress mechanism is proportionate (since any additional costs that providers incur may be passed on to consumers).”

10. The CMA’s findings highlight that there is potentially a large redress gap in the legal services market as it stands. As our regulatory objectives include improving access to justice, we are always keen to find ways to improve the landscape for consumers. We believe that extending redress to a whole new range of users of legal services would contribute to this and ensure a much greater level of consumer protection.
11. However, as stated before, it would be inappropriate to use our current funding streams to work on expanding our jurisdiction. We are also aware that now is not the right time to pursue legislative change on the scale that this would require.
12. Therefore, we will not explore the issue of unauthorised providers further, but agree to be informed by any decisions from the Ministry of Justice on this matter. We believe that if redress was to be provided to consumers of services delivered by unauthorised providers, our organisation is the most appropriate to offer this service. For that reason, should a designated budget (entirely distinct from the levy) be allocated for this work, we commit to moving forward with a scoping exercise.

Accessibility of information about service providers

“Our recommendations to the frontline regulators to address these issues are:

(c) To facilitate the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries. This recommendation would also apply to the LeO as well as to the regulators.”

13. This recommendation will be realised through a ‘single digital register’ of data, which will include regulatory and membership information, quality marks, and complaints data. We

are already engaging with regulators about the information we might be able to provide for this.

14. We support this initiative on the basis that collating information from a range of different sources is likely to improve the quality of online comparison tools, and so increase public understanding of legal services. This corresponds to another of our regulatory objectives: increasing public understanding of citizens' legal rights and duties.
15. However, we may not be able to provide the full range of data suggested in the CMA's report, as there are restrictions in the Legal Services Act 2007 about the type of information we can publish.
16. We hope that making some of our complaints data available will also incentivise providers to improve their handling of complaints, which helps with our regulatory objectives of encouraging an independent, strong, diverse and effective legal profession, and promoting competition in the provision of services.
17. We are planning to contribute to research by the Solicitors Regulation Authority to investigate the effectiveness of publishing of complaints information as well as the provision of information on consumer protections, including access to the Legal Ombudsman. The aim of this research is to establish what kind of information consumers need in terms of complaints data and regulatory protections, and how this information should be presented.
18. The research will provide evidence for policy decisions on this matter. We are mindful of our regulatory objective of protecting and promoting the interests of consumers, and wish to facilitate this through developing our own understanding of the information consumers need to help them make informed choices.
19. We will support the development of the 'single digital register', including working with regulators on information they will provide, and contributing directly to the register ourselves. We will make clear that our data is subject to strict parameters and will seek assurance from regulators that our data is not published improperly.

Development of a consumer education hub

"Our recommendations to the frontline regulators to address these issues are:

(d) Development of a consumer education hub"

20. The report advocates for an overhaul of the Legal Choices platform, with a clear focus on the needs of consumers to help them navigate and interact with the sector.
21. We believe that refreshing Legal Choices would be beneficial for consumers. It was intended as a hub for legal information to increase public understanding and help consumers navigate legal services, and we believe that these are important aims.

However, we believe it has failed to reach many consumers and that those who do use the platform are presented with only a narrow view of the market as a whole.

22. We are confident that in working together, stakeholders in this project can develop the website much further and ensure that relevant, up-to-date information is available in a user-friendly manner. There is a great deal of work that can be done to improve the quality of information provided, and to make sure that it is assessed for relevance to consumer experience. As such, we are eager to be involved in the process.
23. We create factsheets and consumer guides to help consumers with engaging legal service providers and also with using our scheme. These publications are based on our operational experience with complainants, and will help to expand the breadth of information provided on the website.
24. We will support this initiative, including joining the steering group for this project to allow us to work with regulators on information they will provide. We will also seek to contribute directly to Legal Choices with our own data and publications.

Conclusion

25. Thank you for the opportunity to comment on the final report of the Competition and Markets Authority's legal services market study. This is a constructive report which will assist all stakeholders in this area to ensure that the market is functioning well for consumers of legal services.
26. We take note of the hard work and depth of analysis in this report, and look forward to engaging with others on these issues, including in meetings of the Remedies Programme Implementation Group and the Regulators Forum.

For any questions about our response please contact our Parliamentary and Policy Associate at sarah.ritzenhaler@legalombudsman.org.uk
