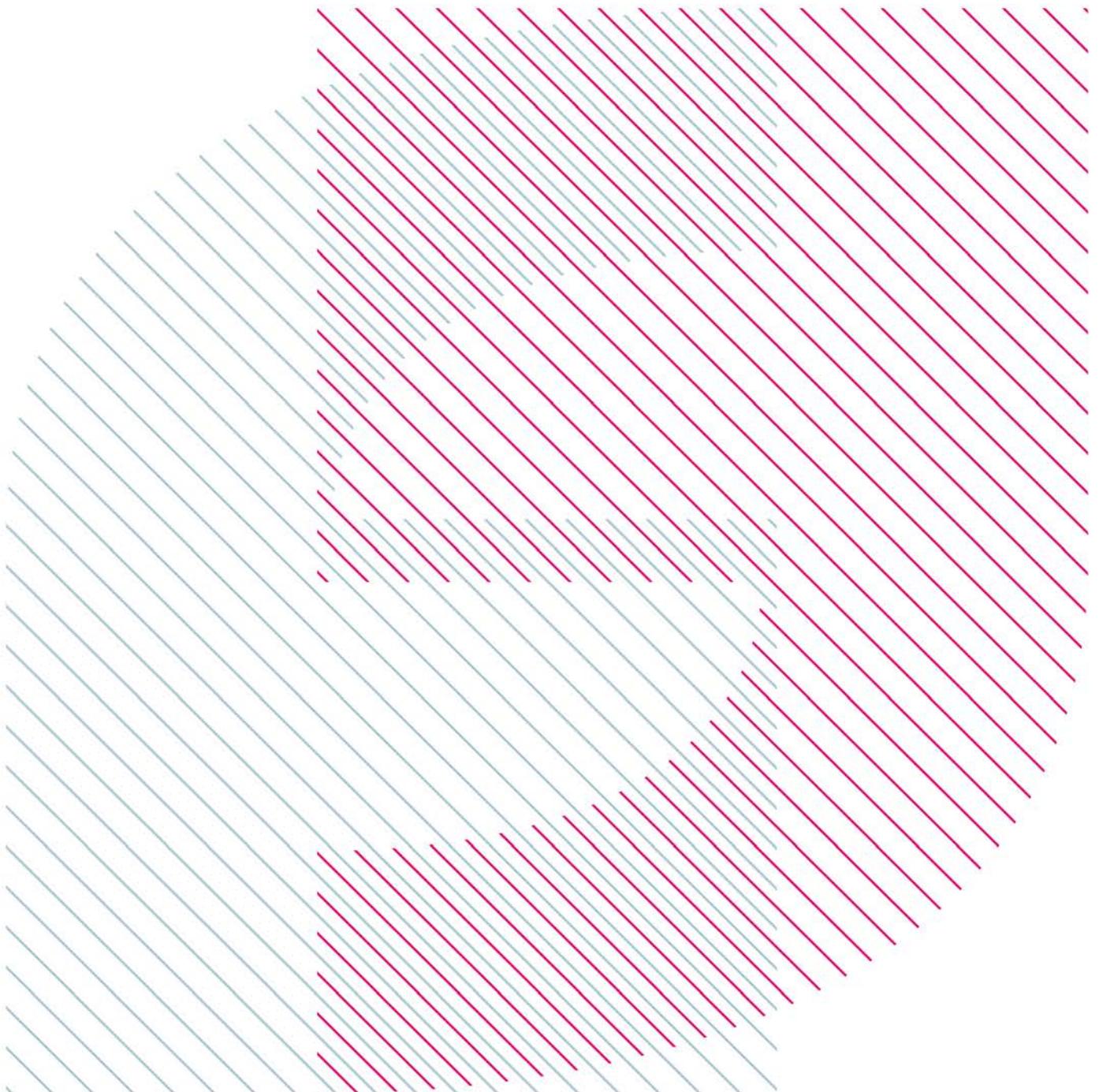




Consultation Response

Solicitors Regulation Authority
Looking to the Future:
phase two of Handbook
reforms



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. We welcome the opportunity to respond to the Solicitors Regulation Authority (SRA) consultation on further changes to the Handbook and their proposed revised Enforcement Strategy.
3. Broadly, the Legal Ombudsman is in favour of measures which make the landscape simpler for service providers, and we applaud the aim of these reforms to reduce the burden for those regulated by the SRA. However, we do have some concerns with the implications some of the proposed measures may have in terms of access to redress for consumers. These concerns are laid out below.
4. With these issues in mind, we look forward to opportunities to work with the SRA on how best to implement these reforms. We are pleased with efforts by the SRA to engage with us on a number of these matters already, and are keen to continue discussions as work on this progresses in the New Year.

Phase 2 of Handbook reforms

Q.1

Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

5. The jurisdiction of the Legal Ombudsman only extends to persons authorised in England and Wales. While largely this change would be unlikely to affect our jurisdiction to accept complaints, we are concerned that it could have implications for a small number of complainants and potentially create a redress gap.
6. Our concern is that we might be unable to consider some complaints due to an insufficient connection with England and Wales, while other complaints schemes are also unable to investigate because the matter is outside of their jurisdiction.
7. Furthermore, we foresee potential issues where an English provider is providing services in English law out of a firm based in Scotland or Northern Ireland. In those

circumstances, there may be an issue of conflict in that the firm is Scottish-regulated and individual is SRA-regulated. As we are an entity-based organisation, it may be difficult to conduct an investigation or enforce a remedy in this situation.

8. We would welcome assurances from the SRA around what might be done in such cases, and are open to further discussions of how such matters should be handled.
9. Therefore while as a broad principle we do not oppose this change, we would be eager to ensure that safeguards are put in place to protect complainants in situations similar to the one outlined above.

Q.2

Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is “qualified to supervise” should be removed?

10. We do not fundamentally disagree with this proposal, although we have some reservations. In pursuit of our regulatory objectives of *‘encouraging an independent, strong, diverse and effective legal profession’* and *‘protecting and promoting the interests of consumers’* we are keen to ensure that standards of management and supervision do not slip, and that service provided to consumers does not suffer due to more relaxed regulations.
11. We would echo concerns referenced in the consultation document—including those of the Solicitors Disciplinary Tribunal—that removing the requirement for three years of practise may result in reduced competence of management/supervisory staff.
12. We appreciate the argument that length of experience does not always correlate with greater competence and so this may be a fairly blunt measurement, but we are of the opinion that it is at least a basic safeguard. While the proposed new safeguards go some way towards mitigating risk, we remain concerned that poorer service and poorer accountability for complaints may result.
13. Again, we welcome any opportunities to work with the SRA on this issue and would be pleased to discuss measures we could take to feed back in order to inform ongoing assessment of this proposal.
14. Unfortunately we do not currently hold any data to contribute to discussions on this matter, but could consider collecting this in future.

Q.3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorized firms?

15. We agree with this proposal on the basis that very often it is the most vulnerable clients who seek advice on immigration matters, which was highlighted in our joint research on the quality of legal services to asylum seekers. Where clients are especially vulnerable we would expect to see greater safeguards and increased oversight in order to ensure high standards.
16. It seems sensible that keeping these services within regulated practices would largely mitigate the greater risk to vulnerable consumers, and provide assurance that there are sufficient safeguards to maintain a baseline of quality in their provision.

Q.4

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR-authorized firms (or equivalent)?

17. In much the same way, we agree with this proposal on the basis that consumers of claims management services are potentially vulnerable. Our demographic research indicates that over 50% of those who use claims management companies earn below £25,000 per annum, and are statistically more likely than the general population to be unemployed and from a lower social grade.
18. We anticipate that figures would be similar for clients of legal providers offering claims management services, and conclude that they are likely to be more financially and socially vulnerable.
19. From our organisational experience we are also aware that users of claims management services usually lack time and/or capacity to pursue their claims independently. The current structure of regulation serves to strengthen these consumers' powers of redress and therefore we would be keen to maintain patterns of regulation as they currently stand.

Q.5

Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?

20. We have previously set out our views on this matter in our response to phase one of the SRA's consultation on Handbook reforms. In this we noted that we support the wider policy objective behind this proposal to provide greater flexibility for solicitors to deliver their services, and therefore give consumers greater access to competent and affordable legal advice when needed.

21. Nevertheless, we do have concerns about the impact on the principle of entity-based regulation and the wider system of redress, as well as how the proposals will work in practice. It is not yet clear how many businesses and solicitors are likely to adopt this model and so the depth of the impact on our organisation does need to be clarified. To some extent the degree to which problems may arise relies heavily on what is meant by a 'service company' in these regulations.
22. If individual self-employed solicitors are prevented from working in businesses where providers of all kinds of services (regulated or unregulated) work collaboratively on projects and may outsource administrative functions to clerks, then our concerns are almost entirely negated. However if it is envisaged that solicitors *should* be able to work in this kind of setup, we remain concerned about potential interdependencies across the business.
23. In these cases, the new provisions might make it significantly more difficult for us to deliver our entire complaints handling service. Primarily the difficulty for us is that our jurisdiction is over the authorised individual rather than the business or anyone else who works there. We appreciate that the service provider will not be able to employ others or share any of their own work out to other members of the business, but there may be a situation where legal advice is only one aspect of a wider service provided by an unregulated business.
24. While technically a consumer still has access to the Legal Ombudsman for the work of the solicitor in question, it will rarely be so straightforward. We envisage difficulties in understanding who has actually undertaken work for the consumer, whether this can be evidenced and whether we have powers to request evidence. Where provision of the legal service may be dependent on other providers in the business who fall outside of our jurisdiction, it may be difficult for us to investigate a complaint fully.
25. If a consumer brings a complaint about the service they have received, they will expect all elements of the case to be investigated. Yet there are likely to be situations where we will have to select which elements of a case we can investigate, and would not be able to comment on the actions of the company.
26. We are pleased to note the proposed safeguards to ensure some consumer protection under these proposals, but still have some reservations, including that we do not believe that requiring a practising address in the UK will provide any particular protection.
27. The Legal Ombudsman aims to simplify redress and reduce confusion among consumers. We believe that these proposals will have the opposite effect, complicating the system of redress further and creating more confusion for consumers and service providers. In particular there is potential for a shortfall in remedy enforcement.

28. While requirements to take out and maintain insurance are necessary, we do not believe they are fully sufficient to provide client protection. When we award remedies for poor service, there are restrictions on the types of remedies that can be paid out by insurers in the event of going out of business. While we are pleased to note that Compensation Fund provisions would apply, we are concerned that certain remedies may be unenforceable under these new arrangements.
29. We are also aware that an extra layer of assurance is removed where the business is not authorised. In our experience there is a greater guarantee that a firm will be able to pay a financial remedy than an individual. While this risk is present in the case of sole practitioners, we are concerned that the extent of insurance required under these new measures may not be as comprehensive.
30. Moreover, we question how far consumers will understand the relationship they are entering into in these cases. In our experience, consumers rarely appreciate the difference between a regulated and unregulated business, and choice is often driven by cost and word of mouth rather than an assessment of the protections available to them. Consumers generally only become concerned with protection issues if a problem arises with the service they receive.
31. We hope that transparency measures laid out in the SRA's consultation on 'better information' may go some way towards tackling this issue, but we await clarity on how any digital badges or reporting requirements may work for authorised providers working in unregulated businesses. We seek assurance from the SRA that they are considering measures to increase consumer awareness of the difference in protections before bringing this proposal into practice.

Q.13

Do you agree with our proposed approach to enforcement?

32. We agree with the broad aim to establish clear expectations while building in appropriate flexibility, in the interests of proportionality. We believe that case studies are useful to give context and allow for more practical understanding of how measures would work. We would welcome the provision of this kind of guidance in order to make new rules clearer to the profession.
33. We would need to understand the new enforcement criteria in order to know what we should be referring to or sharing with the SRA. We have a Memorandum of Understanding and an Operational Protocol which sets out the type of information we should normally be passing on, but would need further clarification of the new framework in order to ensure that we are referring cases appropriately to reflect changes that have been made.

34. We would also need to clarify exactly how our data will be used in these scenarios. There are strict rules which govern the information we can publish and as such we would need to engage in conversations with the SRA about the kind of detail that may be included in case studies.
35. We are appreciative of ongoing conversations with the SRA on this topic and look forward to discussing what the new model and approach to enforcement would look like in practice.

Conclusion

36. Thank you for the opportunity to comment on the Solicitors Regulation Authority's second phase of Handbook reforms.
37. Overall, we believe that the SRA have addressed many of the problems that these changes might evoke, and we are encouraged by proposed safeguards and new ways of working.
38. However, our concerns about proposed changes to the rules governing the practice of regulated solicitors remain. As in our response to phase one of the Handbook reforms, we foresee jurisdictional issues and consumer confusion over these reforms. We believe that proposed restrictions placed upon these individuals may not be sufficient in ensuring redress mechanisms for consumers are robust.
39. We are keen to work with the SRA on these matters to identify ways to overcome new challenges, and areas on which we can work more closely, in order to ensure that consumer protection is maintained even after regulations have been updated.

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