

LEGAL SERVICES  
OMBUDSMAN



Legal Services  
Complaints  
Commissioner

## Legal Services Reform – A perspective

A Special Report from:  
The Legal Services Ombudsman for England and Wales  
and The Legal Services Complaints Commissioner  
June 2007





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## **Foreword**

Foreword by the Legal Services Ombudsman for England and Wales  
and Legal Services Complaints Commissioner



## Foreword

The Legal Services Bill currently before Parliament represents a tremendous opportunity to change the delivery, regulation and complaints handling of legal services for the better.

My independent perspective on the legal reforms is informed by my roles as Legal Services Ombudsman and Legal Services Complaints Commissioner. These statutory appointments have allowed me to take an in-depth look at the relationship between the consumers and providers of legal services through the thousands of complaints I have personally reviewed (as Ombudsman), as well as the systemic overview I have of complaints about solicitors (as Commissioner). Both roles involve understanding the complex relationship between professional regulation, service delivery and the consumer experience – matters, which the Legal Services Bill seeks to address.

I have taken a keen interest in the reform of legal services in England and Wales since my appointment as Legal Services Ombudsman in 2003 and have been active in sharing my experience and knowledge with the Government. In particular, I have strongly advocated an oversight regulator with proportionate powers and an independent complaints handling body. I was an enthusiastic supporter of and contributor to Sir David Clementi's Review of legal services<sup>1</sup>, which reported at the end of 2004.

Central to my approach to the reforms is my view that legal services must be improved in the public interest. In particular, I have been keen to ensure that the consumer's voice is heard in relation to these reforms.

I am proud of the track record of success of both my Offices in contributing to recent improvements in legal complaint handling, but have consistently pushed for reform solutions that are not self-serving. I would wish to see the new organisations described in the Bill build on this success. The consumer and professions deserve and expect the Bill to deliver more for them and not less.

I remain absolutely committed to the principles that lie behind this Bill. However, I believe that some of the choices and decisions that may be made in the detail and implementation could put these principles at risk. Therefore the Bill needs thorough investigation, open debate and robust but constructive challenge in order to protect its more effective aspects and to bring about the necessary changes.

Consumers and other users of legal services are relying on Parliament to deliver legislation that is fit for the twenty-first century. I hope that this document is a useful addition to the debate.

I am grateful to Government for already taking cognisance of some of my concerns and I will continue to work with Government and other stakeholders to ensure that the Legal Services Bill truly delivers the benefits we are all seeking.

**Zahida Manzoor CBE**  
Legal Services Ombudsman for England & Wales  
Legal Services Complaints Commissioner

<sup>1</sup> "Report of the Review of the Regulatory Framework for Legal Services in England and Wales" (December 2004)

## **Introduction**

Background to the Legal Services Ombudsman  
and Legal Services Complaints Commissioner

## Introduction

### Background to the Legal Services Ombudsman and Legal Services Complaints Commissioner

Ms Zahida Manzoor CBE was appointed as the Legal Services Ombudsman for England and Wales in March 2003. Under the Courts and Legal Services Act 1990, the Ombudsman can review individual complaints that are referred to her by consumers. It is the Ombudsman's responsibility to ensure that the professional bodies have conducted fair, thorough and efficient investigations into those complaints about their members. Since the Ombudsman's appointment she has personally reviewed 7,418<sup>2</sup> complaints against the professional bodies, she therefore, sees first hand examples of the problems which consumers can experience when they have had a problem with their legal service.

In February 2004 Ms Manzoor was also appointed as the first Legal Services Complaints Commissioner under section 52 of the Access to Justice Act 1999. As Commissioner she regulates and works with the Law Society of England and Wales to bring about improvements in complaint handling that consumers of legal services could reasonably expect. That means the Law Society's complaint handling arms (the Legal Complaints Service and Solicitors Regulation Authority) providing a service that is impartial, transparent, easy to understand, efficient and gives appropriate remedies.

The Commissioner can require the Law Society to provide information on how it deals with complaints; make recommendations about its complaints handling system, set targets for complaints handling and require the Law Society to submit an Improvement Plan for complaints handling. In addition, the Commissioner has the power to levy a penalty on the Law Society if it fails to deliver an adequate plan or

fails to act in accordance with that plan. The maximum amount specified is the lesser of £1m and one percent of the Law Society's annual income. The Office of the Legal Services Complaints Commissioner (OLSCC) has audited 5,668<sup>3</sup> Law Society cases.

In January 2006, the Law Society formally announced its re-organisation into 3 distinct bodies. These are: the Legal Complaints Service (LCS) which deals with complaints by consumers who are complaining about the service received from their solicitor; the Solicitors Regulation Authority (SRA) which regulates solicitors and deals with some consumer complaints where misconduct is alleged; and the Law Society which represents solicitors and promotes their work. The Law Society's Council still approves the budgets for all three entities and is responsible to the Commissioner for its complaints handling Improvement Plan. The Law Society delegates responsibility to the LCS and SRA for submitting its Improvement Plan to the Commissioner.

The complaints handling arm of the Law Society has undergone a number of restructures and changes to its name in recent years. In the early 1990's it was known as the Solicitor's Complaints Bureau replaced by the Office for the Supervision of Solicitors in 1996, the Consumer Complaints Service in 2004 and most recently, it was renamed the Legal Complaints Service in January 2007. Each change has been accompanied by claims of increased independence from the Law Society.

Since the Commissioner's appointment in February 2004, there have been some improvements in the complaints handling performance of the Law Society. These have been as a direct result of the targets it has been set by the Commissioner

# “The Bill represents an opportunity to address some long-held concerns about the way in which the legal services market has been operating.”

and the plans for improvement she has required. In May 2006, the Commissioner levied a penalty of £250,000<sup>4</sup> because the LCS and SRA failed to produce an improvement plan that she was able to declare as adequate to move LCS and SRA further towards becoming a more effective and efficient complaints handling organisation.

On 12 June 2007, the Commissioner advised the Law Society of her provisional decision that she was minded to say that the LCS and SRA had not handled complaints in accordance with its complaints handling plan for 2006/07. Although the LCS and SRA have made some improvements, the Commissioner remains concerned about quality. The LCS and SRA will be making representations to the Commissioner about this matter on 5 July 2007, after which, the Commissioner will have to consider if LCS and SRA have handled complaints in accordance with their plan and if not, whether there is a need to levy a penalty and if so, what amount. The Commissioner's decision as to whether to levy a penalty will be made in July 2007.

Assuming that the Legal Services Bill receives Royal Assent in 2007, it is envisaged that the LSB and OLC will not be implemented until around 2010 or 2011. Until then the work of the Ombudsman and Commissioner's two offices (OLSO and OLSCC) will continue. The Commissioner's office will continue to work with the Law Society to regulate its complaints handling work and oversee progress and improvements for the consumer and the profession. The Ombudsman's office will also continue to work with all legal professional bodies to improve and maintain standards for consumers of legal services.

## Background to the legal reforms

The Legal Services Bill is designed to achieve wide-ranging reform to legal services regulation, delivery and complaints handling in England & Wales.

The Bill represents an opportunity to address some long-held concerns about the way in which the legal services market has been operating. Among these concerns were those about the relative weakness of the consumer in a system that was perceived to be run largely in favour of lawyers.

These concerns date back as far as the late 1990's, but a head of steam around the issues of legal complaint handling, self-regulation of the professions and competitiveness of the market emerged in around 2001.

The Office of Fair Trading (OFT) published a report in 2001<sup>5</sup>, which raised some concerns regarding potentially restrictive rules in the legal profession, which may have been stifling competition. Also at around this time, the Legal Services Ombudsman's 2001/02 Annual Report<sup>6</sup> concluded that **“the present concern with operational failure in complaint handling needs to give way to a more fundamental debate about reforming the entire system of legal services regulation.”**

Problems in the handling of complaints about solicitors by the Law Society, had led to the Lord Chancellor setting the Law Society performance targets. These targets were not accompanied by the statutory means to enforce them and failures in complaints handling continued.

<sup>4</sup> Penalty was later reduced to £220,000 for the co-operation shown by the Law Society's LCS and SRA and the fact that they submitted a further Improvement Plan that the Commissioner subsequently declared adequate.

<sup>5</sup> “Competition in Professions”, the Office for Trading, March 2001  
<sup>6</sup> “The Regulatory Maze” the 2001/02 Annual Report of the Legal Services Ombudsman for England & Wales

# “The Bill should build on all that is good within the present system and enhance further the rights that people enjoy.”

The Legal Services Ombudsman's 2002/03 Annual Report<sup>7</sup> set out her concerns at the time regarding the dual role of the professional bodies in both representing and regulating their members. The Ombudsman was also concerned that there was not a consistency of standards across all of the legal professions. The Ombudsman again highlighted widespread concerns about the failure of the largest professional body (the Law Society) to handle complaints about its members effectively.

Following that Annual Report, the Ombudsman welcomed the Government's announcement of a review of the way in which legal services were being delivered and regulated and complaints handled. The Ombudsman was pleased to contribute to Sir David Clementi's Review and has continued, as Ombudsman and Commissioner, to support the Government as it has brought the majority of the recommendations made by the Clementi Review through to a White Paper and more recently, the Legal Services Bill.

In 2004, the Government also enacted a provision in the Access to Justice Act 1999, which allowed the appointment of a Legal Services Complaints Commissioner in order to regulate complaints handling by any professional body where this was failing. This appointment was made in relation to the Law Society of England & Wales and the Commissioner was given the full range of powers under the Access to Justice Act 1999<sup>8</sup>.

The Ombudsman and Commissioner has been pleased to see that the legal reforms set out in the Legal Services Bill have been built on addressing these previous concerns and on Sir David Clementi's recommendations. These were broadly to create a new overarching regulator (the Legal Services Board or LSB), an independent complaints handling organisation (the Office for Legal Complaints or OLC) and new ways of delivering legal services brought about by Alternative Business Structures (ABS).

The slow reactions of the professional bodies to issues such as the collapse of The Accident Group and handling of Miners' Compensation cases indicated the need to address the regulation of lawyers in the public interest and to clearly separate their regulatory and representative roles. However, when debating the reforms, it should not be lost that the single biggest problem that crystallised the need for reform was the handling of complaints about lawyers and most specifically about solicitors.

On the face of it, the Bill is faithful to the principles set out by Clementi and influenced by others including the Ombudsman and Commissioner. It is important that the Bill, if enacted, delivers real benefits to consumers of legal services and the professions. The Bill should build on all that is good within the present system and enhance further the rights that people enjoy.

The implementation of the reforms is crucial if public confidence is to be improved, as is the need to ensure that the Bill sets out sufficiently the detail required to make certain that the reforms are not left to unnecessary interpretation. For example, the OLC's scheme rules are left flexible but there should be clarity on the face of the Bill over important issues for the consumer. The OLC's scheme rules have to be agreed by the LSB. The LSB will have to consult on the scheme rules leaving the development of them open to lobbying and challenge. There may also be vested interests from the approved regulators in keeping the scheme rules narrow. The Ombudsman and Commissioner supports the Government in saying that the consumer should be at the heart of the reforms and therefore considers that a balance should be struck between flexibility of scheme rules and clarifying important matters on the face of the Bill.

<sup>7</sup> "Taking up the challenge" The Office of the Legal Services Ombudsman Annual Report 2002/03

<sup>8</sup> Including the powers to set targets, require an improvement plan and in the event of failure to provide an adequate plan or handle complaints in accordance with such a plan, to levy a penalty at the less of £1m and 1% of the professional body's income.

**The new structure created by  
the Legal Services Bill**

## The new structure created by the Legal Services Bill

### The Approved Regulators

The Bill will require the current legal professional bodies to separate their functions as both regulator and representative of their professions. Under the reformed system, the professional bodies will be known as Approved Regulators.

### The new complaints handling body (Office for Legal Complaints)

The Bill will take handling of consumer complaints about legal services away from the legal professional bodies and create a single new independent complaint handling body.

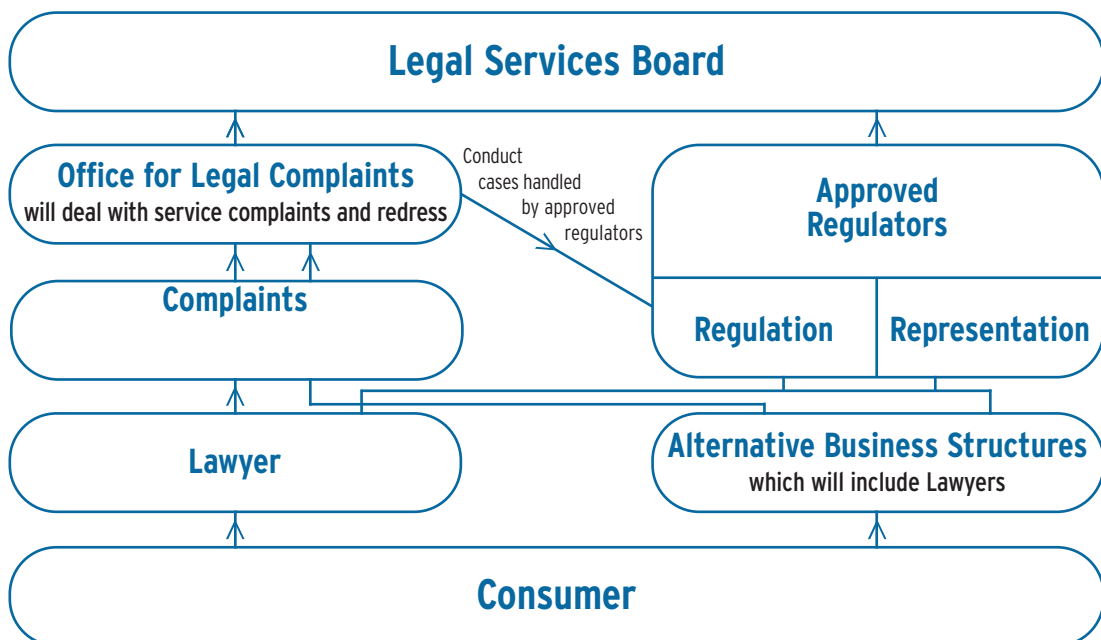
### The new oversight regulator (the Legal Services Board)

The Bill will create a new oversight regulator, which will sit above the Approved Regulators and will have a range of powers over them.

### Alternative Business Structures

The Bill allows for new ways of professionals working together to deliver legal and other professional services, known as Alternative Business Structures. These will allow, for example, solicitors and barristers to run businesses together, lawyers and accountants could have combined companies, and retailers could offer legal services.

The new legal services structure under the reforms will look like this:



## Enhancing the Bill

# “...the strong consumer focused objectives are not matched with detail on how the LSB will achieve these objectives.”

## Enhancing the Bill

There are a number of respects in which the Ombudsman and Commissioner feels that the Legal Services Bill could be enhanced in order to deliver fully on its promise of a more consumer-focused vision of legal services.

### 1. The Legal Services Board

**The Legal Services Board Chair** - the Bill says that **only the first Chair** of the LSB should be a layperson. This means that in future, the person at the head of the regulatory regime for the legal profession could be a lawyer and this may impact on consumer confidence in the independence of the LSB from the legal profession.

It is not clear what is intended by distinguishing within the Bill the first Chair's appointment from future appointments and why only the first Chair should be lay. It would send an important signal to consumers that the era of self-regulation of the legal profession has truly come to an end if it were set out in legislation that **all** future chairs of the organisation at the head of the regulatory regime should be non-lawyers.

In addition, the Government, while not setting out the detail of the appointment process on the face of the Bill, has acknowledged the need for the appointment to follow guidelines set out by the Commissioner for Public Appointments. There has also been an amendment made in the House of Lords to ensure that the Lord Chancellor makes the appointment with the concurrence of the Lord Chief Justice.

Whilst the Ombudsman and Commissioner considers that it would be appropriate for the Lord Chancellor to consult on the appointment, either widely or with specific people, what matters most is that the processes selected are there to support the appointment of the best possible person for the role of LSB Chair.

**The regulatory objectives** - It is to be welcomed that the Bill sets out a clear set of regulatory objectives to which the LSB will work. In particular, the Ombudsman and Commissioner welcomes those directly aimed at the consumer such as: **“protecting and promoting the interests of consumers”** and **“increasing public understanding of the citizen's legal rights and duties”**.

However, looking within the Bill, the strong consumer-focused objectives are not matched with detail on how the LSB will achieve these objectives. It is the Ombudsman's and Commissioner's view that the LSB should be enabled to adopt a strong public facing role, similar to that of the Financial Services Authority (FSA). The Approved Regulators may wish to set limits on the LSB's activities if they are responsible for the entirety of its funding. However, the role of increasing understanding of rights and duties is so important in the wider public interest, that Government should ensure this aspect of the LSB's activities is fulfilled and should consider setting this out more fully on the face of the Bill.

Undoubtedly, the LSB will work with and through the Approved Regulators to improve the legal profession. The LSB will have to work in this way due to the regulatory model chosen and recommended by Sir David Clementi and adopted by Government. The LSB will not directly regulate the legal profession (as does the FSA). However, the LSB's powers in relation to the Approved Regulators are described only in terms of sanction, and not by reference to positive working.

If the only way for the LSB to achieve positive outcomes for the consumer is via its powers of sanction, then the Ombudsman and Commissioner would support the overturning by Government of any amendments proposed by the Lords that weaken the LSB's powers or make them more difficult to use. The Bill,

# “the LSB...given a statutory role to oversee standards of client care across the legal profession”

however, should be enhanced by setting out how the LSB will achieve its positive objectives.

**Developing and maintaining standards for the legal profession** - The Bill ensures that the LSB has a role in “assisting” the maintenance and development of standards in relation to the education and training of authorised persons (e.g. lawyers).

The Ombudsman and Commissioner would recommend that the LSB as overarching regulator is given a statutory role to oversee standards of client care across the legal profession. The Ombudsman and Commissioner has observed that poor or inadequate client care at the point of delivery can be the root cause of many complaints. Specifically, how clients are treated, how cost information is or is not communicated and how lawyers providing the service deal with complaints. These should fall within the LSB’s remit to oversee and this role should be set out in the legislation.

Under the Legal Services Bill, changing the behaviour of the profession with regards to customer service and client care, will still be the responsibility of the Approved Regulators, who have, in some instances, demonstrated limited success with this in the past. The LSB will not directly regulate as the FSA does, therefore the Bill should set out a clear requirement of the LSB as overarching regulator, to **assist** in improving the skills of lawyers on these aspects.

**Separating regulation from representing members’ interests** - The Bill allows for a separation to be made, but also tacitly accepts that the arrangements already being made by professional bodies to restructure, will fulfil the requirement for separation set out in the Bill.

The representative side of some of the professional bodies like the Law Society and Bar Council will still hold the purse strings and will provide those resources reasonably required for regulation. It would appear more prudent for the LSB to have a direct statutory relationship with the regulatory arms of the approved regulators and that these bodies were able to raise their own funds.

In addition, it should be for the LSB as overarching regulator to determine how this functional split should look in each of the different professional bodies it regulates, or it should set criteria which must be adhered to taking into account the differing size and complexity of each body. The wording of the Bill is ambiguous and suggests for the bodies to split “so far as is reasonably practicable”. This definition is too wide and open to interpretation and the Ombudsman and Commissioner would encourage Government to make this wording more precise as to the requirements on the face of the Bill.

**Consumer Panel** - The Ombudsman and Commissioner welcomes that the LSB has a statutory duty to appoint and maintain a Consumer Panel. It is important that this Panel can support the LSB but also needs to be able to challenge it. To that end, and to preserve its independence, it would be preferable for the Consumer Panel appointments to be made by the Lord Chancellor, rather than the LSB itself.

There is a lack of clarity in the Bill regarding the Consumer Panel’s functions in relation to carrying out research for the Board. The individuals on the Consumer Panel will not necessarily have the resources to carry out such research, as it is the LSB that is the executive body. It would be clearer for the Bill to state that it is the LSB that conducts the research but that it is appropriately informed and steered by its Consumer Panel.

# “The consumer has not previously had a formal representative body within the legal services field...”

There have also been debates in the House of Lords regarding the possible establishment of a Practitioner Panel. The Ombudsman and Commissioner believes there are sufficient opportunities already built into the Bill for the profession to be consulted, for a separate Practitioner Panel not to be needed. The consumer has not previously had a formal representative body within the legal services area, so the formation of a Consumer Panel is merely a levelling of the playing field.

**The LSB's powers over the Approved Regulators** - The LSB has been provided with a range of sanctions and powers over the Approved Regulators. The powers include those of setting performance targets, public censure, issuing directions, intervention, levying a penalty and in the extreme, removing an approved regulator's designation to regulate one or more reserved legal activities.

These powers should never have to be used, but should be laid down in statute to be strong enough to protect the public swiftly in the event of a major failure by the professional bodies (as seen in the Miners' Compensation cases). Amendments have been made by the Lords that could have the effect of weakening and limiting the LSB's powers or making them more difficult to use.

The Bill should allow for these powers to be used more effectively by the LSB without unnecessarily burdensome thresholds to be overcome (such as having to demonstrate that an act or omission by an Approved Regulator has breached the regulatory objectives when taken as a whole). The Ombudsman and Commissioner would support the Government in overturning those amendments made in the Lords which are designed to weaken, limit, or make more difficult the LSB's use of its powers.

**The LSB's powers to levy a penalty** - Among the powers of the LSB, is the power to levy a penalty on Approved Regulators. It is noted that the Bill was amended in the Lords so that there are further limits imposed on the LSB's ability to fine than were included in the original drafting.

The Ombudsman and Commissioner would strongly support the original wording and not the amendment, as she has seen evidence of where the use of a penalty by the regulator can bring some benefits for consumers. In 2006, the Law Society was fined £250,000<sup>9</sup> by the Commissioner for failing to submit an adequate complaints handling improvement plan. Following imposition of this penalty, the Law Society did submit an adequate plan and included within it, targets the Commissioner had set at a level which it previously had resisted working to. This highlights the importance of having someone independent of the professional body with appropriate powers and sanctions to encourage it to make improvements it is capable of in its service to consumers.

**The right powers for the LSB** - Useful powers could have been included in the Bill that have not been (e.g. the LSB can set targets but it cannot audit to identify where the problems are first). These omissions relate both to the LSB's powers over the Approved Regulators and its powers over the OLC.

The LSB will not expect that there are failures within the Approved Regulators however, it would be incorrect to assume that things won't go wrong for which the LSB would have genuine interest. It is important to consider how the LSB will obtain information in order to decide whether or not it needs to act. The LSB could be alerted to a potential issue from a number of sources, for example, complaints trends from the OLC, its Consumer Panel or external sources such as MPs or other regulators.

<sup>9</sup> Penalty was later reduced to £220,000 for the co-operation shown by the Law Society's LCS and SRA and the fact that they submitted a further Improvement Plan that the Commissioner subsequently declared adequate.

# “The ability to audit was invaluable in bringing about effective changes.”

Using the example of the handling of Miners' Compensation cases; the Ombudsman was able to draw together findings from a number of cases that had come to the Ombudsman for review into a Special Report<sup>10</sup>, which questioned the professional body's actions in investigating the conduct of some of its members. The Commissioner was able to conduct an independent audit<sup>11</sup> of 282 of the Law Society's complaints handling files in order to see how its policies were being applied to these cases, and in particular how the interface between providing redress to consumers and dealing with alleged misconduct was being managed. The ability to audit was invaluable in bringing about effective changes.

The ability to undertake an independent audit would also enable the LSB to gather evidence to show whether a failure by an Approved Regulator is sufficiently serious to pass the threshold for use of its powers, allowing it to act appropriately.

**LSB powers over the OLC** - The public is looking for greater safeguards over complaints handling about lawyers, given the poor history of the Law Society's complaints handling arm. Although not anticipated, the Bill gives the LSB only limited powers to act if the OLC becomes a failing service. The Bill allows the LSB to set performance targets for the OLC and to monitor it. However, there are no further powers over the OLC (particularly in the event of its failure) other than the LSB's ability to remove the OLC Chair and Board.

As mentioned above with the Approved Regulators, the power of the LSB to investigate (including audit) the OLC, would assist it in monitoring the OLC's performance and would allow for sensible target setting if necessary.

The Ombudsman and Commissioner would expect the Bill to set out more effectively how the LSB would deal with the work of the OLC if it was seriously failing. The Bill should set out the powers for the LSB to take over or find alternative solutions for complaints handling if the OLC should fail.

## 2. The Office for Legal Complaints (OLC)

**The Scheme Rules** - The Bill leaves much of the detail of the OLC's complaints handling mechanism to the scheme rules which will be developed following enactment. While this leaves a flexibility for the OLC to interpret what was intended in legislation within the scheme rules, it also leaves fundamental aspects of the OLC's mechanisms open to challenge.

The legal profession is adversarial by nature and will argue fiercely to ensure that its interests are protected. As an example, when the role of the Legal Services Complaints Commissioner was being debated during development of the Access to Justice Act 1999, it appeared that Ministers envisaged the Commissioner's remit extending into the oversight of complaints handling by legal professionals, not just their professional body. However, this was not on the face of the Bill. Once the Commissioner role was activated, the Law Society fought hard to restrict the Commissioner's remit to only complaints which it handled and not its members.

It is therefore preferable for as much as possible of the important details regarding the OLC's complaint handling to be included on the face of the Bill, so as to be unequivocal. The Ombudsman and Commissioner would encourage Government to ensure that this happens.

<sup>10</sup> The Miners' Cases - A Special Report by the Legal Services Ombudsman for England and Wales (April 2006)

<sup>11</sup> Office of the Legal Services Complaints Commissioner Coal Health Compensation Scheme Audit (July 2006)

The scheme rules are essential to the success of the organisation and should be open for wide consultation. The Offices of the Legal Services Ombudsman and Legal Services Complaints Commissioner, have extensive experience of how the present complaints handling arrangements work in practice. This experience needs to be fed in to assist development of the scheme rules and should not be lost through the abolition of the two Offices.

The OLC is being set up as a **new** consumer-focused redress scheme. Importantly, it is being set up as an ombudsman scheme and it should meet the British and Irish Ombudsman Association's (BIOA's) criteria<sup>12</sup> for ombudsman schemes as well as its principles of good complaint handling.

BIOA's principles include:

**Clarity of purpose.** A clear statement of the scheme's role, intent and scope.

**Accessibility.** A service that is free, open and available to all who need it.

**Flexibility.** Procedures, which are responsive to the needs of individuals.

**Openness and transparency.** Public information, which demystifies the scheme's service.

**Proportionality.** Process and resolution that is appropriate to the complaint.

**Efficiency.** A service that strives to meet challenging standards of good administration.

**Quality outcomes.**

Complaint resolution leading to positive change.

The BIOA criteria include:

Criteria to **promote accessibility** of the scheme's service; Clarity over **powers and procedures**; and crucially Criteria for **independence** of the scheme including security

of tenure of the Ombudsman (their appointment must not be subject to premature termination other than for incapacity, or misconduct or other good cause), publication of the grounds on which a dismissal of the Ombudsman can be made and the provision of adequate staffing and funding levels so that complaints can be effectively investigated and resolved.

Both the BIOA principles and the BIOA criteria that the OLC ombudsman scheme should meet, should be stated on the face of the Bill.

**The OLC's location** - The Government announced in a written ministerial statement on 26 June 2006 that its preferred location for the OLC is the West Midlands. It also included within the Bill a provision that binds this location for at least 5 years. The Government has also announced its decision that TUPE<sup>13</sup> will apply to staff in all the current complaints handling bodies in relation to the formation of the OLC. Pricewaterhouse Coopers<sup>14</sup> estimates that up to 90% of the Law Society's Leamington Spa complaints handling staff will transfer to the new OLC, if in a West Midlands location.

Both decisions announced by Government, could have implications for the future OLC.

One implication of binding the location is that the Lord Chancellor's approval could be required if the OLC wanted to expand beyond the West Midlands base chosen for it or to offer a more sympathetic and responsive service for vulnerable clients, perhaps based in the regions.

The decision by Government to apply TUPE to all present complaints handling staff could mean that the overwhelming majority of the new OLC's staff will be those transferring from the Law Society's existing complaint-handling arm (LCS).

<sup>12</sup> available in full at [www.bioa.org.uk/criteria.php](http://www.bioa.org.uk/criteria.php)

<sup>13</sup> Transfer of Undertakings (Protection of Employment) Regulations 2006

<sup>14</sup> in its independent report to government published with the draft Legal Services Bill on 24 May 2006

# “an opportunity missed to allow the OLC the freedom to choose a location in line with business and consumer needs.”

The Law Society's existing complaint handling arms currently employ 445 full time equivalent staff<sup>15</sup>. It is the Ombudsman and Commissioner's understanding that it is highly unlikely that more than a handful of staff will transfer from other organisations.

This may not address consumer confidence concerns or those of the other current complaints handling bodies that the OLC will be sufficiently effective and efficient as a totally new regime.

TUPE has other implications for the new OLC. It is for the OLC Chief Ombudsman to make his/her own decision on the appropriate staff skills and staffing levels for the OLC. There may be staff where TUPE does not apply, because an equivalent post in the OLC is not established and there may be staff who can transfer across to the OLC on TUPE, but which the OLC Chief Ombudsman may not choose to take. In effect, there may be a possibility that these staff would be made redundant and the Ombudsman and Commissioner's understanding is that those redundancy costs would fall to the OLC. It is a concern, that at the time of establishing itself the OLC may have a difficult financial driver to potentially absorb staff who may not be suitable for the organisation, rather than a pure business excellence driver to have the best staff in place for the scheme. The imperative may be stronger, given that the projected annual running costs for the OLC will be £19.9 million, a significant reduction against the current running costs of LCS and SRA of around £36 million per year. The payment of redundancy costs does not seem to have been built into the present start up cost estimates for the OLC. It is the Ombudsman and Commissioner's view that the cost estimates need to reflect this and that it might be appropriate for the Government to agree to underwrite any redundancy costs, so as to allow the OLC to start on the right footing.

The Ombudsman and Commissioner notes with interest the views expressed by organisations such as Which? who state of the Government's preferred West Midlands location: “**This suggests the only new element may be the building the staff will sit in, as many incumbent staff are likely to be moving across from the LCS en masse**<sup>16</sup>.” It has also been stated in the House of Lords that this may be seen as a rebadging of the existing Law Society complaints handling arm. The Ombudsman and Commissioner has yet to see a sufficiently expressed opinion that dismisses this view entirely.

The Ombudsman and Commissioner has expressed to Government some disappointment over the decision by Ministers to locate the OLC in the West Midlands. This represents an opportunity missed to allow the OLC the freedom to choose a location in line with business and consumer needs. If the decision had been taken to leave the OLC's location more open, this would not necessarily have undermined any legal obligations to staff under TUPE but it could have allowed for greater consumer confidence that the OLC regime and principles behind it would be completely new. It is noted that in contrast to the OLC, the Government has left the LSB's location open and for the new LSB Chair to decide.

**OLC Chief Ombudsman** - The Ombudsman and Commissioner is pleased to see that the OLC's powers are to be vested in an independent individual (the OLC Chief Ombudsman), and not the entity of the OLC Board as was originally considered. It is also welcomed that the word “**ombudsman**” will form part of the eventual name of the legal complaints handling scheme. This is important as the term “**ombudsman**” is understood and trusted by the public. The Government has taken into account the Ombudsman and Commissioner's views and representations on both these issues and has reflected these in the Bill.

<sup>15</sup> LCS (387.39) and SRA (57.6) full time equivalent staff at 31 May 2007 as reported to the Legal Services Complaints Commissioner

<sup>16</sup> Which? “House of Commons 2nd Reading Briefing on the Legal Services Bill” May 2007

# “The Chief Ombudsman is a statutory appointment and the independence and impartiality of this role will be paramount”

One of the key influences on the OLC's design should be the OLC Chief Ombudsman who will shape the organisation based on their vision of how complaints should be handled. The Chief Ombudsman's vision will include the policies and procedures to support efficient and effective complaint handling systems and processes which are open and transparent.

The OLC Chief Ombudsman appointment should be made as soon as possible after enactment. This is important as the work of the OLC cannot start - for example caseworkers cannot investigate any complaints until the Chief Ombudsman is appointed and the scheme rules have been developed by the OLC and approved by the LSB.

The Chief Ombudsman is a statutory appointment and the independence and impartiality of this role will be paramount. There has been much time spent debating the appointment of the LSB Chair and its independence from Government and it is important to debate this. However, the independence of the Chief Ombudsman appointment is also significant, particularly with reference to its independence from the OLC Board. It is noted that the Bill provides for the terms and conditions of all OLC ombudsman appointments to ensure their independence. However, the BIOA criteria (as shown above) particularly in relation to the independence of the Chief Ombudsman, should be stated on the face of the Bill and met by the OLC.

The current Legal Services Ombudsman reports to Parliament directly via the Lord Chancellor. In contrast, the OLC will have a Chief Ombudsman who will report to the OLC which is accountable to the LSB which will then report to Parliament through the Lord Chancellor. This is a much more convoluted reporting route.

The Ombudsman and Commissioner believes it is important for the OLC and its Chief Ombudsman to make reports more directly to Parliament through the Lord Chancellor, equivalent to the current Legal Services Ombudsman, rather than through the LSB. It is unclear whether the OLC or its Chief Ombudsman could make Special Reports direct to Parliament as can the current Legal Services Ombudsman. The means by which important issues have been brought to light could therefore be lost.

## **Operation of the OLC ombudsman scheme**

The current Legal Services Ombudsman role set out in the Courts and Legal Services Act 1990 (and amended by the Access to Justice Act 1999) will be abolished following the Legal Services Bill's enactment. The same is true for the role of the Legal Services Complaints Commissioner as set out in the Access to Justice Act 1999. Both have been instrumental in bringing about fundamental changes to the way in which the legal profession handles complaints (particularly those about solicitors and investigated by their professional body). These roles have been effective in highlighting shortcomings and driving improvements in complaint handling. The powers given to these two roles are not being replaced to their full extent in the Legal Services Bill.

**Jurisdiction of the OLC ombudsman scheme** - Currently, the Legal Services Ombudsman can investigate any allegation made about a legal professional as long as it is reasonably made. Some complainants who seek the Ombudsman's help can be amongst the most vulnerable in society. Most are not well versed in the law. They have already had to attempt to resolve their complaints with their own lawyers, without success. Often they can only express their unhappiness in general, lay terms.

Against this background, a complaint may be no more than a suspicion when the Ombudsman receives it. Nevertheless, the Ombudsman can still exercise wide discretion to investigate any such allegation as long as it is properly made. The Legal Services Ombudsman would often wish to do so especially if, for example, the circumstance or merits of the case involve some vulnerability of the client or could touch on a matter of wider public interest.

The Bill as currently worded puts an initial hurdle before the OLC which could be interpreted by lawyers as acting as a limit on the complaints the OLC can actually deal with. This could lead to lawyers raising arguments about the OLC's jurisdiction that may result in some complaints that the Legal Services Ombudsman investigates now, being excluded from the OLC scheme.

The Bill states that the OLC can only consider “acts or omissions” by a legal professional. This could mean that it would be more difficult for the OLC to give consideration to a complaint where it is alleged that a lawyer had acted improperly against the spirit as well as the letter of the law. In circumstances like the Miners’ Cases where the regulator issued differing guidance over time on the practice of charging success fees, the current Legal Services Ombudsman, had regard to what was reasonable action in the circumstances, in the certain knowledge that all such complaints are within jurisdiction. Many individual miners may not know for sure whether or not improper deductions may have been made at the time when they lodge a complaint. They cannot therefore say categorically that their lawyer has committed an act or omission. The Legal Services Ombudsman, under her current powers, will accept the need for investigation on the basis that there is a wider public interest that she should do so and that powers allow her to investigate all complaints that are properly made.

In future, lawyers may challenge the authority of the OLC ombudsman on the basis that an individual complainant has not provided sufficient information to establish that there has been an act or omission, in strict legal terms, and therefore the OLC ombudsman may be delayed or even prevented from investigating the complaint.

The OLC ombudsman should have powers to consider any allegation that is properly made, equivalent to the current Legal Services Ombudsman; otherwise future consumers could be at a disadvantage compared to what exists now, with the complaints potentially having to pass a higher test in order to even be eligible for determination by the OLC ombudsman scheme.

Legal opinion is divided on whether the term ‘act or omission’ would narrow the OLC’s jurisdiction on complaints against what the current Legal Services Ombudsman can currently consider. It is recommended that the ‘act or omission’ wording should be replaced in the Bill with the current wording which is that all complaints “properly made” can be considered. This would help eliminate legal arguments and the possibility of unnecessary challenges to the OLC’s jurisdiction, as clarity would be established.

**OLC assistant ombudsmen** - There will be two types of person making decisions within the OLC. Many cases will be closed at caseworker level and there needs to be an overall balance of legal and non-legal skills and expertise within the casework staff who will undertake the initial assessment and investigation.

However, if cases are contested, a determination will have to be made. Assistant ombudsmen are likely to be responsible for most of the determinations made by the OLC. The Bill

# “Logic would not support an OLC that only handles complaints about some but not all lawyers.”

states that the Chief Ombudsman must be a non-lawyer appointment, but permits the appointment of lawyers as assistant ombudsmen. Many (perhaps most) determinations in the OLC could therefore be made by lawyers. This would in effect, potentially deny the lay perspective to many complainants and would undermine one of the central objectives of the reforms, to distance the handling of complaints about lawyers from other lawyers.

It is the Ombudsman and Commissioner's view, that it should state on the face of the Bill that **the majority** of the OLC assistant ombudsmen should be lay in order to achieve a balance and allay consumer concerns about independence from the legal profession.

**Handing complaints about lawyers back to their profession** - Professional bodies like the Bar Council are keen to keep the handling of complaints about their members and the Lords have made an amendment which could allow for this. The recent track record of the Bar Council, which is the second largest handler of legal complaints, has shown that it deals with those complaints more effectively than the Law Society. There is therefore empathy for those professional bodies that may feel that the handling of complaints by the proposed OLC, in the West Midlands, may be poorer than the current system they employ.

However, this must be looked at from the point of view of the consumer as well as the profession. The consumer needs to have one place to which they bring any legal complaint about any member of the legal profession. The consumer needs to know that all complaints are handled consistently regardless of the type of lawyer who is the subject of the complaint. The Bill was designed for the OLC to be a single

point of entry for **all** legal complaints, handling all redress complaints consistently, regardless of the type of lawyer complained about. It should remain so.

Logic would not support an OLC that only handles complaints about some but not all lawyers. If service complaints were to be handed back to Approved Regulators as the Lords amendment seeks to allow, with potentially the OLC handling complaints only against solicitors, it would be questionable as to what would be the gain for the consumer of moving the overwhelming majority of staff from the Law Society's complaint handling arm to a new building at great expense. As a result of this Bill, the consumer would only have lost the Offices of the Legal Services Ombudsman and Legal Services Complaints Commissioner. These two efficient and cost effective offices that have achieved real results for the consumer, would be abolished.

The Ombudsman and Commissioner supports the principle behind the OLC, but does not believe arguments by the Bar Council should be dismissed without serious consideration of why it is arguing its case and how its concerns that standards in complaints handling could fall, will be mitigated.

**“Polluter pays” mechanism** - The Bill will allow the OLC to charge the legal profession for handling its complaints. A charge can be made both through a standard levy on the profession as a whole and by individual lawyers paying on a case-by-case basis for complaints made against them to the OLC. Amendments by the Lords are designed to alter the “polluter pays” aspect, for example, to ensure that lawyers would only have to pay after the event for complaints upheld against them.

While this could be seen as beneficial for lawyers, there could be serious drawbacks for the system as a whole. The OLC will need to forecast its funding needs each year based on the number of complaints it would expect to receive. By making “polluter pays” only apply to those complaints that are found to be upheld, this makes the OLC’s ability to predict its income much more difficult. It could also be presenting the OLC with a perverse incentive to uphold complaints.

Under the circumstances presented by the amendment (where the profession can only be charged for complaints that are upheld), the general levy on the profession would have to rise to meet any shortfall in the OLC’s funding. Alternatively, Government would need to underwrite the difference between the OLC’s forecasted required funding and its actual income, which would help remove any perverse incentive to uphold complaints.

The “polluter pays” mechanism should therefore be left to operate so that the OLC (like the Financial Ombudsman Service) is free to charge the profession for the handling of all complaints made whether or not they are later upheld. The Ombudsman and Commissioner would support Government in overturning amendments made in relation to this by the Lords.

**Power for the OLC to award costs against the complainant -** The Ombudsman and Commissioner is pleased to note that following her representations the Bill has been amended to ensure there is clarity that the OLC would only make a costs award against a complainant in the event of unreasonable behaviour. This will mean that some unscrupulous lawyers would find it more difficult to deter genuine complaints than could have been the case under the original provision in the Bill.

**Redress recoverable as a debt from the respondent -**

If, following an OLC ombudsman’s determination, the respondent fails to pay redress, the OLC ombudsman will be able to take enforcement action for a payment of compensation on behalf of the complainant (with the complainant’s consent). The Ombudsman and Commissioner had been concerned that under the Bill’s original wording, vulnerable clients would be left to take enforcement proceedings to gain the compensation awarded to them. The audits undertaken by the Commissioner’s office have shown that in some instances, over 70% of solicitors do not pay compensation unless pursued by their regulator. The Ombudsman and Commissioner is therefore pleased to see that Government has taken these concerns on board and the Bill amended accordingly.

**Costs vs benefits of implementing the new regulation and complaints handling system -**

The Government’s original intention was for the professions to shoulder the whole cost of setting up and running the LSB and OLC. The professions have been pushing hard for the Government to share the costs, particularly those for start-up.

The Bill allows for the Government to contribute to the running costs of the OLC and LSB. It could be argued that it is in the public interest for the Government to assume a proportionate level of the running costs. It might also help to ensure a greater degree of independence from the professions being regulated.

For complaints alone, estimates are that running costs will be approximately £19.9 million per year. However, the current annual running costs of the Law Society’s complaints handling arm (on which it appears the OLC will be closely based) are in the region of £36 million per year. It remains to be seen how

quickly, or if at all, this gap in running costs can be closed before the OLC begins operation. Although the profession will bear the cost of complaints, an inefficient operation will lead to the cost being passed onto the consumer eventually. Government must address this before the OLC is established.

#### **Major changes to complaints handling and the lack of independent review of the Approved Regulators' decisions**

**Major changes to legal complaints handling** - The Legal Services Bill will bring forward fundamental changes to the way in which complaints about service and misconduct are handled. This is not just a matter of the Bill creating a new independent complaints body, the OLC. The Bill leaves it open for the OLC's scheme rules to address fundamental details regarding how complaints will be handled. However, key elements need to be addressed on the face of the Bill, as they are in the consumer's and profession's interest.

It is important that key areas highlighted in this Report are addressed in order to ensure clarity over the jurisdiction of the OLC ombudsman scheme and how it will work in practice.

**The current legal complaints handling process** - Expressed in simple terms, where a consumer has a complaint about a legal service that they have received, they must first raise this with the individual lawyer or organisation that delivered the service. If the complaint cannot be resolved at this stage, then the consumer can take their complaint to the lawyer's professional body. Should the consumer remain dissatisfied, they can ask the independent Legal Services Ombudsman to investigate the way in which the professional body handled the complaint. The Ombudsman can investigate/review both service and conduct elements of the complaint and in certain circumstances can award unlimited compensation. The

Ombudsman has powers under the Courts and Legal Services Act 1990 including those that allow her to: recommend that the professional body reconsiders a case, to issue formal criticism of a professional body's handling of a complaint and to recommend the payment of compensation to the consumer from the professional body or the lawyer complained about. If the consumer is unhappy with the Ombudsman's decision, they can have their case judicially reviewed. The Ombudsman in the last year<sup>17</sup> reviewed 1,886 cases and was subject to only 9 judicial reviews. None of the judicial reviews were upheld. Under the Legal Services Bill, the current Legal Services Ombudsman's review stage will be removed leaving the possibility of many more judicial reviews of the OLC's decisions.

**The future legal complaints handling process** - Where a consumer has a complaint about a legal service, they will still need to raise this with the lawyer or organisation first. If the complaint is not resolved at that stage, the consumer can take their complaint to the OLC. The OLC will consider the complaint and can award redress to the consumer. If the consumer accepts the OLC's decision on the complaint, then the decision is binding on the consumer and the lawyer. If the consumer does not accept the decision, it is in effect a non-decision and the consumer can either judicially review the OLC's decision or take the whole complaint to the courts for resolution. If at any stage of its investigation, the OLC ombudsman is of the opinion that the complaint includes an allegation of misconduct that should be investigated, they may refer the complaint to the Approved Regulator to make a decision on the misconduct elements of the complaint. There is no mechanism for review of the decision to refer the case to the Approved Regulator or of the Regulator's action (or inaction) in relation to the referral.

<sup>17</sup> Office of the Legal Services Ombudsman business year 1st April 2006 to 31st March 2007

# “Consumers very often do not distinguish between service and conduct in the way in which their complaint is expressed.”

**Concerns with the new complaints handling process** - The proposed OLC process is similar to that used in FOS. Although the FOS scheme is highly regarded as an effective complaints resolution service, the structure of regulation within which it operates and the nature of its industry are very different from the legal services industry. For example, the financial services industry has a single regulator in the FSA whereas numerous separate Approved Regulators will exist for legal services, as well as the overarching regulator, the LSB.

Legal services complaints can often have intertwined within them a mixture of elements that can require both redress and a need for disciplinary investigation about the practitioner. Consumers themselves very often do not distinguish between service and conduct in the way in which their complaint is expressed. Yet the Bill requires these elements to be separated and handled by two different bodies. This presents the risk of double handling of complaints, potential delay and parallel processes that could produce conflicting outcomes.

Further complexities could arise for the consumer from the separation of the potential misconduct element of the complaint from the decision about redress. A consumer who feels they have a legitimate allegation of misconduct against a lawyer could find that:

- The OLC decides that the allegation of misconduct does not need to be referred to the Approved Regulator **or**
- The OLC refers the alleged misconduct to the Approved Regulator, who is not obliged by the Bill to inform the consumer of the outcome **or**

- The OLC refers the alleged misconduct to the Approved Regulator who decides to take no action or takes action that the consumer does not feel is appropriate to the allegation made.

There is no mechanism for the consumer to ask for a review of any of these decisions, as there is no longer the Legal Services Ombudsman independent review available to them. The consumer is left to consider a costly and time-consuming judicial review of the OLC's decision not to refer the alleged misconduct or the Approved Regulator's response to the referral.

If it considers it appropriate to do so the OLC can make reports to the LSB in the event of a serious or repeated failure of the Approved Regulator to act, but it is unclear as to what the LSB would then do with such a report, as the Bill is silent on this and, particularly as the powers it has are unwieldy.

The proposed new OLC process will therefore represent to the consumer the loss of the independent Legal Services Ombudsman review as against the current scheme. Crucially it is this stage that is completely independent of key decisions on the complaint and the appointment with the powers to put things right, at no cost to the consumer, that will be lost from the system.

The Ombudsman and Commissioner considers that it is possible to mitigate against the weaknesses highlighted in the new process for dealing with complaints. However, these are too important to simply be left to the scheme rules and it is vital that the suggested remedies are placed on the face of the Bill in order to ensure maximum protection for consumers.

# “the Bill should provide for an independent assessor for legal complaints”

To minimise the risk that consumers could be faced with bringing costly and time-consuming court proceedings to challenge decisions made by the OLC ombudsman and/or the Approved Regulators, it is recommended that the Bill should provide for an independent assessor for legal complaints to be established. FOS has an independent assessor<sup>18</sup> on which this could be modelled but it is recommended that this be further enhanced to meet the specific circumstances of the legal complaints handling landscape, where their role needs to independently assess conduct complaints (as described above) handled by both the OLC and the Approved Regulators. This should be a statutory role set out in the Bill and not left to the scheme rules to establish.

The independent assessor for legal complaints would make recommendations, particularly regarding the OLC's decisions to refer individual allegations of misconduct (or not) to the Approved Regulators and the regulators' responses. The independent assessor would also have the powers to award compensation to the consumer for any failings in the OLC's service (this is similar to the FOS Independent Assessor who can recommend payments for FOS poor service, but should be enhanced to allow the legal services independent assessor to actually make the awards).

The independent assessor for legal complaints should sit within the structure of the LSB and would need the statutory duty to make a report to the LSB at least annually, which showed the recommendations made and the response to those recommendations of the OLC ombudsman and Approved Regulators. By sitting within the LSB, costs would be kept to a necessary minimum, for this important consumer safeguard.

**The sharing of information between the OLC and Approved Regulators** - The OLC rules **must** require a report from the Approved Regulators on every case that has been referred from the OLC for potential misconduct. The OLC could then use this information to build up a picture of any systemic problems in regulation. The Bill should also be strengthened so as to require even individual examples of minor breaches of rules to be referred by the OLC to the Approved Regulator so that the regulator can use the intelligence to identify possible serial offenders.

**Addressing failures by Approved Regulators** - Through experience, we know, that on occasion, regulators can and do fail. At the very least it is likely that different regulators may apply differing standards in their approach to misconduct. The current Legal Services Ombudsman has been able to ensure that conduct issues have been pursued, but this power will not rest with the OLC in future, and the LSB's ability to require action of the Approved Regulators will be severely limited. Therefore there is a very real risk that the OLC and LSB will have inadequate powers in order to act in the event of the Approved Regulators failing to deal effectively with misconduct.

It is therefore recommended that the Bill is also strengthened to allow the OLC to publish its findings on complaints, (much as the Legal Services Ombudsman can do now) and not be reliant on referring matters to the LSB which would have to use its lengthy public censure procedure in order to publish criticism of an Approved Regulator's action or inaction. As well as a lengthy procedure, the Lords amendment to the use of the LSB's powers would require them to be used only

<sup>18</sup> More detail on the proposed independent assessor for legal complaints will be available on the website [www.olso.org](http://www.olso.org) and [www.olsc.gov.uk](http://www.olsc.gov.uk)

if a regulatory failure could be shown to be against the regulatory objectives **when taken as a whole**. In many serious cases, it might be difficult for the LSB to satisfy this test in order to use its powers to protect the public. Even the original wording in the Bill which set the threshold for use of the LSB's powers at **"an adverse impact on one or more of the regulatory objectives"** would not allow the LSB to act sufficiently swiftly to deal with serious shortcomings by the Approved Regulators.

It is questionable how often the necessary powers to protect consumers could legitimately be used by the **light touch** LSB, when facing an adversarial and unwilling Approved Regulator. Regulatory deadlock appears to be a more probable outcome. The Ombudsman and Commissioner would therefore support the Government in overturning amendments that seek to weaken or limit the LSB's powers.

### 3. Alternative Business Structures (ABS)

The Bill opens up new ways of working so that lawyers could combine with different types of lawyers or other professionals (e.g. accountants, architects) in order to deliver services. There are measures in the Bill to protect the public, including rules about who can own ABS firms and how they have to be structured. The Ombudsman and Commissioner welcomes the prospect of innovation in the legal services market that could come from the introduction of ABS.

**Assessing the impact of ABS on vulnerable clients and rural areas before full implementation** - ABS may turn out to be a positive development, but it could also have unpredictable

and unwanted effects. Some aspects of legal work can be undertaken more profitably than others. Therefore some legal firms have a business model that relies on a mix of work, including more profitable elements in order to offer essential, but less lucrative services, for example welfare benefits or housing advice. There is a fear that ABS could promote increased competition for the more profitable work, which could lead to some existing businesses finding it difficult to offer the same range of essential services or compete with new providers. It is a concern that vulnerable clients (older people, disabled people, ethnic minorities and those in rural areas) could find themselves with limited access to justice.

Government has suggested that there needs to be a controlled implementation in order to ensure that access to justice is maintained and the Ombudsman and Commissioner supports this.

ABS is the **"great unknown"** within the Bill. Much of the detail of ABS licensing and rules is left to the LSB (which must make licensing rules within 12 months of an order to do so by the Lord Chancellor).

The licensing rules must minimise the risk highlighted by Which?<sup>19</sup> of the consumer being steered towards buying **"packages"** of services from ABS providers when some parts of the package could be available at a comparable quality and competitive price elsewhere. For example conveyancing services provided by an ABS provider could be offered with will writing and insurance attached. The consumer needs to

<sup>19</sup> Which? "House of Commons 2nd Reading Briefing on the Legal Services Bill" May 2007

# “ABS is the “great unknown” within the Bill.

know that they are free to buy the other two services from other providers, and the Ombudsman and Commissioner would support the Bill being enhanced to cover such scenarios.

When the Access to Justice Act 1999 removed legal aid from most personal injuries claims, claims handling agents emerged. After well-publicised abuse of consumers by some claims handling agents, Government is now bringing these under regulation. The concern is that ABS is too loosely described in the Bill, and without testing the effects of ABS on the legal market, those looking to profit from vulnerable consumers may exploit unforeseen loopholes.

A cautious and controlled introduction of ABS is therefore to be supported so that any unwanted effects for consumers can be fully explored before widescale introduction. However, ABS should not be delayed unnecessarily as it has the potential to bring benefits and innovation into the legal services market.

## Conclusion

## Conclusion

The Ombudsman and Commissioner's concerns are that as shown in this Report, the detail contained within the Legal Services Bill would benefit from further debate and amendment in order to:

- Balance the needs of the consumer with the concerns of the profession, particularly by ensuring that the LSB has the powers to act swiftly and decisively in the consumer's interest without being bound by unwieldy processes;
- Ensure that all the detail which will set out the way in which the OLC will handle complaints is not simply left to the scheme rules but set out, where appropriate, clearly on the face of the Bill;
- Review the cost-effectiveness of the proposed OLC and LSB against what these bodies will achieve for the consumer and profession and against what already exists. It is a concern that the better performing parts of the system (such as the existing independent Legal Services Ombudsman review) are being swept away, without its functions being replaced fully.

Although the Ombudsman and Commissioner remains supportive of the principles contained in the Bill, she has concerns about the details, including clarity over the LSB's purpose and the ability for the powers to actually be used in the event they are needed to protect the public interest.

The Ombudsman and Commissioner is pleased that Government has included areas within the Bill that consumers and those working within the profession have argued for. However her greatest concern is that the positive changes, particularly with regards to complaint handling, that the consumer and profession are relying on to emerge from this Bill, may become watered down in their implementation. Too much importance has been left to the scheme rules, when clear unequivocal statements could be laid down on the face of the Bill.

Although there are many areas which still need to be considered within the Bill, the Ombudsman and Commissioner would like Parliament to consider those areas highlighted by this Report with a view to amending the Bill as necessary.

