

Briefing for the Public Bill Committee for the Legal Services Bill from the Legal Services Ombudsman for England and Wales and the Legal Services Complaints Commissioner

PURPOSE

This briefing has been prepared for the Public Bill Committee, to provide an overview of two areas identified by the Legal Services Ombudsman and the Legal Services Complaints Commissioner in her Special Report into the Legal Reforms.

1. THE NEED FOR AN INDEPENDENT ASSESSOR FOR LEGAL COMPLAINTS

The Bill is, in part, based on how the financial services sector is regulated. For complaints, the financial services sector has an Independent Assessor and, the Ombudsman and Commissioner considers it important that a similar position is established for the legal services sector, through the Bill.

The financial services sector has one regulator (the Financial Services Authority), who handles all allegations of misconduct. It also has for redress, one complaints handler, the Financial Ombudsman Service. In contrast, the legal services sector will have an overarching regulator the Legal Services Board (LSB); many Approved Regulators (e.g. the Law Society), handling complaints about the alleged misconduct of their members; and the Office of Legal Complaints (OLC) handling complaints for redress.

The Independent Assessor for legal complaints allows an avenue for consumers to raise their concerns in two particular circumstances described in the Ombudsman and Commissioner's Special Report. This avenue is not provided for in the Bill, with judicial review as the only option. They are, for a consumer who has complained about their lawyer, where:

- The OLC ombudsman decides that the allegation of misconduct should not be referred to the Approved Regulator; and
- The OLC ombudsman refers the alleged misconduct to the Approved Regulator who takes no action or takes action that the consumer does not feel is proportionate or appropriate to the allegation made.

The Independent Assessor would, on receipt of a complaint from a consumer, assess if the Approved Regulator handled the allegation of misconduct effectively and, the action taken was appropriate in the circumstances. Consumers sometimes have high expectations that, for example, the lawyer will be stopped from practising, because of their allegations. The Independent Assessor can help assure the consumer that, even though this did not happen, the appropriate action was taken for the circumstances presented in their individual complaint. As the Independent Assessor is independent of the Approved Regulators and their decision, this will promote greater confidence for the consumer.

This oversight of how the Approved Regulator handles individual allegations about misconduct is not provided for in the Bill. This is unlike the present circumstances where the current Legal Services Ombudsman can, on receipt of a complaint, investigate how the professional bodies handled the allegations of misconduct. The Legal Services Ombudsman can recommend that the professional body reconsider its actions. This was evident in the way the Legal Services Ombudsman referred the miners' compensation cases back to the Law Society and, more appropriate regulation was started by it against the solicitors involved.

Neither the LSB nor the OLC has the equivalent powers under the Bill, and their scheme rules could not cover this effectively. It is necessary that the position and scope of an Independent Assessor for legal complaints be on the face of the Bill.

This position would not be appropriate for it to sit with the OLC, as one of the circumstances is an assessment of the OLC ombudsman not referring the allegations of misconduct to the Approved Regulator. The Independent Assessor for legal complaints should, therefore, be **within** the structure of the LSB, and report formally to it at least annually to it. This will allow costs to be kept to a minimum, but its value would be seen as an essential and impartial safeguard for consumers and the profession.

To allow this, a probing amendment to the Bill could be:

Clause 137

Page 72, line 10 at end insert “The scheme rules should provide for an application by the complainant to be made to an independent assessor for a review of the adequacy of any investigation and decision as to whether any determination was fair and reasonable by:

- **the OLC ombudsman in not referring to an Approved Regulator an allegation of misconduct; or**
- **the handling of the allegation of misconduct by the Approved Regulator.”**

(Consequential amendments may be necessary to other parts of the Bill.)

2. POSSIBLE NARROWING OF THE JURISDICTION ON LEGAL COMPLAINTS

Currently, the Legal Services Ombudsman can investigate any allegation about a legal professional as long as it is properly made. This allows the Ombudsman to investigate even if the consumer can only express their unhappiness in general, lay terms.

However, the Legal Services Bill states that the OLC can only consider complaints which are defined as “acts or omissions” by a legal professional. This may require the complainant to articulate their grounds for complaint in a more sophisticated and precise way than is currently accepted.

The current Legal Services Ombudsman is able to review cases, for example from former miners or their dependants where they 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 her powers will allow it.

It is feared that in future, lawyers may challenge the authority of the OLC ombudsman to investigate 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. The concern is that the OLC ombudsman may be delayed or even prevented from investigating the complaint as a result.

What is needed to protect the consumer and to allow the OLC ombudsman to consider complaints without undue delay or challenge, is a change to the wording in the Bill to reflect the powers of the current Legal Services Ombudsman and to help avoid unnecessary legal challenges. The proposed amendment is shown below:

Clause 125

Page 64, line 35, leave out “an act or omission of” and insert “any allegation which is properly made about”.

Page 65, line 3, leave out “an act or omission include an act or omission” and insert “any allegation which is properly made include any allegation which is properly made”.

(This is a simple amendment to Clause 125 but the Bill will also require other consequential amendments throughout Part 6 and wherever the term “act or omission” is used to define complaints, which can be accepted by the OLC).