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**BSB response to OLC Scheme Rules consultation**

April 2022

By email to: [consultations@legalombudsman.org.uk](mailto:consultations@legalombudsman.org.uk)

Thank you for the opportunity to respond to your consultation on proposed changes to the Legal Ombudsman Scheme Rules. We hope that you find our responses to your questions helpful.

As you will see, we are concerned that imposing a much shorter time limit for complaints would not be in the interests of consumers but, as we agreed at our last joint Board meeting, we would be delighted to work with you in offering guidance to consumers as to how to make a complaint. We would agree that this should include making clear the benefit of making complaints in a timely manner so that complaints can be properly assessed while the evidence is still readily available.

Please find our response at Annex 1.

Please do not hesitate to get in touch if you require further information or clarification.

Your sincerely,

Ewen Macleod

Director of Strategy & Policy

Bar Standards Board

## Annex 1

### Response to OLC Scheme Rules Consultation

1. In drawing distinctions between the functions of approved regulators and the Office for Legal Complaints, the Legal Services Act 2007 envisages that, where relevant, clients' issues will be dealt with by the Ombudsman in the first instance<sup>1</sup>. This is intended to lead to a better consumer experience and gives complainants the benefit of redress, rather than expecting them to be satisfied with a disciplinary finding against the regulated professional in question. As a result, it is not likely to be in the interests of consumers to reduce access to the system of redress.

*Q1: Do you agree that there is merit in reducing the time limit for complaints to be brought to the Legal Ombudsman to one year from the date of act/omission or date of awareness (whichever is the later)?*

2. No. This proposal is likely to have a negative impact on access to redress for legal consumers and hence on consumer access to justice.
3. In particular:
  - Some consumers are likely to lose access to meaningful redress, by virtue of having been ruled out of scope of the LeO's jurisdiction.
  - A reduction to the time limits for the LeO is likely to mean an increase in the number of inquiries which are raised with the BSB in the first instance, as well as the resultant proportion of cases in which we take no action, since matters of conduct are less likely to be raised. This may leave consumers dissatisfied.
  - For any consumers who are unable to bring a case to the LeO, and who understand that raising a case with the BSB will not result in them receiving redress, there is no potential source of recourse but the courts. Any potential increase in court cases would undermine the purpose of an Ombudsman scheme for legal services.
4. We understand the necessity of encouraging complainants to raise issues in a timely manner, and recognise that complaints which are not raised promptly can be more difficult to investigate. We would support guidance that encourages legal consumers to raise complaints promptly.
5. Overall, we feel that the proposed time limit reduction goes too far. In addressing the consultation, we would like to see the OLC suggest a more generous time limit which would enable consumers to access redress without risking being ruled out of scope due to delays in bringing their case. We have been encouraged by statements in the media that the LeO is succeeding in bringing cases under control in the short term<sup>2</sup>, and believe that proposals elsewhere in the consultation are likely to help the LeO to make efficiencies and bring down caseloads overall. We would suggest that this may mean that the OLC can afford to be more generous in addressing the time limit for cases, without such a sharp reduction.
6. We support the proposed addition of a discretionary mechanism which can extend the time limits under specific circumstances and would be grateful for the opportunity

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<sup>1</sup> Legal Services Act 2007, Explanatory Notes; [Part 6: Legal Complaints](#)

<sup>2</sup> For example: <https://www.legalfutures.co.uk/latest-news/leo-boss-efforts-to-close-complaints-more-quickly-starting-to-work>

to comment further on the guidance which the consultation mentions will govern its use in practice.

7. We would expect to continue to refer cases to the LeO for an initial assessment, even where they appeared out of time, and would want the Ombudsman to rule on whether a case which appeared out of time would have the discretionary extension applied (if not, we would consider the case via our procedures).
8. This would likely mean an increase in administrative discourse between the relevant BSB and LeO teams and could raise the administrative demands on both organisations unless appropriately addressed through the relevant guidance.

*Q.2: Do you agree that there is benefit in introducing a new Rule 2.11? (Declining to accept a complaint for investigation)*

9. Yes. We support efforts to reduce waiting times for consumers to access redress, and hence to reduce the size of the LeO's Pre-Assessment Pool. Ultimately, we believe that this proposed rule will have a net benefit for consumers of legal services by speeding up access to redress where appropriate.

*Q3: Do you support the proposed amendments under Scheme Rule 5.7? (Ombudsman discretion to dismiss or discontinue a complaint)*

*Q4. Do you have any concerns about the implications of the changes to Rule 5.7?*

10. We have some concerns about the proposed introduction of Rule 5.7(p), which would allow the Scheme to dismiss complaints which may be considered disproportionate. We note that some legal complaints are by their nature voluminous, and that expert assessment and investigation may be warranted to assist the complainant in navigating a complex legal services environment.
11. We would also note, however, that some of our concerns may well be alleviated through the proposed guidance, and so would be interested to review the proposed guidance for the operation of this rule before passing judgment.

*Q5: Do you support the intention to look at being able to widen the extent of the delegation of Ombudsman decision making powers?*

12. Yes. We believe that this proposal could help to speed up decision-making by the LeO, and that effective delegation of decision-making and flexibility are reasonable organisational ambitions for the LeO. If delegation is allowed to occur, we believe this is likely to be in the interest of consumers.

*Q6: Do you support the proposal to limit the right to an Ombudsman decision where no substantive issues are raised with the investigator's findings?*

*Q7: What factors should an Ombudsman consider when deciding whether a decision is required?*

*Q8: Are there any alternative ways in which the Legal Ombudsman could adjust the rules to achieve a reduction in the number of complaints going to final Ombudsman decision?*

13. We note that proposed revisions to Rule 5.19(c) may have a limited impact on the number of cases which become eligible for BSB handling if the Ombudsman decision

in question is a jurisdictional one, as cases ruled out of scope become eligible for the BSB to handle. We do not imagine the impact will be major.

*Q9: Do you support a review of the case fees model with a view to implementing a model which better encourages early resolution of cases?*

*Q10: Do you support the proposals outlined in the additional changes? If not, please outline which ones you do not support and your reasons why.*

14. We note that proposed changes to Rule 2.8 may reduce the number of cases eligible for BSB handling, and would welcome this proposal, as these cases are likely to be more suitable for the redress system.

15. The BSB broadly supports the ambition of these proposals in terms of modernising and streamlining the LeO's rules and processes, and speeding up access to redress for those consumers who require it. We do not have any comments on specific questions beyond those made previously.