

SRA response

"OLC draft scheme rules", Office for Legal Complaints consultation

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Introduction

1.

The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society [<http://www.lawsociety.org.uk/>] for England and Wales . We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors' firms and their staff.

2.

We welcome this consultation by the Office for Legal Complaints [<https://www.legalservicesboard.org.uk/research/reports>] (OLC), and look forward to supporting the OLC in creating a single independent Ombudsman scheme for all consumer legal complaints. We currently work closely and co-operatively with the Legal Complaints Service (LCS), and are keen to develop an equally positive relationship with the OLC when it becomes fully operational during 2010.

3.

We responded to the OLC's summer 2009 consultation '*Towards establishing the Office for Legal Complaints*', and while we appreciate the emphasis of the first exercise was on early and informal identification of issues, many of the views we expressed at that time remain relevant to us and are reflected in our response to this consultation.

4.

Below we have dealt with each consultation question in turn.

SRA comments on consultation questions

Q1. Should we include some additional guidance in the scheme rules about how in-house complaints handling inter-relates to the Ombudsman scheme? If you agree, what form should this take? More generally, what can we do to promote good customer service in the legal profession? Please give examples and reasons.



5.

We believe that the final version of the scheme rules could usefully include more guidance on the relationship between the Ombudsman scheme and in-house complaints handling processes. This is preferable to the draft scheme rules containing specific information on how in-house complaints handling should work.

6.

We note the point made on page 4 of the consultation covering paper that the Legal Services Board [<http://www.legalservicesboard.org.uk/>] has powers under the Legal Services Act 2007 [<http://www.legislation.gov.uk/ukpga/2007/29/contents>] to set requirements for in-house complaints handling. As this power has not, as yet, been exercised, we believe that the scheme rules should focus on providing guidance as to how in-house and OLC complaint handling mechanisms relate to each other, rather than the detail of how an in-house complaint handling scheme should function. Providing guidance that is generic and non-prescriptive will allow practitioners to tailor their in-house scheme to fit with the OLC's framework, but in such a way that it remains consistent with any requirements set down by the relevant approved regulator.

7.

Promotion of good customer service can be achieved by identifying and communicating best practice to legal services providers, perhaps through events or by creating a stand-alone bulletin (that could be issued once or twice a year) to all providers, setting out best practice and practical steps that can be taken to enhance customer service.

Q2. Should the OLC ask the Lord Chancellor to consider exercising this power to include the others we have suggested? Should we include anyone else? Please give your reasons why or why not.

8.

We have no suggestions for other individuals or organisations that should be given authority to complain to the OLC, though we would not oppose such a move.

Q3. Are there any gaps in who can come to the ombudsman scheme? Should we ask the Lord Chancellor to consider including anyone else and, if so, whom and why?

9.



We note the OLC's position on page 5 of the consultation covering paper that it will accommodate those needing assistance to complain, or those requiring a complaint to be made on their behalf, and will be responsive to situations where third parties may be involved in lodging complaints on behalf of others. We are supportive of this position, and believe that the wording used at 2.2 (page 5) of the scheme rules consultation draft will reasonably account for differing complainant circumstances that the OLC may need to respond to.

Q4. What do you think about the current proposal for the time limit to bring a complaint? If you think it should be different, please say what time limits you would include and why.

10.

We agree with the amended time limit for making a complaint. The inclusion of an assessment by the OLC of the complainant's knowledge is welcomed and we believe this should cover all circumstances.

Q5. Do you have any comments on the approach to resolving disputes set out in the scheme rules?

11.

We endorse the OLC's commitment (on page 7 of the consultation covering paper) to encourage early and informal resolution of complaints where possible. The scheme rules rightly emphasise that informal resolution should always be the preferred option, and we have no objection to the wording proposed at 5.17 of the scheme rules consultation draft.

12.

We believe it would be useful at some stage for the OLC to set out examples of informal resolution techniques it might try using (as guidance perhaps to 5.17 of the scheme rules). We are not sure whether 'informal resolution' would necessarily be a meaningful term for those reading the scheme rules, such as members of the public who had not used an ombudsman service previously, without examples of how informal resolution might look in practice.

Q6. The scheme rules also set out a framework for our ongoing relationship with approved regulators. Is this framework sufficient? If you think we should include something additional, what form should this take?

13.



In our response to the OLC's previous consultation '*Moving toward the OLC*', we emphasised the importance of establishing clearly defined criteria to support working relationships with approved regulators.

14.

We welcome the statement on page 8 of the consultation covering paper that strong working relations are vital in order to "*...make sure that both the systems for making sure consumers have access to redress and the regulatory structures work well and in a coordinated way*".

15.

The legal professions' regulators are becoming increasingly aligned with each other and now share an oversight regulator and work toward a common set of regulatory objectives framed by the Legal Services Act 2007 [<http://www.legislation.gov.uk/ukpga/2007/29/contents>] (the Act). The OLC is integral to this new framework.

16.

We believe that Schedule 15 part 18 of the Act provides sufficient scope for the OLC to make clear the mechanisms it intends to use in working with approved regulators. The scheme rules are effectively the OLC's blueprint for its operational launch, as the OLC itself makes clear on page 2 of the consultation covering paper by stating that "*the rules will underpin our decisions and process...*". The inter-relationships and the sharing of information with approved regulators will be central to the OLC's effectiveness, and we consider it essential for the scheme rules to provide more detail about this.

17.

We note in the scheme rules consultation draft that, while there are references throughout to various circumstances when approved regulators may interact with the OLC (such as those mentioned in paragraph 5.61), there is no specific section to set the principles under which the OLC will engage with other organisations. We recommend that the OLC includes a seventh section in the scheme rules to cover this more explicitly, and draw together the high-level principles governing how it will work with approved regulators and other relevant organisations. Schedule 15(18) of the Act would be the starting point for such a section.

Q7. Are there any other points or issues you wish to raise in relation to the draft scheme rules? Do you think

there is anything missing? Is there anything you disagree with? Please give your reasons.

18.

We appreciate that the rules are intended to set the high-level principles by which the OLC will operate. However, we remain concerned about the potentially limiting effect of some specific rule references within the current consultation draft of the scheme rules.

19.

In our comments under Q6 we suggest the OLC considers adding an additional section to its scheme rules to set out the principles governing the OLC's relationships with external organisations, including approved regulators. We believe that such an additional section could explore more fully the workings of section 144(1), to give more context to how the OLC generally will share information with approved regulators, manage relationships with them, and encourage effective and proportionate information exchange protocols. This section could give more context to support individual ombudsmen in making decisions as to what information can be shared with approved regulators, in such a way that complainant privacy is upheld and regulatory activities are not compromised or jeopardised.

20.

In our previous response we also highlighted our concern over the provision within the draft rules relating to provision of information by the OLC to approved regulators. Section 140 of the Act requires the OLC to provide approved regulators with copies of determinations, and we note that this is reflected in the draft scheme rules at paragraph 5.48. However, we are concerned that the draft rules do not explicitly support the wider sharing of information between the OLC and approved regulators at earlier stages of the investigations process where this is necessary to protect the public, and believe that failure to reflect this in the high-level scheme rules this could prove detrimental to the public interest.

21.

As part of the SRA 's current information sharing arrangements with the LCS, we have agreed processes to support intelligence sharing and the referral to us of solicitor conduct matters. We receive regular management information updates from the LCS in respect of incoming complaints to ensure our regulatory approach is appropriately directed and we are responding effectively to emerging issues. We welcome the OLC's assertion in the consultation covering paper that it is being encouraged to *"... put in place strong day to day working arrangements with each of the*

regulators with responsibility in this sector" and we believe that the scheme rules should set the foundations upon which such arrangements can be built. We would welcome the opportunity of further discussions on this issue.