

## SRA response

### *"Review of the scheme rules and case fee structure", Legal Ombudsman consultation*

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#### *Introduction*

1. The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society for England and Wales. We regulate solicitors, the firms in which they practise and all those working with them. We are also a licensing authority for alternative business structures (ABS) operating within the legal services marketplace.
2. We regulate in the public interest and take action where it is needed to keep consumers well-protected when they access legal services. To do this we rely on a two-way flow of information and a strong working relationship with the Legal Ombudsman.
3. As such we welcome the opportunity to take part in this consultation, and have set out our comments below.

#### *SRA comments*

*Do you agree with these principles? Are they the right ones to guide this review of the Legal Ombudsman's scheme rules?*

4. Yes, we agree with the suggested principles on pages 3 and 4 of the consultation paper. We particularly welcome the commitment to focus on reviewing rules which have *"...proved problematic in view of the experience of operating the scheme in practice"*, and updating them to keep pace with changes in the wider consumer marketplace.

*Do you have any views on these proposed changes to the scheme rules?*

5. We support the proposed chapter 1 scheme rule changes.

*Are there any additional changes to Chapter 1 that in your view are necessary? If so, please explain your reasons and provide evidence to support your view.*

6. We do not have any additional changes to propose.



*How appropriate do you think the current £1 million income/asset limit for charities and trusts is? Why do you think this? Can you provide any evidence to support your view?*

7. We have considered the extent to which the existing £1 million income threshold for defining a charity or trust as either large or small remains appropriate. The Legal Services Consumer Panel's 2011 report Study into the provision of legal services to small charities (PDF 62 pages, 748K) shows that some 86% of charities registered with the Charity Commission in England and Wales have income below £500,000, meaning that the majority of these organisations are already eligible to access the Legal Ombudsman's services if they require them.
8. However we have previously provided evidence across to the Legal Ombudsman in relation to larger charities and their ineligibility to access the Ombudsman scheme where their annual income exceeds £1 million. Our view is that this does not automatically identify such organisations as therefore having capacity to take their disputes with lawyers instead to the courts. As not-for-profit organisations existing for the benefit of the people they represent, the potential detraction of charity income towards legal bills due to inaccessibility of an Ombudsman scheme does not seem to us satisfactory. The potential also for genuine cases by larger charities regarding poor service by lawyers to simply not be heard due to potentially prohibitive legal costs also seems counter-intuitive to the direction elsewhere of the Legal Services Act 2007.
9. We would be interested to look more closely at the application of the scheme rules in this area and the extent to which the current eligibility criteria prescribed in the Lord Chancellor's 2010 order might instead be limited to the nature of an organisation's status first and foremost. If an organisation is a registered charity and therefore is not-for-profit, we would argue that the Legal Ombudsman's scheme ought to be available for them regardless of turnover.

*Do you agree with our proposal to bring our service in line with other Ombudsman schemes and accept complaints from prospective customers? Why do you think this? Please include evidence.*

1. We agree that where appropriate the Legal Ombudsman is right to try and align its scheme rules with those operated by other Ombudsman schemes. There is also a strong consumer interest here in better supporting members of the public who have not appointed a lawyer but find themselves



unwillingly targeted by unacceptable practices, such as agents pressurising people or acting aggressively through sales calls made to prospective customers.

2. We also accept the rationale set down in the consultation paper to update the scheme rules so that they may be well-positioned ahead of any moves by the Lord Chancellor to bring Claims Management Companies (CMCs) under the Legal Ombudsman's jurisdiction.
3. We agree it is in the public interest for the Legal Ombudsman's scheme to be available to members of the public who are impacted by the actions of a lawyer. Members of the public do not always have to be engaged as a client of that lawyer to be impacted by their commercial practices. In making any changes to the scheme rules in this regard the Legal Ombudsman should ensure that due consideration continues to be given to identifying service matters and providing information regarding misconduct across to the relevant approved regulators.
4. For example, scenarios where a prospective client receives "...persistent and unsolicited cold-calling..." (page 9 of the consultation paper) from a lawyer may well have regulatory implications, that would therefore require consideration by the regulator in question. There may be intertwining service and misconduct matters arising from third party complaints, so in this example advertising practices that may be permissible from a regulatory perspective may contain elements of unacceptable service, in the Legal Ombudsman's view, or vice-versa.
5. Underpinning any change here must therefore be a renewed commitment by both the Legal Ombudsman and each approved regulator to work closely in sharing information where it is appropriate to do so, and in ensuring that issues of poor service and misconduct alike impacting third parties are identified, investigated and above all put right in a timely manner. If the Legal Ombudsman determines as a result of this consultation exercise to move ahead with its proposal to extend the scheme rules to third parties we would welcome early dialogue to ensure that this can be achieved.

*Do you think there is evidence to support a change to the rules to include a list of specific categories of third parties who may complain to the Ombudsman? Which categories would you favour? Why? Please provide evidence to support your view.*



15. We note the Legal Ombudsman's conclusion on page 11 of the consultation paper that "...a 'list' approach may help to negate some of the negatives of third party complaints by being clear about who may come to the Ombudsman and in what circumstances." We agree that the Legal Ombudsman is right to specify the categories of any third party it intends to include in the scheme rules.
16. We are aware that currently there is a gap between the remits of the Legal Ombudsman and the approved regulators in supporting third parties who may have been impacted by the actions of a lawyer. The widening of the Legal Ombudsman's scheme rules may be one way of reducing this gap. Third parties who, for example, suffer a financial loss in a conveyancing transaction as a result of the actions of another party's lawyer, is one category that may be relevant for inclusion on a list.
17. We believe that a list could also include service complaints arising from sub-contracted legal services - for example, where a consumer who is a customer of a bank receives a legal product from that bank, but the bank had sub-contracted the provision of that service to a lawyer. The consumer in question should have the right to seek redress from the lawyer in question if required. (This should also cover lawyers and law firms that sub-contract certain legal services to other lawyers on behalf of a consumer).
18. Consideration should also be given to clarifying the circumstances under which residuary beneficiaries are entitled to seek redress through the Legal Ombudsman in the scheme rules. While a beneficiary may not have played a direct role in the appointment of a lawyer acting as an executor they may still be directly impacted by the actions of that lawyer or the service they provide. In the current edition of the scheme rules this seems to us a 'grey area' requiring some clarification.
19. If the Legal Ombudsman decides to extend this part of the scheme rules we would like to support this process by discussing the practical application of the changes. Certain third party complaints could, for example, give rise to scenarios where the Legal Ombudsman experienced difficulties in requiring a lawyer to disclose confidential information about their own client. We would therefore be keen to discuss the practicalities at play here and put in place mechanisms capable of ensuring that service and conduct matters alike can be identified and assigned appropriately.



20. The suggested addition to section 132 of the scheme rules seems suitable to cover any situation arising as a result of a successor firm taking ownership (or not as the case may be) of a complaint arising from the preceding firm. The ongoing emergence of ABS and new commercial practices across the legal services marketplace may give rise to, for example, more re-brands and purchase of existing legal practices by new enterprises. It is important, therefore, for the Legal Ombudsman to have flexibility within the scheme rules to approach such situations and ensure that consumers caught up in these situations continue to have access to redress as required.

*Do you agree with the proposed change so that complaints can be accepted up to six years from the event or three years from the knowledge of the event? Please provide evidence to support your view. If you think the current arrangements are problematic, please provide solutions you would find appropriate.*

21. Overall we support the proposed increase in timescales for making complaints. Clearly there are circumstances within legal services in which a cause for complaint only becomes apparent over time. We believe that this proposed change is therefore in the best interest of the public.
22. In making this change there may be practical implications to be aware of if the timeframe in a particular case had increased significantly, not least of which is the possibility for a legal firm to have ceased to exist. The SRA Indemnity Insurance Rules 2011 [<https://www.sra.org.uk/solicitors/handbook/indemnityins/content>] require SRA-regulated entities to put in place insurance cover with a qualifying insurer capable of providing run-off cover for 6 years following the date at which the practice ceases. Regulatory mechanisms such as these may have some bearing towards the Legal Ombudsman's ability to provide suitable redress to a consumer seeking that redress at some point after the expiration of a firm's run-off policy.
23. As per our comments above, if the Legal Ombudsman decides to implement this proposed change we would welcome the opportunity to discuss practical applications of the change.

*What do you think our financial limit should be for compensation? Please provide evidence to support your view.*



24. We agree that the Legal Ombudsman is right to consider increasing the existing maximum compensation limit, both in terms of greater parity with other Ombudsman schemes but also to better accommodate the small number of cases it receives that are more satisfactorily resolved with higher compensation payments.
25. The nature of products and services lying at the heart of complaints considered by the Financial Ombudsman Service (FOS) can be inherently high value, particularly in terms of investments, stockbroking arrangements and portfolio management. The compensation levels operated by FOS seem therefore appropriate for those circumstances. For legal services it may be that complaints involving particularly high value transactions are more appropriately managed via courts.

*Please express your preferences in relation to options 1 and 2. Please explain your reasons.*

26. As evidence to date has not shown any negative impact for consumers arising from the Legal Ombudsman waiving initial case fees, we believe the public interest is well served and we see no reason for change. We therefore support option 1.

*Do you have any views about whether it would be worthwhile to consider a different approach to the collection of unpaid case fees through, for instance, the levy? Please explain your reasons why or why not.*

27. We would be interested to explore different approaches towards the collection of unpaid case fees with the Legal Ombudsman following the consultation process.
28. While case fee collection is first and foremost an issue for the Legal Ombudsman there may be regulatory implications to consider for firms that effectively refused to co-operate in this regard (for example in respect of SRA Principle 7 requiring SRA-regulated practitioners and firms to "...*comply with (your) legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner*".) We would therefore be willing to discuss this further with the Legal Ombudsman following the conclusions of this consultation exercise.