

## **Response on behalf of Manchester Law Society to Legal Ombudsman Scheme Rules Consultation**

**This response is submitted on behalf of Manchester Law Society ('MLS') members. By way of background, MLS has a membership of in the region of 3,600 solicitors and firms. It is one of the joint five local law societies along with Birmingham, Bristol, Liverpool and Leeds. MLS has an active COLP and COFA forum which meets regularly.**

We propose only to comment on the 6 key changes being considered in the consultation. Our members do not have any issues/concerns in relation to the additional, more minor, changes being proposed.

As a general point, we agree that it is critical to ensure that a) the Ombudsman is able to continue to provide an independent and impartial complaint resolution service but also that b) the profession's reputation is not adversely affected by operational delays within the organisation.

Publicity around delays at the Legal Ombudsman being due to an increase in complaints against the profession, for example, when the actual causes are more operational in nature, do not help to generate confidence in the Legal Ombudsman either from a complainant or service provider perspective.

Provided therefore that the proposed changes are clearly explained and justified in order to "improve the customer experience, reduce the overall customer journey, deliver improved performance and support a sustainable recovery", not just a way of cutting the backlog, we agree in principle to the changes proposed.

### **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)?**

We agree with the proposal to reduce the time limit for bringing a complaint to not later than 1 year from the date of the act or omission being complained about or from when the complainant should have realised that there was cause for complaint. If a client has a genuine "poor service" complaint, it is difficult to envisage circumstances where a complainant could not reasonably have known they had grounds for complaint within a year of such poor service or alternatively within a year of becoming aware of issues giving rise to a complaint. The complainant does have the right of redress through the courts which gives them more time if necessary coupled with the discretion of the Ombudsman to extend the 1 year time limit if fair and reasonable to do so.

We also agree that the transition to the new timescales will require careful management and communication to ensure that firms are able to accurately update their complaints guidance and client engagement/terms of business for clients.

We also agree that the 6 month time limit for bringing a complaint to the Legal Ombudsman after final response should remain in place in circumstances where the firm has properly signposted the complainant to the Legal Ombudsman in its final response.

### **Q.2 Do you agree that there is benefit in introducing a new Rule 2.11?**

This relates to when the Legal Ombudsman can decline accepting a complaint for investigation. Provided that the Ombudsman can be satisfied as to the competency of those performing the review

of cases in the pre-assessment pool and provided there are very clear criteria of complaints which can be concluded without full investigation, we can see merit in introducing such a rule.

We also agree with the need to have any recommendation to dismiss at this early stage reviewed by an Ombudsman if requested by the complainant.

**Q3: Do you support the proposed amendments under Scheme Rule 5.7?**

The question of proportionality will, we think, need careful explanation to complainants. To them, their complaint (no matter how trivial it may seem to others) will often be significant. We note the Ombudsman is alert to this by confirming that detailed criteria will need to be developed for an Ombudsman to refer to to ensure that the decision-making is fair and consistent.

We also agree that an extension of the wording at Rule 5.7(c) to allow an Ombudsman to dismiss if a reasonable/revised offer is made by the service provider during the investigation process has merit. We agree that in such circumstances, no case fee should be payable by the firm.

We agree with the proposal of a new rule 5.7 (p) to enable the Ombudsman to dismiss a complaint where it would be disproportionate for an investigation to be carried out, subject, again, to there being clearly defined criteria.

Similarly, we agree with the proposal for a new rule 5.7(q) enabling the Ombudsman to prevent additional complaints being added to an ongoing investigation if they could have been raised sooner.

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

It is possible that the introduction of these new rules enabling dismissal of complaints could lead to complainants complaining about the Ombudsman/might see it as not acting independently/fairly. This is not to say that the changes should not be introduced but the Ombudsman will need to be alert to the possibility and ensure that there is explanatory guidance which is easily accessible to complainants and with clear criteria on which the Ombudsman is able to exercise his discretion etc.

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

We can see some logic to this in principle but the Ombudsman would need to be satisfied with the training, guidance and quality assurance of investigatory staff and decision-making. There is also the potential concern (which arises in eg internal misconduct issues at the SRA) of being seen as acting as investigator, prosecutor and judge with no separation of powers/responsibilities. If the Ombudsmen would need to be heavily involved in supervision/training and development etc, will there actually be any significant time-saving benefits? We do not have enough information to be able to comment on that.

**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?**

We can see the benefits identified in the consultation of an Ombudsman triaging a decision request instead of having to spend time drafting and issuing a full decision but this will require clarity on the part of the investigator in setting out the grounds for their findings. If, having done so, there are no

substantive reasons given for objecting, we can see that time could be saved in not having to have a final decision drafted. The Ombudsman has highlighted the situations where a final decision might still be required as set out in the consultation.

**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?**

Our members endeavour to resolve complaints during the first-tier complaints process before it reaches the Ombudsman. Unfortunately, it is not always possible to do so but on the whole, it is not for want of trying. The case fee system is often seen as unfair to firms in circumstances where there is no fee being charged to the complainant in what are often seen as spurious complaints. Having the ability to dismiss such claims in the early stages before being accepted for investigation as per earlier proposals in this consultation may help to alleviate this.

We can see that a flat fee imposed irrespective of the stage at which a Legal Ombudsman complaint is resolved (after being accepted for investigation) does not encourage service providers to try and resolve complaints as early as possible and a tiered case fee structure based on the stage of the process reached might be more appealing but we can also see scope for further argument about which tier a particular complaint resolution falls into. Without more data and information to assess the possible options and their consequences, it is difficult to comment further at this stage.