

# Consultation response

## Legal Ombudsman: Access to redress for legal and other professional services

### Overview

1. The proposals to create a voluntary scheme are overdue and welcome, although thin on detail. A voluntary scheme would help to close gaps in redress, reduce confusion and enhance competition in the market. There is sufficient scale of unregulated businesses to create demand for this. Online services should be within scope, although there are challenges around definition of legal activity and firms operating from a foreign jurisdiction.
2. Implementation of the ADR Directive could mean a voluntary scheme is not needed if all legal services providers are brought within the Legal Ombudsman. However, should the Government's proposals fall short of this, urgent action to start a voluntary scheme is needed.
3. Where practicable, the voluntary scheme should run on the same basis as the mandatory jurisdiction, particularly in areas like time limits. However, the Legal Ombudsman should present alternative proposals for the complaints handling processes it would use, as its unit cost is far too high to attract participation. Otherwise, trade associations will either remain without an ADR provider or give their business to another scheme – thus adding to the regulatory maze.
4. Although legal and other services are being offered in one-stop shops, redress remains unbundled. Rationalisation of the consumer redress landscape would be beneficial; the Government should seize the opportunity provided by the ADR Directive to lead the way on this. The Panel reserves judgement on whether the Legal Ombudsman, or some other arrangement, is best positioned to take responsibility for complaints in the other professional services arenas.
5. A relevant consideration is the impact of an expanded remit on the scheme's unit cost, complaints-handling standards and standards-raising work. Stakeholders would need to be convinced that legal services consumers would not lose out due to the impact on the Legal Ombudsman of the organisational change needed to widen its jurisdiction.
6. A common complaints portal would help to mask the existing complexities for consumers and we encourage the Legal Ombudsman to pursue this idea in tandem with other redress schemes.

## The proposals

7. The Legal Ombudsman has issued a discussion paper to help it consider the future strategic direction of the scheme. In particular, it is seeking views on:
  - Creating the voluntary scheme provided for within the Legal Services Act and thus providing a single point of entry for all complaints about legal services;
  - Whether its scheme should go wider to cover other professional services where there is currently no consumer redress mechanism, such as for accountants and architects, on either a voluntary or compulsory basis; and
  - Rationalisation of the ombudsman landscape and options that would make things easier for consumers, such as a common entry portal

## The Panel's response

8. The consultation questions are answered in turn below. In addition, the Panel attended a Legal Ombudsman workshop to support the discussion paper. This response should be read alongside our submission to the Ministry of Justice simplification review which partly covers similar issues.

**Q1. Do you agree that these are the right risks and issues? Please give your reasons and include evidence that demonstrates the impact on consumers and businesses.**

**Q2. Are any risks and issues missing? Please provide evidence and reasons.**

9. We agree these are the right risks and issues. The consultation event to support this discussion paper identified universal agreement that the system 'isn't working' and needs to be fixed. The Panel discussed this at length in its submission to the Ministry of Justice simplification review and we refer you to this document rather than repeat our arguments and evidence here. The debate should now focus on solutions.

**Q3. We would welcome your comments (supported by evidence where possible) on whether this approach to a voluntary scheme would assist businesses and consumers by promoting simplicity and effectiveness for them in relation to redress.**

**Q4. Is this proposal for the scope of a voluntary scheme the right one to be thinking about? Please state your reasons why or why not.**

**Q5. Are there any issues or risks that we would be aware of about this approach? Is there anything else what we have not considered that you think is missing? Please provide evidence and reasons.**

10. The Panel has long called for the Legal Ombudsman to establish the voluntary scheme provided for in the Act. It was the will of Parliament that a voluntary scheme could be created so very good arguments would need to be advanced to prevent this. We hope the need for a voluntary scheme will soon become redundant because the Government will use the ADR Directive to mandate that all legal services complaints be brought within the scheme's jurisdiction. However, in a deregulation climate, it may

be attracted by alternative options. The outcome of the Ministry of Justice Simplification Review is another unknown, but there seems to be wide support for extending redress across the whole market.

11. Clearly, the Legal Ombudsman will want to consider its plans when the Government's intentions become clearer on both fronts. Should it be intended that all legal services complaints, widely defined, be eligible for investigation by the Legal Ombudsman by 2015, then it makes little sense to create a voluntary jurisdiction that would only last for a few months. But should the proposals fall short of this, the Legal Ombudsman should continue to develop its plans. This should then happen with urgency given how long the voluntary scheme has been pondered over and ongoing detriment in areas where redress is unavailable like will-writing.
12. In the absence of guaranteed access to ADR across the market a voluntary scheme would help to close gaps in redress and remove some of the confusion which the Legal Ombudsman and other organisations have previously described. Although the main purpose of a redress scheme is to remedy individual injustices, a voluntary scheme would enable providers to reap the wider benefits of ombudsman schemes, such as learning from complaints data to raise standards. The regulatory objective to promote competition would also be enhanced, as providers could more easily signal their commitment to consumer protection and assure consumers there is somewhere to turn if things go wrong.
13. It would have been helpful if the Legal Ombudsman had conducted preliminary research to assess the likely demand for a voluntary scheme among unregulated legal services businesses. Nevertheless, we note LSB research data which suggests people who seek advice about legal problems approach reserved providers only 20% of the time.<sup>1</sup> Moreover, unregulated providers have gained quite significant market shares in sectors such as will-writing. Therefore, the legal services market is growing more diverse and there could be many providers who could benefit from a voluntary scheme. The potential demand should not just be considered on a market-by-market basis – as few individual markets have many unregulated providers – but instead based on the total potential demand across the whole legal services market.
14. We support the idea that online services could be included within scope. This is a growth area and is likely to continue to be. The online environment confers benefits but also some heightened risks for consumers, for example in areas like default choices, misuse of personal information and unclear pricing where services are bundled. Online services will pose challenges for the Legal Ombudsman, including where the business is based overseas and in deciding when a legal service was actually provided (the division between information and advice can be particularly blurred in the interactive online world). The Panel is starting new work on DIY law which will explore these issues in depth.
15. The discussion paper suggests the scheme might be open to all businesses in respect of all 'legal activities'. This would have natural advantages in enabling the widest possible coverage for consumers. However,

'legal activities' is very broadly defined in the Act, to the extent it may be unclear which activities are intended to be captured. The voluntary scheme would be quickly undermined if the Legal Ombudsman had to reject complaints due to jurisdictional uncertainties. The Panel's submission to the Ministry of Justice simplification review recommends further work on this issue. However, the starting position should be the consumer's view of what a legal service is.

16. The Panel agrees that, where practicable, the voluntary scheme should run on the same basis as the mandatory jurisdiction. This would seem especially sensible for types of complainant, and for scheme rules in areas like time limits and compensation award limits. However, the processes that the Legal Ombudsman uses to resolve complaints may need to be adapted for the voluntary scheme in order to make this a financially viable proposition for providers. The scheme's unit cost – in excess of £2,000 – is unaffordable; providers would either not participate or use alternative ADR providers, thus fracturing legal services redress and adding to the regulatory maze. While the Legal Ombudsman may offer trade associations discretion over how to apportion costs between a general levy and case fees, their often small membership base means the financial impact of signing up to a voluntary scheme would hit hard.
17. It is unlikely to be sufficient for the Legal Ombudsman to continually shave its unit cost; this would not bring it down to an affordable or competitive level. Instead, the Legal Ombudsman may need to radically rethink its dispute resolution model in order to offer a unit cost in the low hundreds of

pounds. However, in doing this it must not lose those elements which provide added value and must still provide a service that is recognisably an ombudsman scheme. The standards-raising side of its work and promoting access to hard-to-reach groups are two examples of this. We encourage the Legal Ombudsman to present a series of alternative models should it consult on the detail of a voluntary scheme.

**Q6. We would welcome your comments (supported by evidence where possible) on whether there is a need to consider ADR in relation to professional services.**

**Q7. Is the proposal for the possible scope of the remit of the Legal Ombudsman broadening to include professional services the right one to be thinking about? Please state your reasons why or why not.**

18. The Panel's statutory scope is limited to representing the interests of consumers of legal services in England and Wales. Therefore, we may not offer views on behalf of consumers who lose a planning consent battle with their local council, or who think their accountant has offered bad financial advice. However, we are interested where other professionals offer legal services as an ancillary part of their business, and we are keen to support integration of legal and other services in one-stop shops. We are also concerned with the potential impact on legal services consumers – for better or worse – of the Legal Ombudsman taking on responsibility for new business areas.
19. In an increasingly converged economy, providers are appealing to the consumer's

- desire for convenience by bundling services in one-stop shops. The house purchase example used in the discussion paper is just one example of this. The ABS reforms are designed to support the multi-channel business environment, but complaints and regulation systems remain unbundled. This situation is creating both gaps and overlaps in redress provision across the economy. The Panel has previously indicated its support for the rationalisation of redress schemes and we see the ADR Directive as giving fresh impetus to such an initiative. We were pleased to note wide support for this position at the consultation event.
20. Recent government policy might suggest a preference for competition between redress providers to promote efficiency. As noted at the consultation event, there is an important distinction between competition *in* the market and competition *for* the market. In the former, multiple redress schemes exist for businesses to choose between, which raises concerns about a race to the bottom. The latter model would see government or regulators commission a single provider to offer redress services in a given arena for a fixed period following a competitive tender exercise. While the second model is more likely to work in the consumer interest, both risk creating an even more fragmented redress landscape than we have now. Also, there is a risk that contracts are awarded principally on cost grounds, which risks creating perverse incentives. For example, schemes might cut down on work aimed at raising standards; this increases their expenditure but should deliver economic efficiencies in the longer-term.
21. The ombudsman is just one of a range of dispute resolution models and it may not be necessary to turn to this in every consumer situation. Early findings from our study which benchmarks the Legal Ombudsman against other schemes indicate that alternative models are relatively cheap, quick and have high advocacy ratings. The Legal Ombudsman will therefore need to justify to Government why its model of redress is necessary in this sector.
22. At the consultation event, research was cited showing that the ombudsmen model is especially useful when there is a need to equalise a power imbalance between the parties. Certainly there are wide gaps in knowledge and power between consumers and lawyers that justifies the inquisitorial approach at the heart of the ombudsman model. These characteristics are shared among professional services generally. Similarly, the ombudsman model is marked out by its focus on using complaints data to raise industry standards and promoting access to under-represented groups. Access to justice considerations make it especially important to make sure the full diversity of consumers can access redress. The role of legal services in underpinning economic transactions, the significant contribution that the sector makes to GDP and the need to safeguard the international reputation of the UK legal system, all mean that the standards-raising role is vital. Again, similar dynamics could be argued to apply in other professional services. Therefore, for reasons of societal fairness and economic growth, there is a public interest case for using the ombudsman model in the professional services sector.

23. It is then a different question to ask whether the Legal Ombudsman or someone else should be a hub for professional services complaints. The Northumbria University paper sets out a range of situations where non-legal businesses provide some legal advice. Also, the legal sector is at the forefront of multi-disciplinary practices. Since legal rights and duties underpin the economy, such overlaps are to be expected and the Legal Ombudsman is in many ways a logical home for such complaints. However, there are also overlaps between many of the professions listed in the paper and financial services, which raises the possibility that the Financial Ombudsman Service would be also be a good candidate to handle complaints in these arenas. There is too much uncertainty about the future direction of Government policy for the Panel to reach an informed view at this point, but it must be the consumer journey that shapes the future redress landscape.

24. Finally, the Legal Ombudsman needs to consider whether this is the right time and way for it to expand. It wishes to reduce its unit cost and higher caseload volumes should normally be expected to increase economies of scale and reduce unit cost, but numbers of complaints in the suggested areas are likely to be low in number and quite complex which could have the reverse result. We are also conscious that the Legal Ombudsman is still a relatively new body; while complaints systems are reasonably bedded down, the standards-raising side of its work remains at a relatively early stage. It will need to convince stakeholders that taking on new complaint areas would not compromise its performance on complaints handling for legal services consumers or

distract it from developing fully its standards-raising programme.

**Q8. We would also welcome views on any area of this paper, or if there are additional areas that you think are relevant and would also help to inform this debate.**

25. We agree the common complaints portal idea is worth pursuing further. Even if this just masks the complexity, rather than resolves it, the consumer's journey through the maze would at least be made easier.

## September 2013

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<sup>1</sup> Legal Services Board, *Market impacts of the Legal Services Act 2007 – Baseline Report (Final) 2012*, October 2012.