

Janet Edwards  
Legal Ombudsman  
Po Box 6803  
Wolverhampton  
WVI 9WF

30 October 2015

Dear Ms Edwards,

### **Consultation: Proposed ADR Scheme Rules**

The Legal Services Consumer Panel welcomes the opportunity to respond to the Legal Ombudsman's (LeO) consultation on proposed changes to its scheme rules.

It is important to register at the outset our disappointment at the events which have led to this consultation and at a time when the legal sector should be signposting to one dispute resolution entity. LeO's decision to withdraw its application to become an approved Alternative Dispute Resolution (ADR) provider under the UK Regulation<sup>1</sup> implementing the EU Directive<sup>2</sup> has led to consumers being signposted to multiple providers, leaving room for confusion. Arguably, it has also had an impact on due consideration being given to LeO's role in handling complaints from unregulated legal services providers.

We hope LeO makes an application to the Legal Services Board (LSB), post consultation, without further delay. Indeed our response makes recommendations for amendments which might prevent further delay in getting accreditation. The UK's implementing Regulation<sup>3</sup> requires the LSB to assess LeO's proposed scheme rules and to decide whether LeO meets or can meet the prescribed requirements to become a certified ADR entity. The Panel is worried about the impact of further delay should the LSB find some of LeO's proposals do not clearly and unambiguously accord with the requirements of the Regulations. Specifically, we disagree with LeO's plan to introduce a second time limit relating to when an act or omission occurred. It is our belief that this goes beyond the permissible grounds prescribed for in the Regulations. We believe this risks going beyond what the Regulations permit, and risks restricting access to redress in a way

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<sup>1</sup> The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and information) Regulations 2015 No. 542

<sup>2</sup> Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

<sup>3</sup> The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and information) Regulations 2015 No. 542

that the Regulations did not anticipate. We also disagree with LeO's proposal to retain some of its existing grounds for refusing to deal with a complaint. In our view, the grounds set out in the Regulation are exhaustive; only these should be permissible. For avoidance of doubt LeO may wish to stick with the wordings in the Regulations.

The Panel has provided answers to the consultation questions below. We hope our concerns and suggestions help LeO in its final deliberations and help to ensure consumers of legal services have access to a single point of dispute resolution.

## **Answers to consultation questions**

### **Is the description of our approach, in section 1, to the application of the rule clear?**

- There is scope for confusion and ambiguity if LeO introduces a supplementary ground for refusing to deal with a case based on the time that has passed since the act or omission complained of was committed.
- The ADR Regulations allow ADR entities to refuse to deal with a complaint on six grounds. In our view, these grounds are exhaustive and only one relates to a time limit; a complaint must be submitted to an ADR entity within 12 months from the date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint. The Regulation does not permit ADR entities to operate rules which allow them to refuse to deal with cases based on the timing of the act/omission, or consumer's awareness of the act or omission. LeO's scheme rules must be compliant with the letter of the legislation without inadvertently introducing barriers to redress. Embedding a second time limit on the face of the scheme rules, or in any accompanying guidance is likely to be considered non-compliant with the ADR Regulations, and would restrict access to redress for those who may have legitimate and meritorious cases. Moreover, attempting to incorporate this into the application risks introducing further delay and risk that any application is rejected for going beyond the requirements of the Regulations, thereby prolonging the existing confusion and uncertainty to the detriment of consumers and scheme members.
- We understand LeO's concerns about how it might deal with complaints that happened a long time ago. However, LeO already accepts complaints about acts or omissions that fall outside its current prescribed time limit as illustrated by examples in the consultation paper. Moreover, there is no evidence to suggest that LeO would be inundated with historic cases. Therefore, it is our view that these cases should be considered to be within jurisdiction under the Regs. Afterwards, an ombudsman would review whether there was sufficient evidence upon which to make a merits decision. After such a review, LeO could dismiss the case if it considers that there is insufficient information or evidence. These cases could be

refused under the permissible Regulation ground of “*dealing with such a type of dispute would seriously impair the effective operation of the body*”. This is a sufficiently broad ground for refusing to deal with these types of cases where appropriate.

**Do you foresee any difficulties in applying the approach in section 1?**

- Yes. LeO proposes to add an extra time limit and break up the grounds for refusing to deal with a complaint into separate sections. For ease of reference and clarity all the grounds for refusing to deal with a complaint should be clearly outlined under one section, and the language of the Regulation adopted to the letter. Splitting up the grounds for refusals or introducing a new time restriction will confuse and could limit access to redress.

**Should we explore specifying a period of time within b) i) beyond which the presumption should be that the investigation of the case would seriously impair the effective operation of the Scheme. a) If so what should that period of time be?**

- No. Specifying a period of time beyond which there would be a presumption that the investigation of the case would impair the effective operation of the Scheme is tantamount to introducing a new time limit. This goes beyond what is prescribed in the Regulations and goes against the spirit of opening up access to redress. Any cut off period is likely to be arbitrary. It is fairer and more proportionate to deal with such matters on a case by case basis.

**Or do you consider that no time period should be set because the issues would be case specific?**

- Yes. We consider that the issues should be assessed on a case by case basis, especially as these cases are likely to be few in numbers.

**Do you consider it would be reasonable to use the new rule 5.7(d) to refuse to deal with complaints about acts or omissions that took place so long ago that a fair practical and proportionate investigation can no longer be conducted and safe conclusions cannot be reached at all, or without unreasonable or disproportionate commitment of time or resources? a) If not how do you think we should deal with these complaints?**

- We believe that the grounds for refusing to take a complaint as set out in the Regulation under section 13(f) is sufficient to deal with these types of complaints. ‘*dealing with such a type of dispute would seriously impair the effective operation of the Body*’. This is suitably broad to accommodate cases which happened a long while ago. However, this exemption should be applied in exceptional circumstances only. We would recommend that LeO record all instances where it is used and publish these in line with the ADR requirement to publish information ‘known’ to them.

**Is the description of our proposed approach, in section 2, clear?**

- The Consumer Panel has serious concerns about the proposed approach outlined in section 2 of the consultation paper. This approach proposes to introduce more grounds for refusing a complaint than is allowed under the Regulation. We do not accept the rationale behind introducing these grounds, and would question whether the scheme would be deemed compliant with the Regulation under these circumstances.

**Do you foresee any difficulties in applying the approach in section 2?**

- We foresee difficulty in LeO gaining accreditation should it decide to introduce additional grounds for refusing to deal with cases as proposed. Grounds for refusal which go beyond that prescribed in the Regulation risk being considered non-compliant with the ADR Regulation.

**As set out above, the ADR Regulations allow ADR entities to refuse to deal with disputes that do not meet a pre-determined minimum and maximum monetary threshold. Should we explore having prescribed monetary thresholds for the value of claims?**

**a. If so, what should the thresholds be?**

**b. How should we identify and verify the amount?**

- LeO has not made the case for prescribing minimum monetary thresholds for the value of claims. There is not sufficient evidence or a clear rationale in the consultation paper to justify the added value of adopting this approach.

**Do you have any other views on our proposed new sub section of chapter 4?**

- We disagree with the creation of this subsection and the inclusion of more grounds for refusing to deal with a complaint under this subsection.

**Are there any other grounds which you feel should be in the new subsection “complaints not covered”?**

We would recommend that no additional proposed grounds should be added, for the reason as set out above.

I hope these comments are helpful. Please contact Lola Bello, Consumer Panel Manager, with any enquiries.

Yours sincerely



Elisabeth Davies  
**Chair**