



# Our response

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## Introduction

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The Legal Ombudsman is the complaints handling body set up under the Legal Services Act 2007 as an independent ombudsman scheme, to resolve complaints about lawyers in a fair and effective way.

The Legal Ombudsman launched its service in October 2010. Our purpose is to improve today's services and tomorrow's industry reputation by resolving disputes impartially, promoting service excellence and being a champion of best practice. One of the ways we promote service excellence is to feedback our experiences and insights, and raise issues through responding to consultations such as this.

We have read your consultation paper regarding first tier complaints handling with interest. We broadly agree with the proposed revisions to your requirements and guidance, and would welcome closer working with the Legal Services Board (LSB) and approved regulators to ensure that authorised persons understand their obligations and can access information about best practice in complaints handling.

Any statistics quoted in this response are from our legal jurisdiction only.

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## General views

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Overall, we believe that many authorised persons understand their obligations. However, as we mention below, there are still some key requirements which firms often miss from their signposting information.

There are two areas which we consider need addressing further. Firstly, we believe that as a sector we need to review what we mean by "best practice" in complaints handling. One of our key areas of focus this year is to mine our own data to develop baseline information. This will allow us to assess how well authorised firms are performing in complaints handling, what key issues need

addressing, and how can we support development in this area. We also aim to update our guidance on what is best practice and look at different ways to share these resources with authorised persons. We will engage with both regulators, authorised persons, and other key stakeholders as we develop this work.

Secondly, we need to address how we identify and encourage firms who could benefit from improving their complaints handling. While there is guidance available and we run regular courses, which focus on best practice, there is perhaps a tendency for these resources to be mainly accessed by those who have the time, or by those who view this area as a priority. In its recent consultation report<sup>1</sup> the Law Society highlights concerns about small firms and sole practitioners who may be disproportionately affected by the time it takes to deal with complaints that come to the Legal Ombudsman, and by case fees. Part of the response to this is also to look at how they can best access resources – to ensure they respond to complaints as effectively as possible at the first tier, to increase the possibility of resolving complaints, and to ensure that a case fee waiver is an option if it does come to the Legal Ombudsman. Again this is an area we will liaise with regulators on as this work develops.

In relation to your consultation document, we agree that the statistics you use give cause for some concern. However, it is also important to bear in mind that, anecdotally at least, we know that customers do not necessarily take on board the information which is provided to them at the beginning of an instruction. This means there will always be a discrepancy between a customer's recollection and the information that has been provided by an authorised person. This is highlighted by additional data, which we collect during our investigations.

We collect data at two stages of the process. At the beginning we ask customers how they heard about the Legal Ombudsman, and at the end our investigators record whether an authorised person's complaint information signposted to the Legal Ombudsman. In 2015/16, 20% of customers told us that they heard about the Legal Ombudsman from their lawyer. However, our

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<sup>1</sup> <http://www.lawsociety.org.uk/news/stories/law-society-view-on-legal-ombudsman-funding/>

investigators recorded that customers were signposted to us in 33% of cases<sup>2</sup>. The 33% figure indicates that there is still much room for improvement, but the difference between the two figures urges caution as to how we interpret this information.

As we try to improve this figure we need to bear in mind that, while it is still important to include information about complaints handling in documents such as the client care letter, we also need to think carefully about how customers can access this information. We should also encourage authorised persons to provide relevant information at the point at which it is required.

In our strategy consultation document we also highlight two other areas the Legal Ombudsman will be working on over the coming year.

Under goal 2 (implementing changes to our jurisdiction) we said that we will review the nature of premature complaints (contacts from customers who have not made a first tier complaint) and opportunities for supporting customers and service providers. We do not yet know what this support might look like in our legal jurisdiction, but we do know that we still receive a significant number of calls from customers who have not yet complained to their firm, and who never return to the Legal Ombudsman. In 2015/16 we received just over 11,000 premature contacts from customers, of which just over 2,000 brought their complaint back to the Legal Ombudsman for further consideration. Of course, some of these premature contacts may have had their complaints resolved at the first tier but we also know<sup>3</sup> that many drop out of the complaints process. We already provide support in our legal jurisdiction to premature customers but we may explore whether there are certain groups of customers who would benefit from additional support to make their first tier complaint.

Under goal 3 (creating an improved complaints handling system) we are also committed to reviewing our scheme rules and in particular the case fee

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<sup>2</sup> Both figures represent the % of cases where this information was recorded, as opposed to all accepted complaints.

<sup>3</sup> In 2012 we commissioned research from You Gov to identify why we receive high levels of premature complaints and what happens to customers after their initial contact with us. The report highlights a range of factors including customer fatigue with the complaints process. <http://www.legalombudsman.org.uk/?portfolio=yougov-consumer-experiences-of-complaint-handling-in-the-legal-services-market>

structure. We would like to look at a case fee structure that takes into account at what stage complaints are resolved.

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## **Response to proposed updates to the LSB requirements and outcomes for Approved Regulators**

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We have reviewed the proposed changes to the requirements and outcomes for approved regulators. We agree with all but one change. We know that the BSB and SRA have put together guidance for self-employed barristers so that both solicitors and barristers are aware of their obligations when working together. We suggest that a reference to the existence of this guidance is included in the requirements section. This will make it clear that self-employed barristers work in a different way. Apart from this, the proposed revisions are sensible and take account of the time that has passed since the Legal Ombudsman was set up.

We also welcome the change in emphasis from stating that the “guidance” may be updated, to the “requirements” may be updated. These requirements are some of the basics for good complaints handling and signposting and we know that, while many firms signpost to the Legal Ombudsman, they do not necessarily get all the requirements correct. For example, at the conclusion of their complaints process authorised persons often omit the timeframe for customers to bring a complaint to the Legal Ombudsman. Omitting this information leaves authorised persons open to the potential of a case fee (assuming service has been fine in other respects) as they have not followed a reasonable complaints procedure.

In the work we are doing on first tier complaints handling we are looking at whether authorised persons’ correctly signpost to the Legal Ombudsman, and whether they included all the requirements. This work is still in progress so we cannot give exact statistics at this stage. However, we are finding plenty of

evidence where firms have not included the correct timescale in their final complaint response, or the correct contact details. We also know anecdotally that we still receive complaints which refer to the Legal Complaints Service and on occasion the Office of the Supervision of Solicitors. While these may be firms that have very few complaints, we would still expect that the right organisation is quoted.

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## **Response to proposed updates to the LSB guidance for Approved Regulators**

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We are broadly happy with the revised guidance for approved regulators, but have one specific amendment we would like to suggest.

Towards the end of the guidance you talk about a customer exhausting an authorised person's first-tier complaints process. In our scheme rules<sup>4</sup> we state that a complainant can use the Legal Ombudsman if a complaint has not been resolved within eight weeks. We consider that eight weeks is a reasonable period for an authorised person to review a complaint, and do not expect a customer to have to exhaust a complaints process. We have seen cases where authorised persons have an extended first tier process, which includes appeals to various levels within an organisation. Multi-stage processes can wear a customer down and lead to them abandoning a complaint if they do not think it is worth the effort<sup>5</sup>. In addition we often see cases where an authorised person has not provided a final response to a complaint and then raises questions about the Legal Ombudsman's jurisdiction as their complaints process has not finished. Therefore, we would strongly suggest that the guidance is altered to reflect this.

We support the suggestion that approved regulators should gather and analyse data from both first and second tier complaints processes. As

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<sup>4</sup> Scheme Rule 4.2 a

<sup>5</sup> <http://www.legalombudsman.org.uk/downloads/documents/publications/Part-A-First-Tier-complaints-YouGov-180912-Final.pdf>

mentioned above, we are currently focusing on reviewing the material that we have gathered on first tier complaints handling.

Our aim is to have a clear view of how authorised persons respond to complaints at the moment, what the current challenges are, and what guidance we can provide in order to support authorised persons in this area. Of course, the data we gather only provides part of the picture; therefore, it would be useful to work with the regulators in order to develop a comprehensive picture of complaints handling. We would be happy to work with both the LSB and regulators as they develop this area since it would help ensure that any information gathered by regulators is done so in a way in which it can be compared with our own data. Together we can identify and address any issues which are emerging. As we move forward with our own work we wish to work more with regulators in order to identify authorised persons who may require support, and establish how this can be achieved.

We believe that the level of analysis required should be appropriate to the level of complaints. For example, from our perspective regulators such as the Costs Lawyers Standards Board (CLSB), Intellectual Property Regulators (IPReg), and the Faculty Office have a small number of complaints that come to our office. Of course complaints may be arising at the first tier that we never become aware of, but the nature of their work and their client base suggests that complaints will be fewer.

Thank you for giving us the opportunity to respond to this consultation. If you have any queries about any of the points raised in this response please get in touch with Alex Moore (Operational Insight and Engagement Team) at [alex.moore@legalombudsman.org.uk](mailto:alex.moore@legalombudsman.org.uk).