

Consultation response: November 2011

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# Enhancing consumer protection, reducing regulatory boundaries

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The logo for the Legal Ombudsman features the word "LEGAL" in a bold, pink, sans-serif font. A decorative, flowing pink line starts above the 'L', loops over the 'E', 'G', and 'A', and ends with a flourish above the 'L'. Below "LEGAL", the word "OMBUDSMAN" is written in a black, all-caps, sans-serif font.  
LEGAL  
OMBUDSMAN

## Introduction

Thank you for the opportunity to comment on this important discussion paper.

As you are aware, the Legal Ombudsman is a creation of the Legal Services Act 2007. The establishment of this new service was an active response by Parliament to simplify the system for consumers, so, in this changing world of legal services, there was a clear and accessible route to a safety net of redress.

Our role is two-fold: to provide consumer protection and redress when things go wrong in individual transactions within the legal services market, and also to feed the lessons we learn from complaints back to the profession, regulators and policy makers to allow the market to develop and improve. We have tried to provide you here with a summary of some of the issues we have found from complaints that may assist you develop your approach to regulatory standards, both in developing a framework but also in considering how any framework could work in practice.

In your excellent paper, you describe your vision for legal service as being three-fold:

- consumer protection and redress should be appropriate for the particular market;
- regulatory obligations should be the minimum level to deliver regulatory objectives; and
- regulation should live up to the better regulation principles in practice.

We agree with the principles of included in vision, and particularly welcome that consumer protection and redress are foremost amongst these. While redress and regulation are intertwined, we agree that it is possible to consider these two elements separately within any overall approach to developing a regulatory framework that responds to the demands of a modernising marketplace.

## Our response

It is not for the Ombudsman to comment on whether regulation might be the appropriate response to the issues highlighted from this review. Instead, our focus is on access to redress. A key tenet of the Legal Services Act 2010, providing consumers with effective routes to redress is an area where both UK and EU approaches are developing within a broad principle of acknowledging the importance of joined-up redress within sectors and across different markets.

As you are aware, the market is innovating and becoming increasingly diverse. We agree with your view that it is vital to put consumer at the heart of a system of regulation and redress with sufficient consumer protections in place to ensure that if and when a problem occurs, the system is able to respond to the individual nature of complaints or consumer detriment. This is particularly pertinent given the fast changing pace of current market.

Since our opening in October 2010, there have been innovations and changes in the way legal services are delivered, the impact of which we are seeing on consumers. The onset of ABS is part of an overall pattern of change for the legal services market, encouraging further initiatives by the market to diversify. We thought it might be useful to outline some of these innovations to you here in summary, as these issues might assist you refine your approach to developing a framework designed to enhance consumer protections as well as to reduce regulatory restrictions.

## Impact of bundling of services

We welcome that you are grappling with important questions in this discussion paper, including how the principles you set out interact with regulation in other areas, whether it be financial services, trading standards, or others. This is an important consideration given the changing legal landscape. The different modes of regulation you debate, such as entity focused regulation, activity based regulation and outcome based regulation, also play an important part in framing access to redress. As markets increasingly join up, it will be ever more important that consumers are able to navigate seamlessly between regulation

across different areas. If you take financial and legal services as an example, at present there are additional complexities in place when considering who might access which Ombudsman scheme. This is due to that fact that access to the Financial Ombudsman Service is tied to a regulatory framework based on activity, whereas the legal services market adopted an entity regulation approach, meaning that consumers are able to come to the Legal Ombudsman for a wide range of activities, if the service had been provided by a regulated lawyer. This leads to some potential overlaps in jurisdiction, and also some potential gaps in redress, which we have been working with the Financial and other Ombudsman to map. We will share our proposed approach to Ombudsman working together to ensure joined up redress in this complicated landscape with you separately.

It also seems essential for regulatory principles to be backed by strong enforcement strategies. These should include a proactive approach to consumer protection in addition to the redress that can be provided by an Ombudsman scheme. Your paper touches on the full range of consumer protection options, including insurance, which we agree is fundamental to ensuring effective regulation. We are also keen to ensure that the other aspects of consumer protection – speedy discipline and compensation arrangements – tie up with redress and insurance, so that the system has robust mechanisms in place enabling consumers to benefit from an adequate, joined up, safety net.

In our recently published Strategy 2012-2015 and Business Plan 2012-2013 we committed to look at how we could use the provisions in the Legal Services Act to create a voluntary jurisdiction under section 164 to fill these gaps and ensure access to free and fair redress for consumers of legal services. We look forward to developing this approach with you as you continue to grapple with the vital issue of how regulation and redress should interact in these broader areas of legal services.

The LSB's recent research on first-tier complaint handling has disclosed considerable deficiencies in how legal service providers handle complaints. Against that background, it would be helpful if there were a single set of complaint-handling rules that applied across the legal sector, as there is in other sectors, rather than separate rules from each front-line regulator. A single set of rules would be simpler to communicate to lawyers, consumers and the press, providing a consistent approach to complaint handling - as well as being simpler to operate. This is the situation in other sectors. This would be consistent to the approach taken in other sectors, such as financial services where the same first-tier complaint-handling rules apply across the board to all financial

businesses regulated by the FSA and all holders of consumer credit licences issued by the OFT. Such harmonisation within the legal sector will also help to contribute towards harmonisation between sectors, as the advent of ABS necessitates.

## Consumer confusion

As we have shared with you previously, we are increasingly seeing the consumer confusion that is caused by the overlap between unregulated and regulated services. We often have to put considerable effort into establishing whether an act or omission was conducted by a lawyer and therefore falls within our jurisdiction. In such a complex system, it is little wonder that consumers of services are unclear and confused about how to seek help and redress. We shared some evidence on this in our Annual Report 2010-2011; since then we have commissioned and published research by Leicester University into the issue of consumer confusion in seeking redress. Academics at Leicester University looked in to redress issues in depth, and found that access to redress in was often confusing and posed some risk of consumer detriment. The report also looked into other areas where similar issues were at play; we have included a copy of this research report with this response.

A key tenet of the Act was to bring consumer benefit from innovation and increased choice through competition in the legal services arena. The cases we are seeing highlight that - as is to be expected - business innovation can, and is, happening independently of regulatory structures and frameworks. The area of wills and probate, for example, has shown itself to be at the forefront of some of these market developments, with a rise in use of legal products in relation to wills, diverse providers in the marketplace - from the post office, to banks and then to professional and specialised online providers. Online firms are also often engaged in sub-contracting arrangements which see the reserved legal activity being conducted by different organisations / firms. This has resulted in the evolution of multi layered and complex business structures, some of which can fall within regulation, and some outside.

As an Ombudsman scheme we have significant concerns about the impact that these innovations are having on consumers with regards to rights and access to redress. We are interested to learn how your

proposed approach to regulation will help us all achieve greater clarity in this increasing complex market place.

For us, these examples leave us with a need to clarify the bounds of our jurisdiction – consumers deserve clarity about when and why they are able to access redress for some of these business models and service providers but not for others. The complaints we are seeing tell us that companies are finding ways to develop and innovate, leaving evidence of consumer confusion about how to find help when things have gone wrong. Rather than just being part of a changing legal services market, it seems we are seeing a changing approach to how the more complex consumer services are delivered more generally – a joining up across financial, accountancy and other services, as illustrated in the broad spectrum of providers of estate administration services. As such, we believe that a less segmented response to regulation and redress is central to ensuring that consumers have access to a robust and comprehensive safety net and therefore can have confidence in the legal services market overall.

Thank you again for the opportunity to respond to this discussion paper. If you would like to discuss in more detail any of the issues raised here, please contact Sian Lewis, Policy and Research Officer, Legal Ombudsman at [sian.lewis@legalombudsman.org.uk](mailto:sian.lewis@legalombudsman.org.uk).