

Consultation response: June 2012

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Legal Services Board:  
Approaches to  
Quality

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LEGAL  
OMBUDSMAN

## Introduction

Thank you for the opportunity to respond to this consultation on how we can develop a framework to define “quality” across the legal profession.

The Legal Ombudsman is a creation of the Legal Services Act 2007. We were established by Parliament to simplify the system of redress by resolving complaints independently and informally in a changing world of legal services. Our role is two-fold: to provide consumer protection and redress when things go wrong; and to feedback the lessons we learn from complaints back to the profession, regulators, and policy makers to encourage development and improvement.

In your consultation you identify three dimensions of potential risk to consumers: technical competence, service competence (client care) and the utility of advice. The Legal Ombudsman’s focus is primarily on the level and competence of service that consumers receive, and ensuring there are systems in place to provide redress. In responding to this consultation we have drawn on our experience to demonstrate the key areas of service complaints, and how we could improve the system for first tier complaints handling, and where we have seen that innovation and technology has not led to the required standard of service to consumers.

As you rightly identify, defining quality across such a diverse profession is not an easy task, and therefore we support your aim to develop a framework which is flexible and appropriate to the different areas of the profession. We also think the discussion is timely – as we are all aware the legal sector is changing and developing in innovative ways. One of the assumptions in the consultation is that a liberalised market, combined

with appropriate regulation is likely to deliver the regulatory objectives. While a liberalised market will bring choice for consumers we also need to ensure that there are adequate safeguards in place, particularly for those consumer groups who have less understanding of legal services to know whether or not they are receiving a quality service. While there may potentially be greater choice for consumers, and different ways for them to access legal services, consumers ideally require mechanisms to research and analyse the different options open to them and that is in the public interest.

## Sharing complaints information

In our opinion publishing and sharing information about the work that we do is an important part of our mission to drive improvements in the legal profession. This can be seen in our decision to publish information about Ombudsman decisions, and the commitment in our business plan to mine our data and ensure that we draw out the lessons learned both for the profession, consumers and public. As the sector begins to change it is an ideal time for the different parts of the legal profession to come together and see to what extent it is possible to share more information about the performance of service providers, both to identify risks and areas for learning within the profession, and see whether there is information which can be shared with consumers and the public.

In an earlier response to you on *“Enhancing consumer protection, reducing regulatory boundaries”* we put forward a suggestion for a single set of complaint handling rules across the legal sector. In our opinion a single complaints handling scheme should be a key part of the quality framework for legal services. A common set of complaint handling rules

would be easier to communicate to the profession and consumers and ensure a consistent approach is used. A single scheme will also provide a stronger basis for sharing and analysing complaints information across the legal profession enabling regulators to use both first and second tier complaints handling information to assess risk and identify areas for continuing professional development, all of which is in the public interest. We would welcome an opportunity to discuss the single complaints scheme further with you and other parts of the profession.

## Our response to your questions

**Question 1:** *In your experience, when consumers do not receive quality legal services, what has usually gone wrong? Where problems exist, are these largely to do with technical incompetence, poor client care, the service proving to be less useful than expected by the client – or something else?*

When consumers bring a complaint to the Legal Ombudsman it can be both about the level of service and the technical competence of the lawyer. The most common service complaints we receive are about poor communication (16.8%), costs (16.9%) and not following instructions (16%)<sup>1</sup>. Out of the complaints we investigated between August 2011 and March 2012 61% were found to have been at fault in some way.

Some of these service failings can lead to serious consequences for consumers. However in many cases it can be a relatively minor error or omission which can leave the consumer feeling out of touch and confused about their case. For example *Mrs B instructed a firm to obtain the rental funds she was owed on an overseas property. She received an*

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<sup>1</sup> Complaints received between April 2011 and March 2012

*initial quote but the work took longer than expected because of delays in the overseas courts. Mrs B became concerned that any award she received would be taken up by her increasing legal costs, this led to substantial correspondence with the firm, which increased costs further. We concluded that the firm should have clearly set out Mrs B's options in order to manage her concerns, and we suggested a schedule for managing communication. We also concluded that the firm should have given Mrs B a revised estimate at an earlier stage.*

Going beyond the more traditional approach of instructing a lawyer face to face we have also seen a number of cases where consumers instruct a firm online. Often these have been in conveyancing cases, but we have also seen examples in family law. In the cases we have looked at one of the common complaints is that clients were not fully aware of what their costs were going to be. For example in conveyancing cases where disbursements are detailed in separate terms and conditions rather than in the initial quote.

Consumers often want to complain about the advice, or technical competence of a lawyer: for example about the advice given in a litigation case, or the performance of their barrister in court. We will only look at this from a service perspective: did the lawyer clearly inform their client, including setting out any risks and other options. However as a lay organisation we are not best placed to comment on the technical competence of lawyers.

The way in which firms respond to first tier complaints can also affect consumers' perception of the service they have received. The Legal Ombudsman charges for the cases it investigates, but we can waive this fee in certain circumstances, including when we feel that the firm has done everything that they can to deal with the complaint. Out of the

cases we have investigated to date just over two thirds are considered to be chargeable cases<sup>2</sup>. This indicates that we felt that the firm did not offer a reasonable remedy to their customer, or the firm could have responded to the complaint more effectively.

**Question 6:** *Another possible tool for improving quality is giving consumers access to information about the performance of different legal services providers. How far do you think this could help to ensure quality services? How far is this happening already?*

We recognise that it is important for consumers to have access to information as it enables them to make informed choices about the legal services they are purchasing. This is something which is supported by the Department for Business Innovation and Skills who argue that Ombudsmen and regulatory bodies can help consumers to make better informed choices by publishing complaints information, which will also improve business performance without the need for heavy-handed regulation. However at the same time consumers need access to reliable information in order to make informed choices.

The Legal Ombudsman already publishes anonymous case studies on our website. From July 2012 we will publish quarterly data about all cases which reach Ombudsman decision stage, and publish information where there has been a pattern of complaints, or set of circumstances, around a specific lawyer or firm and we think it is in the public interest to do so.

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<sup>2</sup> All firms have a free case allowance. Some chargeable cases are part of these free cases.

As we have already mentioned, in our opinion a single set of complaints handling rules would provide a basis for collecting and publishing comparable information about complaints from across the profession.

Another part of this picture is the use of comparison websites for legal services, of which a number already exist. Although there is evidence to suggest that comparison sites do not yet play a large role in informing consumer choice<sup>3</sup> this may change if the profession begins to see the value in making their work more visible. The ongoing changes, with consumer savvy firms such as the Co-op entering the market may encourage this, particularly in areas where services can be more easily compared such as conveyancing and will-writing. As the Legal Services Consumer Panel report suggests it would be in the interests of the profession to develop standards for these sites to ensure that consumers have access to a reasonable amount of (quality) information. This could include looking at ways in which consumers can find out details about a firm, for example about the size of a firm, which will give more context to other information which might be published.

However any plans to share information needs to be proportional. We know from our own work on Publishing Decisions that this is a complex piece of work which needs to maintain a balance between producing information that is helpful to consumers and ensuring there is not a negative impact on the legal profession. The feedback we received in particular indicated that smaller firms and those working in areas of law which are more likely to attract complaints are concerned about any disproportionate impact on them.

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<sup>3</sup> Legal Services Consumer Panel, Comparison Websites, February 2012

If there are questions about our response please contact Alex Moore  
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