Department for Business, Energy & Industrial Strategy: Reforming Competition and Consumer Policy

Response

Response on behalf of the Office for Legal Complaints

Introduction

1. The Office for Legal Complaints (OLC) welcomes the opportunity to respond to the Department for Business, Energy, and Industrial Strategy's (BEIS) Reforming Competition and Consumer Policy consultation. The OLC is responding to this consultation as the Board for the Legal Ombudsman, one of the statutory ombudsman bodies in the UK.

2. The Legal Ombudsman was established by the Legal Services Act (2007). Its role is two-fold: to protect and promote the public interest by resolving complaints and providing redress when things go wrong in transactions within the legal services market, and also to feed the lessons it learns from complaints back to the profession, regulators, and policy makers to allow the market to develop and improve.

3. As the consultation looks at reforming consumer policy across a variety of sectors, the OLC has provided a number of comments below based on experience of running a statutory scheme, alongside recognising the specific issues facing users of legal services, and the challenges that the consultation raises. In responding to this consultation, the OLC has focused on three key areas: fake reviews, access to ADR, and the quality and oversight of ADR services.

4. The OLC would welcome the opportunity to discuss these proposals in further detail along with welcoming further clarity on whether the proposals in the consultation apply to all providers of alternative dispute resolution, or whether it primarily focuses on voluntary schemes.

Response to specific questions

Fake Reviews

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

5. It is the OLC's view that businesses should not be disadvantaged from restrictions on commissioning consumers reviews in *all* circumstances and would therefore support options (b) or (c) which have a focus on fake reviews only. Research indicates that consumers value feedback from those who have already used a

service provider, whether this is through Direct Comparison Tools (DCT) or through recommendations from family and friends, so it is important that a consumer has confidence in the authenticity of the reviews available. Companies often actively ask consumers to review products or services once a purchase has been made. This is likely to be one of the main ways consumers are reminded to leave a review. Listing commissioning reviews in all circumstances as an unfair practice could therefore have a detrimental effect on business growth, especially for small business.

6. There are a number of review sites who are already working to stop fake reviews, primarily through verified consumer status. The OLC would encourage Government to support further development of this approach, to ensure that reviews are only made publicly available once a purchase or use of a service has been verified.

Q43. What impact would the reforms mentioned in Q42 have on a) small and micro businesses, both offline and online b) large online businesses and c) consumers?

7. The Legal Ombudsman is committed to improving the transparency of information made available to consumers of legal services. As part of this, they are working with legal regulators and DCT providers to understand how complaints data can be used as an objective indicator of the quality of a service provided.

8. It is important that objective data is not diluted by fake or misleading customer reviews, as this does not enable a consumer to make an informed choice before a purchase. People often require legal services at some of the most stressful times of their lives and it is likely that many people will look to see what others have said about a service provider before working with them. By listing options (b) or (c) as unfair practices, it will give consumers greater confidence that reviews of products and services contain legitimate customer experiences and encourage consumer confidence in a provider.

Access to ADR

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

9. In 2017, the Legal Ombudsman and Solicitors Regulation Authority commissioned research which looked into the effectiveness of solicitors' handling of first tier complaints[1]. Like the research[2] commissioned by the Legal Ombudsman and the Legal Services Consumer Panel in 2012, it showed that there are a number of barriers to making a complaint for customers, such as those with disabilities or grieving for their loved ones. The most common barriers expressed in both reports relate to consumers not having the confidence and information to make a complaint

[1] https://www.legalombudsman.org.uk/media/1jclcouj/first-tier-complaints-report-2017.pdf
[2] https://www.legalombudsman.org.uk/media/avtn4lrm/part-b-premature-complaints-report-yougov-180912-final.pdf

and concerns about whether a solicitor will handle the complaint fairly.

10. The 2012 research highlighted that 25% of complainants come to the Legal Ombudsman prematurely and data shows that this figure has not changed over the subsequent years. There are a number of reasons why some consumers who made a premature complaint to the Legal Ombudsman did not pursue making a formal complaint. These include:

    - People don't know how to complain to their provider
    - People are scared about how complaining will impact on their case
    - People consider lawyers to be 'good at arguing' and therefore think complaining will be a difficult process.

11. The OLC would stress the importance of situational vulnerability and not just vulnerability that may be linked to protected characteristics. This is something the Legal Ombudsman is proactively addressing, reflecting work being undertaken elsewhere to understand consumer vulnerability in the legal services market.

12. Once a complaint has been accepted by the Legal Ombudsman, they help vulnerable consumers access their service through the support of 'Vulnerable Customer Champions'. These are dedicated members of staff who are there to support consumers and service providers who may need extra help to access and properly use the complaints process. The OLC know that in accessing legal services, people do not behave in the same way as consumers of other services and often use legal services at some of the most vulnerable times in their lives. This situational vulnerability and the power and information asymmetry that can exist between service providers and those accessing legal services is a key reason why the Legal Ombudsman provides this enhanced level of support. The OLC would encourage other ADR providers to explore making a similar service available to vulnerable customers.

13. There is a requirement under section 112 of the Legal Services Act[3] for all authorised persons to signpost customers to the Legal Ombudsman. This helps raise awareness of what consumers can do if they are unhappy with the outcome of a first-tier complaint. Similarly, transparency rules within the profession also require providers to publish details of its complaint handling procedure, including how and when a complaint can be made to the Legal Ombudsman. This statutory responsibility increases consumer awareness of access to redress in the regulated legal sector. However, more still needs to be done.

14. There is a proliferation of silent sufferers amongst legal services consumers. The Legal Service Consumer Panel's annual tracker survey has consistently indicated high levels of dissatisfied consumers who do not complain, peaking at 49% in 2018.

[3] https://www.legislation.gov.uk/ukpga/2007/29/section/112

This is in comparison to around 25% in other sectors and is particularly noteworthy in the Black, Asian and minority ethnic communities. It is important to recognise and understand differences in consumer approaches to complaints, particularly where there is evidence of redress not being sought.

15. To better understand how consumers could be supported in accessing information on ADR services, the OLC would like to see more consideration given to the advantages and disadvantages of a dedicated portal, including its fit and added value to the legal services sector. There are a number of circumstances where legal and non-legal services overlap, and this can create confusion for a consumer in relation to where they should direct their complaint. The development of an online portal could improve consumer awareness and signposting by creating a platform in which consumers can more easily navigate the appropriate route to redress. This could also include the necessary processes that need to be followed before taking a complaint to the second tier.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

16. The OLC agrees that timely access to redress needs to be ensured. The consultation notes that in regulated markets, the majority of disputes are resolved within four weeks, but in the legal services sector, OLC data suggests that only 47% of first-tier complaints are dealt with within four weeks, rising to 80% within eight weeks. The OLC is aware that these figures are not necessarily a reflection of what could be done, as it is likely that some service providers could have resolved the complaint sooner had the upper time limit been less. It is, however, important to recognise some of the complexities involved in resolving legal service complaints within a shorter time period.

17. In 2017, the Legal Ombudsman published a report on first tier complaints, which highlighted a number of issues related to firm and consumer perceptions around the time taken to respond to complaints. Some of the issues that affect perception or the ability to respond included:

- *The size of the firm and resources available*. Smaller firms, for example, sole practitioners, may be more likely to respond faster than larger firms. 36% of surveyed firms with one fee earner reported responding to complaints within one week, compared to 16% of firms with more than 6 fee earners. One of the reasons that smaller firms are able to deal with complaints in a timelier manner may be that the complaints are frequently assessed and responded to by a fee earner who is more familiar with the context of the complaint. Conversely, larger firms will have dedicated resource to handle complaints and therefore a resolution may be reached within the first tier. As part of the Legal Ombudsman's guidance on best practice for complaints handling, it underlines the importance of really understanding the complaint that is being

made in order to fully resolve it. Larger firms, who handle more complaints, may not have the time to fully understand a resolve a complaint within four weeks.

- *Complexity of the complaint*. Some high complexity cases will involve a substantial amount of material which needs to be fully assessed and understood by those dealing with the first-tier complaint. The OLC's scheme rules state that the Legal Ombudsman can look at a complaint if; it happened within six years of the problem happening and it happened within three years from when the consumer found out about it. These timelines could result in complaints being made to a legal service provider several years after the case has been dealt with and would require the individual involved in dealing with the complaint to familiarise themselves with the case dealings. A strict four-week upper limit for first tier complaints could result in the complaint not being fully understood and therefore not fully resolved before being brought to the Legal Ombudsman for investigation. A shorter timescale may be possible for lower complexity cases but there will always need to be flexibility and more time for more complex cases.

- *Categorisation of dissatisfaction as a complaint.* Legal service providers may not always identify when a consumer's expression of dissatisfaction is a complaint. This means that consumers may have raised dissatisfaction and expected a response, but firms may not recognise this as a complaint, and may not respond formally, believing the matter to be resolved. Reducing the upper limit also reduces the time in which firms can recognise customer dissatisfaction as a formal complaint, and therefore reducing the time available to attempt to resolve it at the first tier.

- *Outsourcing to third parties*. Some legal service providers are choosing to outsource some complaints to third party specialist services to obtain an independent view. Whilst this does add to the timescale, it also potentially means that the first-tier complaint is handled more effectively.

18. Since 2012, analysis by the Solicitors Regulation Authority has shown that the number of first-tier complaints has increased, and firms are continuing to resolve a higher proportion of complaints[4]. Legal complaints as a whole can be more complex than complaints about the service provided in other industries. What the Legal Ombudsman would consider to be low complexity complaint would be viewed as a high complexity issue by others. The OLC would want to avoid receiving complaints which could have been resolved at first tier had a firm had the appropriate time. The OLC already encourage firms through best practice to take the time to understand a complaint which puts them in the best position to resolve it successfully themselves. Reducing a timescale to 4 weeks could undermine this. Based on current behaviours, a strict upper time limit could restrict the number of cases being resolved

[4] https://www.sra.org.uk/sra/how-we-work/reports/first-tier-complaints-report/

within the legal sector, either because of the resources available to a firm, complexity of a case or the time which has passed since the original instruction.

19. The OLC would recommend further work being undertaken to explore the impact on different sectors, as well as the impact on the efficiencies and effectiveness of complaints processes more generally.

Quality and Oversight of ADR services

*Q67***.** *What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?*

20. As a statutory ADR provider, the OLC is already directly accountable to the Legal Services Board, who are the oversight regulator for the sector, and in addition is an Arm's Length Body to the Ministry of Justice. The OLC would welcome clarity on which ADR providers would fall under the proposals for strengthening minimum service expectations. As a member of the Ombudsman Association, the Legal Ombudsman also meets published criteria in the Association's Terms and Rules, which itself covers effectiveness, fairness, openness and transparency and public accountability.

21. Quality of service is something that the OLC takes very seriously. The OLC has specific key performance indicators, agreed with the LSB and MoJ, that are reported on regularly. In addition, the Legal Ombudsman is working with the wider sector on increasing the transparency and availability of the data and decisions from the complaints process. Taking a one size fits all approach to quality and oversight does not recognise significant differences across various market areas. The OLC would propose that competent authorities for each ADR should still hold a degree of autonomy around setting standards and ensuring consistency of quality and oversight. Rather than working towards a universal framework, it may be more beneficial to consult on a common set of principles, from which the competent authority could design and implement a sector specific framework of quality and oversight for ADR providers to operate against.

22. While the paper does not specifically look at the EU ADR Directive, the OLC is conscious that some of the quality measures and minimum service expectations could replicate the directive. The OLC decided that the Legal Ombudsman would not become the ADR provider for the legal sector in 2015, as the requirements of the EU Directive, for example around the timescales for investigating, conflicted with existing Legal Ombudsman processes and the requirements of the Legal Services Act. These would still be issues that would need to be considered and any proposal that enables competent authorities to incorporate additional requirements for ADR providers as part of their service provision to consumers and businesses would need to be lined up against existing legislative requirements.

23. Finally, the impact of Covid-19 on organisations over the last 18 months has been unprecedented. As businesses and organisations continue to recover both financially and in terms of efficiencies and backlogs, attempting to widen the remit and oversight of ADR providers may create significant additional pressures on already under resourced organisations.

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

24. The OLC would question whether implementing a lower limit on the value of claims or charging a fee would achieve the intention of deterring frivolous or low value complaints. The Legal Ombudsman has very little evidence of frivolous complaints and the OLC would suggest that charging a fee to access ADR services could create an additional barrier for people who may already be hesitant to complain. As outlined in paragraph 14, the legal services sector already experiences a high number of silent sufferers and it would therefore be important to see further evidence that the proposal does not have more significant unintended consequences, such as deterring low income or vulnerable customers, for whom the marginal cost is significant.

Conclusion

25. The OLC has welcomed the chance to comment on the proposals outlined in the Reforming Competition and Consumer Policy consultation. This has been an important opportunity to consider potential differences within legal services when compared with other markets; to share learning and insight from the Legal Ombudsman scheme around access to redress; and to ensure the specific needs of legal services consumers are reflected and taken account of.

26. The OLC looks forward to working with the Department for Business, Energy, and Industrial Strategy to share further its experiences of running an ombudsman scheme and would be grateful for the opportunity to explore the issues raised in this paper in more detail.

For any questions about this response please contact [redacted] *at support@legalombudsman.org.uk*