



Office for Legal Complaints (OLC) Consultation on Draft Scheme Rules

Question 1: Should we include some additional guidance in the scheme rules about how in-house complaints-handling inter-relates to the Ombudsman scheme? If you agree, what form should this take? More generally, what can we do to promote good customer service in the legal profession? Please give examples and reasons.

The Commissioner believes that it would be very helpful if the OLC were to set out either in the Rules or related publicity, the minimal standards that consumers can expect from their lawyers in terms of in-house complaints handling.

This will encourage lawyers to maintain those standards as well as helping help consumers make a more objective assessment as to whether or not their lawyer is handling their complaint properly. Non-compliance may flag up the need for an early referral to the OLC, while compliance may reassure the consumer that their lawyer will deal fairly with their complaint.

The Commissioner believes that the OLC should also take the following steps to promote good customer service by the legal profession:

1. Meet regularly with the LSB and approved regulators to discuss areas of concern and agree any actions to be taken, by whom and by when;
2. Publish information on trends in complaints received and synopses of cases explaining what went wrong and the lessons that can be learned;
3. Publish guidance on issues that cut across disciplines or work with the LSB to produce this;
4. Ensure that approved regulators are promptly informed about potential conduct issues;
5. Ensure that other interested regulatory bodies such as the OISC are informed of issues relevant to them, e.g. examples of unregulated immigration advice-giving;
6. Identify training needs for firms and individuals and inform approved regulators;
7. Identify training needs across professions and discuss with approved regulators how these are to be met.

Questions 2: Should the OLC ask the Lord Chancellor to consider exercising this power to include the others we have suggested? Should we include anyone else? Please give your reasons why or why not.

Question 3: Are there any gaps in who can come to the Ombudsman scheme? Should we ask the Lord Chancellor to consider including anyone else and if so, whom and why?

The Commissioner supports the extension of the scheme to the bodies specified in the draft scheme rules for the reasons given in the consultation paper.

She is, however, concerned that the draft rules do not appear to address the issue regarding who may make a complaint about the service provided to a minor. Paragraph 2.5, which allows one person to complain on another's behalf with their



written authority, does not seem appropriate where the authority would come from a minor.

The OLC may consider that it is unnecessary to make any special provision for minors on the assumption that generally services provided to minors are commissioned by their parents or guardians and may therefore be regarded to that extent as services provided to the them.

This is not always the case, however. In immigration for example, it is not uncommon for work on behalf of minors to be commissioned by relatives who are neither parents nor the child's legal guardian (usually because the parent is abroad). The Commissioner would not want to exclude complaints from the parent, relative or guardian in this situation.

The Commissioner further notes that paragraph 2.3 excludes public bodies from being complainants. This appears to present a difficulty where a child is in the care of a local authority. The Commissioner is particularly concerned about minors who enter the UK unaccompanied and often go into local authority care.

The Commissioner believes that the scheme needs to be extended to allow complaints from those above - parents, relatives or guardians of minors, including public bodies acting as guardians.

She also notes that people who are detained, either in the UK or abroad, may have serious difficulty communicating even their written authority to a friend or relative in the outside world.

She believes that this should be taken into account, and that the rules should allow for the acceptance of complaints from such friends and relatives without written authority in exceptional circumstances, provided they can demonstrate an interest in the complaint.

Question 4: What do you think about the current proposal for the time limit to bring a complaint? If you think it should be different, please say what time limits you would include and why.

The Commissioner is concerned about cases where the individual raises their complaint with their lawyer shortly after becoming aware of the problem (perhaps even raises it on several occasions), but the lawyer persuades them that everything is satisfactory or that nothing further can be done.

In the immigration field, for example, legal practitioners have been known to deter complainants by blaming the apparent lack of progress on their case on delays by the Home Office, which they also claim rarely respond to letters or telephone calls. In some cases, this has gone on for several years.

The Commissioner would like to be satisfied that the OLC will take this into account when deciding whether or not a complaint is excluded as being out of time.

Other factors that need to be taken into account with immigration clients are that:

- they may not have English as their first language;



- they may be unfamiliar with the system;
- they may have a culture in which lawyers are highly respected and their advice not generally questioned.

Question 5: Do you have any comments on the approach to resolving disputes set out in the scheme rules?

The Commissioner is satisfied that the OLC's general approach to dispute resolution is a reasonable one, but she urges the OLC to ensure that it takes into account in the operation of its Rules the difficulties that may be faced by complainants in pursuing their complaint (particularly immigration clients – see response to question 4).

Question 6: The scheme rules also set out a framework for our ongoing relationship with approved regulators. Is this framework sufficient? If you think we should include something additional, what form should this take?

The Commissioner does not believe that the Scheme Rules set out an adequate framework for the OLC's relationship with approved regulators. Having said that, she considers that the Scheme Rules are not, in any case, necessarily the best place to set out such a framework. She believes this should be done in Memoranda of Understanding and Service Agreements agreed with each approved regulator.

The OLC needs to consider, for example:

- what arrangements to put in place for sharing information with the approved regulator;
- the criteria for identifying conduct matters to be referred to the regulator;
- the timescales and procedure for referrals;
- the type and frequency of meetings that will take place and the purposes of those meetings.

In the Commissioner's experience, the aspect of the relationship between the complaints handling body and the regulatory body that is most crucial (and most difficult to get right) is the referrals system – in particular, the type of information to be referred, the timing of the referral and the form it takes.

It is very rare that the complaints handling body requires the assistance of the regulator in resolving the complaint (except for the circumstance set out in paragraph 5.29 of the Rules, where the regulated person fails to co-operate with the complaints-handling body).

Questions 7: Are there any other points or issues you wish to raise in relation to the draft scheme rules? Do you think there is anything missing? Is there anything you disagree with? Please give your reasons.

1. The Commissioner notes that the Rules are written in very technical, legalistic language, employing the terminology of the Legal Services Act, such as "authorised person", "Approved regulator" and "reserved legal activity". While this may provide



clarity to lawyers, it may confuse complainants with little or no understanding of the Act and even deter them from complaining.

The Commissioner is particularly concerned that it may deter immigration clients, who often do not have English as their first language and may be unfamiliar with the law or complaints systems. In general, the current wording is likely to make it difficult for anyone without a background in the law to understand.

The Commissioner suggests that the OLC produces a more “client-friendly” plain English version of the document to be used either instead or in addition to the existing one for publicity purposes. She further suggests that the OLC approach the Plain English campaign for assistance.

2. Paragraph 5.39 of the Scheme Rules seems to imply that costs will only be awarded to a complainant where they have had to obtain assistance from another party to pursue their complaint. However, a complainant may incur significant costs (at least, significant to them) without seeking assistance from anyone else.

For example, the complainant may need to take unpaid leave from work to attend a hearing or incur costs for sending items by recorded delivery, which they have difficulty meeting because they are dependent on subsistence benefits. The Commissioner believes that this should be taken into account.

A handwritten signature in black ink, which appears to read 'Suzanne McCarthy', is positioned above the printed name.

Suzanne McCarthy
Immigration Services Commissioner
4 December 2009