



FOCUS ON THE LEGAL OMBUDSMAN

JAYNE WILLETTS | SOLICITOR ADVOCATE | JAYNE WILLETTS & CO | SPECIALISTS IN PROFESSIONAL REGULATION

Whilst the SRA frequently occupies space in this column, it is probably the Legal Ombudsman (“LeO”) that firms have most contact with particularly if they are dealing with the general public on a regular basis so this month the focus is on the LeO.

FACTS & FIGURES

The LeO dealt with 8000 complaints last year with 39% being resolved without a formal LeO decision. 20% of complaints related to residential conveyancing; 17% to family work and 13% to wills & probate. The main causes of complaint were failures to follow instructions; failures to advise and excessive costs or inadequate costs information.

CLAIMS MANAGEMENT COMPANIES (“CMCs”)

From 28 January 2015, the LeO began to accept complaints about CMCs. In 2013/2014, under the previous complaints handling arrangements, there were 8,700 complaints about CMCs.

TIME LIMIT FOR BRINGING COMPLAINTS

In July 2015, the European Directive on Alternative Dispute Resolution (ADR) will come into force. The purpose of the Directive is to ensure that all consumers in the EU have access to an ADR Scheme to seek redress when they have experienced problems with goods and services that they have purchased.

The LeO scheme rules have to be brought in line with this new Directive. The main change will be to the time limit for bringing complaints. At present, this is six months from the date of receiving a final response from the legal services provider but, from 9 July 2015, this will increase to 12 months.

Therefore, all final response letters sent on or after 9 July 2012 must include the 12 month time limit. Any final response letters sent before 9 July 2012 should include the 6 month time limit.

A change to client care letters, terms and conditions and complaints procedures will be necessary from 9 July 2015.

SUCCESSOR FIRMS

The question of whether successor firms were responsible for dealing with complaints made against practices with which they have merged or taken over was considered in *Kerman & Co LLP v Legal Ombudsman & Levy & Schroeder* [2014] EWHC 3726 (Admin).

A sole practitioner had merged his practice with Kerman & Co (“K”). The court had to determine whether section 132 (2) of the Legal Services Act 2007, concerning continuity of complaints, allowed the LeO to treat the complaints against the sole practitioner as a complaint against K.

K argued that section 132 was restricted to continuity of complaints against private individuals not entities. In a robust endorsement of consumer protection, the court held that a complaint should not be left without a remedy just because the respondent to the complainant, A, had ceased to exist and another person had succeeded to A’s business in whole or in part. As K had received the benefit of the business, it could not be unfair for it to accept the burden of the complaint.

This decision emphasises that when firms are negotiating takeovers and mergers, care and attention needs to be paid to the complaints handling record of the target firm. Dealing with your own firm’s complaints is bad enough but trying to deal with a previous firm’s complaints where fee earners have left and files are light on file notes can be quite another story.

NAMING & SHAMING

The LeO published for the first time in the public interest details of decisions (14 in total) made against a barrister. In a scathing press release, the LeO described him as a “*risk to potential new clients*”.

THE FUTURE

Two areas to watch. First, the LeO is keen to extend its jurisdiction to cover all unregulated service providers. Its research has revealed the existence of a significant “*alternative*” legal market in which services were being supplied by providers beholden to no regulatory body or, in some cases, code of conduct. The report estimated that some 130,000 service providers in England and Wales were operating outside the regulated domain. Questions of funding and enforcement will need to be raised if this plan is developed further.

Secondly, after publication of LeO decisions in the public interest for the first time, the publication of more detailed complaints handling data about firms is likely to be back on the agenda coupled with its use by comparison sites. The present arrangement is limited to the publication of decisions during the last 12 months but this could be subject to pressure in the future. ■



Jayne Willetts is also a director of Infolegal Ltd – providing the Colpline practice advice helpline and consultancy advice for law firms – www.infolegal.co.uk