COMPLAINTS HANDLING WITH THE LEGAL OMBUDSMAN & LE

With the Legal Ombudsman ("LeO") recently publishing its business plan and budget for 2024/2025, it is time to review the latest developments both in the performance of the LeO and that of the profession. As to the latter, the LeO revealed that 45% of complaints that the LeO investigated last year entailed inadequate complaints handling by the firm involved writes Jayne Willetts Solicitor Advocate of Jayne Willetts & Co Solicitors Ltd.

These figures have not escaped the notice of the Legal Services Board ("LSB") which has published new requirements for regulators amid concerns that legal services providers are not doing enough to prevent complaints escalating

Rule changes 1 April 2023

On 1 April 2023, the LeO introduced changes to the Scheme rules, all of which (it was hoped) were designed to increase the LeO's powers to reject complaints at the early resolution stage. The principal change was the reduction in the time limit for referring a case to the LeO - reduced from six years to one year from the date of the act or omission being complained about. Also, the time limit from the date that the complainant should have realised that there was cause for complaint was reduced from three years to one year. The Ombudsman retained discretion (Rule 4.7) to extend the 1-year time limit if it were fair and reasonable to do so.

As it is now 12 months since the changes were introduced, the LeO is less likely to exercise its discretion to extend the time limit. The new time limits will have bedded down and complainants are less likely to be caught by surprise.

Firms should have amended their documentation to reflect the new time limits. If they have failed to do so, the LeO is more likely to exercise its discretion to extend the time limit in favour of the complainant.

The other changes introduced last year included dismissing complaints if the loss or detriment to the complainant was not significant; if the case was too

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large and/or complex and to exclude from investigation new already known issues being added to an existing complaint.

Whilst it is early days to assess the effect of these changes, it is hoped that the improvement in the informal early resolutions reported by the LeO are as a consequence of these important rule changes.

Judicial review

It is relevant here to explain that the only means by which a complainant or a law firm can challenge the decision of the LeO is by way of judicial review. There was an extreme example recently of a former client complaining about an historic transaction.
In *Alexander v Legal Ombudsman & Stevenson Glassey Solicitors [2024] EWHC 886 (Admin)*, Ms Alexander sought permission from the Administrative Court to judicially review a decision made by the Legal Ombudsman in 2022 to reject a complaint relating to a 2004 house purchase - some 18 years after the transaction was completed.

She asserted that she had paid an additional payment to the law firm of £500 which would be returned once the vendor obtained documentation from the local authority. The Legal Ombudsman had thoroughly investigated the complaint and found no evidence to support the complaint. The Judge certified that the claim was totally without merit. What is interesting here is that the LeO exercised its discretion and did not reject the complaint ab initio as being way outside the six-year time limit as it was then. One would hope that the LeO would now rely upon the new time limits and reject such a complaint out of hand.

Despite the LeO being threatened with judicial review on a fairly regular basis, only a handful of cases have reached a full hearing since the LeO was set up in 2010. Six of these were decided on a fact-sensitive basis (four in favour of the LeO and two against) without developing any new body of law or changes in public law principles. The one clear point that has emerged is the consistent acceptance that the LeO has a wide discretion within a statutory framework which is itself drawn in very broad terms. In other words, the test is *"what is fair and reasonable in all the circumstances of the case"*.

Change of LeO postal address

A minor change during the last 12 months is that the LeO has changed its postal address from PO Box 6806, Wolverhampton, WV1 9WJ to PO Box 6167, Slough, SL1 OEH. The telephone number and website remain the same - 0300 555 0333 and www.legalombudsman.org.uk.

Firms will need to change their retainer documentation, internal Complaints Procedure Policies whether printed or electronic or on websites and finally amend the Complaints Information section printed on invoices to reflect the new address.

LeO performance

There has been some improvement in LeO performance reported in the 2024/2025 LeO plan, but complaints to the LeO that require investigation still have to wait for nearly three months before work begins and up to nine months for a conclusion. It is this queue of cases awaiting allocation to an investigator that causes the problem. In 2022, the queue was 5.862 cases and in 2023 it reduced to 4,282 cases. Optimistically the LeO is hoping to bring this figure down to 3000 in 2024 and 1650 in 2025.

Firms need to ensure that they collate all documentation and records relating to a complaint so they can be on top of their brief as soon as the case is allocated and the LeO investigator begins work. Asking for further time to retrieve files from archives or copy emails is not a recipe for a speedy resolution of a complaint. The use of informal early resolution techniques has also helped, aided (one anticipates) by the rule changes referred to above. At the end of December 2023, 45% of all cases had been resolved within 90 days.

The use of what is colloquially referred to as "reasonable offer made" at Rule 5.7 (c) is an important tool in the early resolution stakes. The LeO can dismiss a complaint where the law firm has already offered fair and reasonable redress to the complainant which has already been accepted or is still open for acceptance.

To achieve these improvements the budget is up 7% for this year to £18m paid for by a levy paid for by all authorised lawyers.

The profession's performance & the LSB requirements

As mentioned in the introduction above, 45% of complaints to the LeO last year involved inadequate complaints handling by the firm involved. The LSB has said that there needs to be a *"step-change improvement"* in first-tier complaints handling and that it wants legal service regulators such as the SRA to compel law firms to improve their complaints handling – with enforcement measures taken if necessary.

The SRA will be assessed by the LSB on how it improves the first-tier complaints handling of the firms it regulates and it has 18 months to comply with these new requirements. The profession should therefore expect a focus by the SRA on the data for each firm's complaints handling performance and then thematic review visits to those firms who have a large number of LeO complaints.

The LSB requirements are very detailed, and some might say oppressive. The LSB recognises that some complaints may be vexatious and/or frivolous but nonetheless it insists that the SRA introduces measures to avoid complaints being dismissed as vexatious and frivolous even when they are not – so the profession will not be trusted to determine whether a complaint is vexatious or frivolous.

The LSB is keen on communicating the complaints procedures to clients and suggests short video clips or animations i.e. cartoons and use of a range of media. Complaints policies are expected to be prominent on websites and "not require multiple clicks to access". Investment in IT will be required.

In a superb example of quango logic, the LSB has stated that if a firm did not have any or a very low number of complaints in practice areas that are commonly subject to complaints this might indicate that there is a flaw in their complaints processes. Many more positive thinkers would conclude that the reason why a firm had very few complaints was because the practice delivered exceptional service not because they were hopeless at complaints handling.

Space does not permit a more detailed review of all the LSB requirements (see LSB website) but complaints handling partners would do well to review them and test their own current procedures against the LSB expectations. These obligations will no doubt be reproduced in SRA Guidance on first-tier complaints handling within the next 12 to 18 months so forewarned is forearmed.

The SRA will need to do its homework and deliver on the challenge set by the LSB. Because of the LSB scrutiny, the SRA is unlikely to be interested in any excuses for poor complaints handling. Investigating whether firms are dealing with complaints satisfactorily is a relatively simple job compared to other investigations such as the Post Office lawyers. We are in the realm of "low hanging fruit" – a bit like AML failures – easier to investigate and quicker to fine. Empathy for the profession will be in short supply.

On the plus side, at least improving the first-tier complaints handling of the profession can be regarded as a core function of the SRA as opposed to some of the more fanciful and politically motivated directions that have been taken by the SRA in recent years. Good complaints handling is an essential part of the delivery of legal services. Whilst one knows that some complaints are impossible to resolve, the more complaints that the LeO has to handle the higher the levy on the profession. It is that simple.

To reinforce the point, the LeO forecasts that a further increase of 5% in demand would require a full additional team at a cost of about £600,000. Suffice to say, improvement is needed not only by the LeO but also by the profession.