A New Legal Ombudsman

A new regime called the Legal Ombudsman ("LeO") will replace the Legal Complaints Service on 6 October 2010. The LeO will be responsible for dealing with complaints against lawyers.

According to the LeO, this marks the beginning of a very different approach to complaints handling. For a start, it is an Ombudsman scheme, a lay organisation taking a non-legal approach to the investigation of complaints in an independent and inquisitorial manner. The emphasis of the new arrangements will be on speed and informality, with the aim of settling complaints by agreement rather than by judicial or quasi-judicial process.

This new regime will radically change the way in which lower value claims against lawyers are dealt with and determined. We expect that defending claims referred to the LeO will be similar to defending claims referred to the Financial Ombudsman Service (FOS).

Powers

As soon as it becomes operational, all complaints from clients about barristers, solicitors, and other types of legal professional will be handled by the LeO. It will not, however, investigate complaints of professional misconduct or be involved in the consideration of disciplinary issues (those powers remain with the SRA/SDT). It will not investigate complaints by large organizations e.g. banks.

The LeO will have a range of powers, including the ability to require the lawyer to pay compensation (plus interest), make an apology and rectify mistakes. The complainant may be entitled to costs (although the rules say that awards of costs are likely to be rare). The lawyer has no entitlement to claim costs, even where the complaint is dismissed.

As the rules stand, there is a limit of £30,000 on the total value that can be awarded in determination of a complaint, but it is widely expected that this limit will increase in the next few years to £100,000 (the current limit for the FOS). The LeO may publish a report of any complaint. The complainant has the option to remain anonymous; the solicitor does not.

How will the LeO deal with complaints?

The LeO will have formal powers to resolve complaints about lawyers (including solicitors, barristers and other providers of legal services eg licensed conveyancers) registered in England and Wales. The aim is to simplify the system and make it more effective. The complaints-handling procedure will be as follows:

- The LeO will not consider a complaint unless the claimant has complained to the firm in question. Unless there are exceptional circumstances, the LeO will only consider a complaint if the firm has had eight weeks to consider the complaint (and has not responded) or has already issued a written response to the complainant.
- The LeO will try to facilitate an informal settlement at an early stage.
- The LeO may then investigate the complaint. He or she will allow both parties to make representations and will then make a provisional decision. Both the lawyer and the complainant can reject that decision (similar to an FOS adjudicator's decision).
- If either party rejects the provisional decision, the complaint is referred to an Ombudsman for a final decision.
The LeO will determine the complaint by what is “fair and reasonable in all the circumstances of the case”. Importantly, in making that decision the LeO is not bound by the decision that a court might make. This may result in the complainant recovering damages that they would not be awarded by a Court.

As with the FOS, the complainant (but not the lawyer) is entitled to accept or reject the LeO’s decision. If they accept the decision, it is binding on both parties. Once the decision is binding and final, neither party may start or continue legal proceedings relating to the subject matter of the complaint (save to enforce any award). The lawyer’s only remedy would be to seek judicial review.

Remedies available to the LeO

Where the LeO finds in favour of the complainant, it may require a lawyer to do any of the following:

- apologise;
- pay compensation of a specified amount for loss suffered;
- pay interest on that compensation;
- pay compensation for any inconvenience/distress caused;
- Rectify any specified error, omission or other deficiency (at the lawyer’s own cost);
- take (and pay for) any specified action in the interests of the complainant;
- pay a specified amount for costs the complainant incurred in pursuing the complaint and/or
- limit the lawyer’s fees to a specified amount.
- report any suspected misconduct by a solicitor to the SRA

The compensation limit of £30,000 does not include interest on compensation, costs incurred by the complainant in pursuing the complaint, the limitation of fees and/or any interest on fees to be refunded.

Time Limits

A claimant will have 6 months from the date the firm rejects the complaint to refer the complaint to the LeO (NB as with the FOS, this limit only applies if the firm says the rejection of a complaint is a final response and also informs the claimant of the right to refer the matter to the LeO).

The rules require complaints to be made to the firm within one year of either the date of the act or omission that forms the subject of complaint, or the date the complainant should reasonably have known that there was cause for complaint, whichever is later. The LeO has discretion to extend these time limits to the extent that it is fair, but only in exceptional circumstances.

Impact upon Solicitors’ Insurers

We expect that, like the FOS upon which much of the LeO’s structure and procedure is clearly based, the LeO will be extremely claimant friendly. As adverse costs orders cannot be made there is no downside for a Claimant in bringing a complaint to the LeO. Legal defences like causation may not extinguish claims where inadequate legal services have been provided. Claimants will also be eligible to receive damages for stress and inconvenience, although these awards are likely to be modest.

On a more positive note once the Claimant has accepted an Ombudsman’s decision it is binding on both parties and prevents further civil claims thus avoiding expensive costs. Claimant solicitors will not be able to recover large amounts of costs incurred in dealing with low value claims.
We expect that disgruntled clients will use the LeO more than previous complaint schemes, especially as the limit for compensation is now £30,000. When claims are first received by Insurers they should be carefully analysed to confirm that the LeO does indeed have jurisdiction – our experience in dealing with complaints involving the FOS is that, if jurisdiction can be challenged successfully, many claims are subsequently withdrawn.

If the LeO’s jurisdiction cannot be challenged, an early assessment of the merits of the complaint is essential. Whilst the LeO will be claimant friendly, claims should still be robustly defended initially (where possible) to lower settlement expectations.

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