



THE NEW LEGAL OMBUDSMAN

By Jayne Willetts | Solicitor Advocate and Partner, Townshends LLP Birmingham

On 6 October 2010 the new Legal Ombudsman (“the LeO”) opened its doors for business in Birmingham at Baskerville House - the large and impressive white building next to the Repertory Theatre. Bringing over 300 jobs to the city it is a welcome addition to the legal services community.

The LeO is a child of the Legal Services Act 2007 and will replace both the Legal Complaints Service (“LCS”) and the Legal Services Ombudsman in England & Wales. The LCS will deal with existing complaints and then close down within about 6 to 12 months.

The new LeO will investigate and resolve complaints made by consumers of all legal services including complaints against solicitors, barristers, and licensed conveyancers. It will not only accept complaints from individual clients but also from “micro-enterprises” i.e. businesses with less than 10 staff and a turnover of less than £2m as well as charities, clubs and associations with an annual income less than £1m.

So how will this affect the profession? The maximum award for compensation that the LCS can impose for inadequate professional service (“IPS”) is £15,000. This will increase to £30,000 when the LeO takes over. The ambit of the scheme will also be wider. The LeO will not be restricted to complaints about IPS, but will consider “*dissatisfaction whereby the complainant has suffered financial loss, distress, inconvenience or other detriment*”. Firms must initially follow their own internal written complaints procedure but will only have 8 weeks to conclude the matter to the satisfaction of the complainant before the complaint can be referred to the LeO. The new time limit for bringing a complaint is one year from the act or omission complained of or one year from realisation of the cause of complaint. As with the LCS the LeO can reduce solicitors’ costs beyond the £30k limit.

Complainants will not pay for the LeO’s service. Solicitors on the other hand must pay a fee of £400 per case. That fee will only be refunded if the complaint is resolved in favour of the lawyer and the LeO is satisfied that the firm has done all it can to resolve the complaint through its in-house internal complaints procedure. The LeO’s “Guide to Good Complaint Handling”) (see website) sets out what it will be looking for from solicitors. Solicitors will be

allowed two “free” complaints a year. Some firms might take the commercial view to settle low value claims whatever the merits of the complaint.

Due to the wider ambit of the scheme, it is inevitable that the LeO will deal with complaints which are essentially professional negligence claims up to £30,000. Solicitors must therefore notify their insurers of all complaints. As the LeO is not bound to follow the existing case law and has committed to a non legal approach marked by speed and informality, I can foresee some very lively tussles with defendant professional indemnity lawyers.

On a practical level you need to amend client care letters and the reverse of invoices as well as update the complaints handling procedure to take account of the LeO. There are new Practice Notes on the Law Society website which are helpful.

As firms will be paying £400 per case to the LeO it makes good commercial sense in low value claims to settle with the complainant whatever the merits of the complaint. For complaints that are basically professional negligence claims your insurers’ solicitors may take over handling the complaint.

The Ombudsman’s decision is stated in the Scheme Rules to be final. There is no reference to a right of appeal. There is no reference to a procedure for complaining about the way in which the LeO handled the complaint apart from its own internal complaints procedure. As the Legal Services Ombudsman will no longer be available there does not appear currently to be a process for calling the LeO to account apart from judicial review.

The LeO is determined to keep the procedure as simple as possible – the leaflets on the website are consistent with this admirable aim. We must all wish the LeO future success and support it in its endeavours - if for no other reason that the LeO will only cost £20m to run as opposed to £30m for the LCS. However the LeO must not underestimate the difficulty of resolving legal service complaints – it is not like returning a shrunken sweater to M & S for a refund - it can be a murky, time consuming and complex business. ■