

The Legal Services Act – a perspective from the Legal Services Ombudsman for England and Wales and the Legal Services Complaints Commissioner

by Zahida Manzoor

The author gives some of her views on the future for the legal profession following the introduction of the Legal Services Act, which gained Royal Assent on October 30, 2007. Appended to this paper is a summary of the questions posed to the Ombudsman and Commissioner following her speech, together with an overview of her answers.

THE LEGAL SERVICES OMBUDSMAN

I was appointed as the Legal Services Ombudsman for England and Wales in March 2003. I sit at the apex of legal complaints handling: complainants must first make their complaint to the relevant professional body, eg the Law Society's complaints handling arm. If complainants are not satisfied with the way the professional body has dealt with their complaint, they may refer the matter to me as Ombudsman. It is my responsibility to ensure that the professional bodies have conducted fair, thorough and efficient investigations into those complaints about their members. I therefore see first hand examples of the problems which consumers can experience when they have had a problem with their legal service.

THE LEGAL SERVICES COMPLAINTS COMMISSIONER

In February 2004 I was also appointed as the first Legal Services Complaints Commissioner. As Commissioner I regulate and work with the Law Society of England and Wales to encourage and influence it to improve how it handles complaints against solicitors.

In January 2006, the Law Society formally announced its re-organisation into three distinct bodies. These are: the Legal Complaints Service (LCS) which deals with complaints by consumers about the service received from their solicitor; the Solicitors Regulation Authority (SRA) which regulates solicitors and deals with some consumer



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complaints where misconduct is alleged; and the Law Society which represents solicitors and promotes their work.

BACKGROUND TO THE LEGAL REFORMS

The Legal Services Act 2007 is designed to achieve wide-ranging reform to legal services regulation, delivery and complaints handling in England and Wales.

The Office of Fair Trading (OFT) published a report in March 2001, *Competition in professions*, raising some concerns regarding potentially restrictive rules in the legal

profession, which may have been stifling competition. Also at around this time, the Legal Services Ombudsman's 2001/02 Annual Report, *The regulatory maze*, concluded that "the present concern with operational failure in complaint handling needs to give way to a more fundamental debate about reforming the entire system of legal services regulation."

Problems in the handling of complaints about solicitors by the Law Society had led to the Lord Chancellor setting the Law Society performance targets. These targets were not accompanied by the statutory means to enforce them and failures in complaints handling continued.

My 2002/03 Annual Report as Ombudsman, *Taking up the challenge*, set out my concerns at the time regarding the dual role of the professional bodies in both representing and regulating their members. I was also concerned that there was not a consistency of standards across all of the legal professions. I again highlighted widespread concerns about the failure of the largest professional body (the Law Society) to handle complaints about its members effectively.

Following that Annual Report, I welcomed the government's announcement of a review of the way in which legal services were being delivered and regulated and complaints handled. I was pleased to contribute to Sir David Clementi's Review and have continued, in my roles as Ombudsman and Commissioner, to support the government as it has brought many of the recommendations made by the Clementi Review through to a White Paper and more recently, the Legal Services Act.

On the face of it, the Act is faithful to the principles set out by Clementi and influenced by others including myself. It is important that the Act delivers real benefits to consumers of legal services and the profession.

I am pleased that the Legal Services Bill received Royal Assent on October 30, 2007. It is envisaged that the Legal Services Board will be established in 2009 and the Office for Legal Complaints in 2010. The Office of the Legal Services Complaints Commissioner is expected to close in March 2010 and the Office of the Legal Services Ombudsman will continue until at least December 2010. In my role as Commissioner I will continue to work with the Law Society to regulate its complaints handling work and oversee progress and improvements for the consumer and the profession. As Ombudsman I will also continue to work with all legal professional bodies to improve and maintain standards for consumers of legal services.

NEW STRUCTURE CREATED BY THE LEGAL SERVICES ACT 2007

The Act has created a Legal Services Board (LSB) – a new over-arching regulator with a range of powers over front-line regulators. The front-line regulators are the existing legal professional bodies such as the Law Society and the

Bar Standards Board. Handling of consumer complaints about legal services will be moved away from the legal professional bodies with the creation of the Office for Legal Complaints (OLC), a single, new independent complaint handling body. In addition, the Act allows for new ways of professionals working together to deliver legal and other professional services, known as alternative business structures (ABSs).

Perspectives on the Legal Services Board (LSB)

I welcome the LSB as a new oversight regulator, which will result in a more simplified structure to replace the myriad of regulators that currently exists. I also welcome David Edmonds as its chair and have had the opportunity to discuss my perspective with him. The LSB will have powers that will allow regulators such as the Solicitors Regulation Authority and the Bar Standards Board to manage the day to day regulation of the profession.

I am pleased that the Act provides the LSB with powers to protect consumers where necessary. It has the ability to play a positive role in the regulation of the legal profession by enhancing its standards.

In much the same way as the financial services industry benefits from the regulation by the Financial Services Authority, I hope that the LSB will enhance the reputation of the legal services profession.

Perspectives on the Office for Legal Complaints (OLC)

I welcome the new and independent OLC, which will provide redress for consumers through a single complaints handling organisation. I also welcome Elizabeth France as its Chair, and have held early discussions about complaints handling with her. The OLC will be independent of the legal profession, which should encourage consumer confidence in how their complaints will be handled.

I am pleased to see that the OLC's powers are to be vested in an independent individual (the OLC Chief Ombudsman). I believe it is appropriate that the word "ombudsman" will form part of the eventual name of the legal complaints handling scheme, as the term is understood and trusted by the public. The government has taken into account my views and representations on both these issues and has reflected these in the Act.

The Act will allow the OLC to charge the legal profession for handling its complaints. A charge can be made both through a standard levy on the profession as a whole and by individual lawyers paying on a case-by-case basis for complaints made against them to the OLC. The OLC will only waive charges for a complaint not upheld against a lawyer if the ombudsman is satisfied that the lawyer handled the complaint properly in-house. I believe that this will encourage firms to try to sort out complaints using their internal procedures and that good firms will have nothing to fear.

It is clear that some branches of the legal profession undertaking contentious work may be likely to attract more complaints than others – particularly from consumers who may be dissatisfied with the outcome of their case. This provision in the Act offers some protection for professionals who try to resolve complaints properly. However, the profession as a whole will need to take seriously the service it gives to the consumer as well as the quality of advice.

The majority of complaints I see as Ombudsman and those that the Law Society's Legal Complaints Service deal with are about simple things such as failure to keep people informed regarding their case, poor or no cost information, and failure to notify consumers if there is a change in direction, which can leave them without the choice of obtaining alternative legal advice. Some small legal firms can become swamped with forms and paper and forget they are in a consumer-focused business.

The Legal Services Act gives the OLC the ability to make public more information about legal complaints handling. This may extend to the publication of firms' complaint records. Such information could help the consumer to decide which firms to choose but would need to be part of a package which included the benefits of choosing a particular firm (eg its specialism demonstrated through a form of "kitemark"). It would create marketing opportunities for those firms who have an excellent record in customer service. I believe that any increased transparency could have benefits both for the consumer and the reputation of the legal profession.

The OLC will be paid for by the legal profession. Latest published government estimates are that the running costs for the new complaints handling organisation will be approximately £19.9 million per year. However, the current annual running costs for the Law Society's complaints handling arm only (the LCS and SRA) are in the region of £36 million. This does not include costs for the other legal professions such as the Bar Standards Board. I believe that the financial gap needs to be closed sooner rather than later. As Commissioner I am working with the Law Society on how LCS and SRA can meet this challenge. It is in the interests of the profession as a whole to have a good quality but also cost-effective complaints handling organisation.

Alternative business structures (ABSs)

The Act opens up new ways of working so that lawyers could combine with different types of lawyers or other professionals (eg accountants, architects) in order to deliver services. There are measures in the Act to protect the public, including rules about who can own ABS firms and how they have to be structured. I welcome the prospect of innovation in the legal services market that could come from the introduction of ABSs.

Government has suggested that there needs to be a more controlled implementation in order to ensure that access to justice is maintained and I support this. This would allow for any unwanted effects for consumers and the profession to be fully explored before widescale introduction. However, ABSs should not be delayed unnecessarily as they have the potential to bring benefits and innovation into the legal services market.

The creation of ABSs has been termed as the advent of "Tesco law" and has been presented by some as posing a threat to the future of high street legal practices. I believe that there could be both threats and opportunities and that legal firms could consider what advantages ABSs could bring as well as the potential dangers.

For the consumer ABSs will possibly create more choices and it is arguable that some consumers will use the legal services of organisations like the RAC, the Halifax and the Co-op. If existing high street legal practices are to survive they have to work out what they can offer in order to compete. They will need to ensure they aim to deliver exemplary customer service.

For some people, accessing legal services can be at a stressful time in their life such as going through a divorce or the death of a loved one and they may be attracted by a name they trust offering legal services. For some, being able to communicate by phone or e-mail, rather than the prospect of going into a high street office and talking over their issues face to face may seem more appealing. The legal profession needs to work on its advantages and maximise them in what will become a more competitive market.

DIVERSITY IN THE LEGAL PROFESSION

ABSs may also encourage firms to increase the diversity in their workforce to mirror that of their consumers. A move away from the traditional partnership structure, and its inevitable tendency to translate into long hours, could mean real benefits for lawyers with families, for example, who want to work more flexibly or take a career break. In addition, there is the potential to diversify into a range of different service offerings and business ventures. All of this creates more opportunities for people entering the profession for the first time.

As with any major change, there will be both opportunities and threats. There are many more women going into the legal profession, which was once a male dominated profession. In 1999 only 35 per cent of solicitors holding practising certificates were women, the figure rising to 43 per cent in 2007. And there are many more ethnic minority people joining the profession – the number of practising certificate holders from ethnic minority groups has increased almost 244 per cent in 10 years. This is good news and I am very encouraged by it. However, the number of women and ethnic minority partners is less encouraging. In 2007, fewer than 22 per cent of partners

were women and fewer than 26 per cent were from ethnic minority groups in private practice. This suggests that there is still some way to go before the diversity beginning to be seen in those joining the legal profession is also evident at senior levels within firms. It is essential that there is greater diversity, and that the profession reflects the community it serves and ensures equal career progression.

CONCLUSION

I welcome the new legislation and am pleased that the reforms will soon become a reality for the consumer and the profession. As a contributor to Sir David Clementi's review and the Legal Services Bill, I am pleased that that changes to how legal services will be delivered and regulated and how complaints will be handled have now become law.

I look forward to a new and independent OLC, which is the opportunity for a fresh start for legal complaints handling. I also welcome the LSB, which will provide protection for the consumer through streamlined regulation of front-line regulators, allowing them to get on with their day to day business.

In addition, the Legal Services Act 2007 creates alternative business structures, which I consider have the potential to open up increased competition and raise standards in the provision of legal services. This can only be good for both the consumer and the legal profession.

Q&A

Q: From a firm of solicitors – How should we deal with unmeritorious complaints from clients, many of whom have mental health problems?

A: *Have established systems in place and keep good notes. If a complaint comes before me as Ombudsman I would note the*

vulnerability of the client but would also consider whether the complaint had merit.

Q: From a university source – More a comment that although more women and people from an ethnic background were on the solicitors roll, many were in the lowest paid jobs. The top firms were still dominated by white males.

A: *This was a challenge for the Law Society to provide leadership and opportunities for all to reach the highest echelons of the profession. Through personal experience glass ceilings can be broken.*

Q: From Shelter – Do the socially excluded complain?

A: *Many complaints seen by me as Ombudsman come from those most able to express the complaint – middle England and Wales. I have been in discussion with the Legal Complaints Service (LCS), to understand its complainants and whether this matches the diverse nature of those using solicitors. I want its service to be more accessible for all.*

Q: From a Law Centre – Legal Aid brackets law into areas and is about process, not necessarily the right advice. Can regulation really bring about a quality legal service?

A: *There is a responsibility to ensure that both the needs of the profession and those of the consumer are met to deliver better legal services. Solicitors and the LCS can improve their services and where appropriate, regulation can help. Vulnerable clients often need regulation to help ensure that they receive a level of service regardless of their circumstances or knowledge.* 

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