

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

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28 April 2010

Dear Alison,

Memorandum of Understanding

Please find herewith the signed copy of the Memorandum of Understanding between the Bar Standards Board and the Legal Ombudsman.

Yours sincerely



Baroness Ruth Deech
Chair, Bar Standards Board

Encl.

Memorandum of Understanding between the Bar Standards Board and the Legal Ombudsman

Introduction

1. This Memorandum of Understanding (MoU) sets out a framework for the Bar Standards Board (BSB) and the Legal Ombudsman to work together in order to carry out their independent roles and separate functions in accordance with the Legal Services Act 2007.
2. The Legal Ombudsman was established under the Legal Services Act to set up an ombudsman scheme for legal services complaints. The BSB is the regulatory arm of the Bar Council, an Approved Regulator. The Act sets out the roles of both the Legal Ombudsman and the Approved Regulators.
3. The purpose of this MoU is to put in place clear arrangements and practices that will foster an effective and cooperative working relationship between the Legal Ombudsman and the BSB.
4. In agreeing this MoU, the BSB and Legal Ombudsman agree that in working together, each will have regard to their respective needs to promote an effective complaints handling system for consumers of legal services and avoid consumer detriment in the operational practices put in place to support this agreement.
5. The Legal Ombudsman and BSB wish to operate in accordance with good practice and are therefore committed to cooperating and sharing knowledge and expertise to benefit consumers of legal services and the legal profession through the operation of a transparent and robust dispute-resolution scheme and an effective regulatory regime for dealing with conduct matters.
6. The Legal Ombudsman and BSB will continue to monitor the operation of this MoU and review it as necessary. A first review will occur before the end of two years of the establishment of the ombudsman scheme.

Roles of BSB and Legal Ombudsman

7. The primary role of the BSB is to promote and maintain excellence in the quality of legal services provided by barristers to support the rule of law. This is achieved by setting standards of entry to the profession and by ensuring that professional practice puts consumers first as far as is consistent with barristers' obligations under the Code of Conduct and their duty to the court.
8. The Legal Ombudsman has been established by the Office for Legal Complaints (OLC) under the Legal Services Act (the Act). The ombudsman scheme will be an independent and impartial service that consumers of legal services can access to resolve disputes involving their lawyer. The Legal Ombudsman scheme will be the single body for all consumer complaints about the service they have received from their lawyer.

9. The statutory objectives of the Legal Ombudsman are to resolve disputes quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances. The scheme has a statutory jurisdiction and a voluntary jurisdiction.

Statutory responsibilities

10. The Act provides the statutory framework for the operation of the Legal Ombudsman and provides specific responsibilities in respect of complaints and the provision of complaints information for both the Legal Ombudsman and Approved Regulators. In particular, the Act requires:
- a. the Legal Ombudsman to assist regulators to carry out their regulatory functions and requires Approved Regulators to take into account the views and operations of the Legal Ombudsman in determining its regulatory arrangements;
 - b. the Legal Ombudsman to provide information to the appropriate Approved Regulator where a complaint is received about an authorised person which is of a conduct nature (section 143);
 - c. the Approved Regulator to report to the Ombudsman the action to be taken or outcome of a referral of a conduct matter. If the Approved Regulator does not produce such a report, and if an ombudsman considers this is a serious failure, the ombudsman may make a report to that effect to the Legal Services Board (section 143(4) and (6));
 - d. the Approved Regulators and Legal Ombudsman to co-operate and share information which may benefit either body. This information is not limited to ensuring the proper investigation of complaints. It may also include information which an Approved Regulator would benefit from knowing in order to make or amend regulatory policy (section 144); and
 - e. the Legal Ombudsman to report to Approved Regulators the failure to co-operate by an authorised person with a complaints investigation (section 146).
11. This MoU will be complemented and supported by written operational procedures agreed between the Legal Ombudsman and BSB. At a minimum these procedures will cover:
- co-operation and information sharing;
 - arrangements for dealing with hybrid complaints (a complaint which has both a service and conduct element); and
 - reporting possible conduct issues .
12. The Head of External Affairs of the Legal Ombudsman and the Head of Complaints and Hearings of the BSB will be responsible for determining and agreeing operational protocols and putting in place effective working practices that meet the over-arching objectives of this MoU.

Cooperation and information sharing

13. The BSB and the Legal Ombudsman agree that they will:

- a. seek to make sure consumers, barristers and others understand (and are not confused) about their different roles of the two organisations;
- b. seek to achieve a complementary and consistent approach as far as possible in the context of their different roles;
- c. meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest;
- d. seek to share expertise wherever appropriate; and
- e. consult one another at an early stage on any issues which might have significant implications for the other organisation.

14. The BSB and Legal Ombudsman will agree, publish and periodically review operational procedures on:

- a) routine information sharing including general reporting requirements to support the investigation of complaints by the Legal Ombudsman and the regulatory function of the BSB;
- b) dealing with cases or trends that raise broader regulatory, policy or other issues; and
- c) any other relevant arrangements.

15. Any information sharing between the two organisations is subject to relevant restrictions on disclosure of confidential information:

- a) So long as it has regard to any rights of privacy, such as confidentiality and information protected by the Data Protection Act 1998, the OLC or the ombudsman scheme will disclose any information reasonably requested by the BSB for the purpose of assisting the BSB to discharge its functions subject to any rights of confidentiality.
- b) The BSB may disclose confidential information to the OLC or the ombudsman scheme for the purpose of facilitating the carrying out of a regulatory function of the BSB or a function of the OLC or ombudsman scheme.

16. The procedures for information sharing will include the following:

- a) The Legal Ombudsman will give the BSB information it reasonably requires to enable it to discharge its regulatory obligations either generally or in relation to the behaviour of individual barristers.
- b) The BSB will give the Legal Ombudsman information it reasonably requires to enable the ombudsman scheme to function efficiently and effectively, about barristers authorised by the BSB.
- c) Routinely, the Legal Ombudsman will provide the BSB with information about the number, types of complaints handled and outcomes of complaints about

barristers, including information on the number of complaints that were not accepted as within the jurisdiction of the Legal Ombudsman.

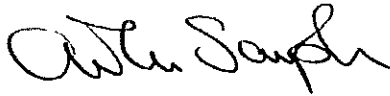
- d) Routinely, the BSB will alert the Legal Ombudsman to key areas of risk or concern that it considers relevant to ensure that the Legal Ombudsman is able to discharge its statutory obligations.
- e) If concerns arise, the Legal Ombudsman will give the BSB information about: serious shortcomings in a chamber's complaint-handling or other issues that may require action by the BSB in its regulatory role.
- f) If the BSB requests it for actual or contemplated regulatory action, the Legal Ombudsman will give the BSB (for the specific authorised person concerned) information about: the number and types of complaints handled; and specific initial and final decisions.
- g) The BSB will give the Legal Ombudsman information about proposed changes to rules or guidance on complaints handling by barristers and chambers; and, when it is relevant to the functions of the OLC or Ombudsman scheme, information about actual and contemplated regulatory action.

Reporting possible misconduct

- 17. The Legal Ombudsman will report promptly to the BSB any possible misconduct that becomes apparent from a complaint that has been made to the Ombudsman service.
- 18. The BSB and Legal Ombudsman will agree and regularly review procedures about conduct referrals including how the BSB will inform the Legal Ombudsman of any outcome of a conduct investigation. Under these procedures the Legal Ombudsman will provide the BSB with information about the number of conduct referrals made about barristers, and also, where relevant, information arising from the results of investigations
- 19. The BSB and Legal Ombudsman will agree arrangements in respect of the investigation of hybrid complaints where both a service and conduct element exists in a single complaint. These arrangements should ensure that there is minimal duplication of effort and that both the service and conduct elements can be investigated expeditiously.
- 20. Part of these agreed practices will include regular feedback to make sure conduct issues are being identified and any referrals of conduct matters about barristers are in a form that supports the BSB in its regulatory role. This may also include training for Legal Ombudsman staff members.

Complaints about non-authorised persons

21. Complaints against barristers who are not authorised to practise under the arrangements of the BSB fall outside of the jurisdiction of the Legal Ombudsman. The Legal Ombudsman agrees therefore to refer any such complaints to the BSB for further consideration and/or investigation.



Adam Sampson
Chief Ombudsman
Office of Legal Complaints



Baroness Ruth Deech
Chair
Bar Standards Board