

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

### **Introduction**

1. This Memorandum of Understanding (MoU) sets out a framework for how the Bar Standards Board and the Legal Ombudsman ('the parties') will work together to carry out their independent roles and functions in accordance with the shared regulatory objectives set out in the Legal Services Act 2007.

### **Purpose**

2. The purpose of this MoU is to:
  - a. put in place clear arrangements and practices that will foster an effective and cooperative working relationship between the Bar Standards Board and Legal Ombudsman; and
  - b. provide a framework for the lawful flow of information between the parties.
3. In working together, each will have regard to their respective needs to promote an effective complaint handling system for consumers of legal services, avoid consumer detriment and to enhance effective and independent regulation of the Bar.

### **Legal status and effect**

4. Nothing in this MoU shall, or is intended to:
  - a. create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
  - b. create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or
  - c. prevent either of the parties from complying with any law which applies to them; or
  - d. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
  - e. create any legitimate expectation on the part of any person that either of the parties in this MoU will do any act (either at all, or in any particular way, or at any particular time) or will refrain from doing any act.
5. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this MoU in good faith and intend to act in accordance with its terms on a voluntary basis.

### **Role of the Legal Ombudsman**

6. The Legal Ombudsman (LeO), as established by the Office for Legal Complaints (OLC) under Part 6 of the Legal Services Act, provides an impartial Legal Ombudsman Scheme to

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help resolve consumer service complaints about legal providers in England and Wales and share learning and insight to improve how the legal sector handles complaints.

### **Role of the Bar Standards Board**

7. The Bar Standards Board (BSB) is the independent regulatory body established by the General Council of the Bar for the regulation of legal services by barristers and BSB authorised entities in England and Wales<sup>1</sup>. The BSB's powers arise from various statutes and regulations including the Legal Services Act 2007 (the "Act").
8. The primary functions of the BSB are to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest.
9. In discharging these regulatory functions, the BSB is bound by Regulatory Objectives set out in the Legal Services Act 2007, which are:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of citizens' legal rights and duties;
  - promoting and maintaining adherence to the professional principles<sup>2</sup>; and
  - promoting the prevention and detection of economic crime.

### **Statutory responsibilities**

10. The Legal Services Act 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);

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<sup>1</sup> Under the Legal Services Act 2007 (the Act), the General Council of the Bar (or "Bar Council") is an Approved Regulator (as defined by the Act) for Barristers in England and Wales. The Bar Council must under the Act delegate responsibility for all regulatory functions and arrangements to an independent body and has duly constituted the Bar Standards Board (BSB) for this purpose.

<sup>2</sup> The professional principles are:

- that authorised persons should act with independence and integrity;
- that authorised persons should maintain proper standards of work;
- that authorised persons should act in the best interests of their clients;
- that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
- that the affairs of clients should be kept confidential.

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- 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 complaint's investigation (section 146).

### **Information to be shared**

11. Subject to any legal restrictions on the disclosure of information, the parties will routinely share information to enable and support each other's regulatory functions and objectives:
- 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**

12. 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.
13. 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

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with information about the number of conduct referrals made about barristers, and also, where relevant, information arising from the results of investigations.

14. 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.
15. 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**

16. 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.

### **Legal Basis for Sharing**

17. Where personal data is shared by the BSB to the Legal Ombudsman, the lawful basis for sharing is Public Task (Article 6(1)(e) UK GDPR): the sharing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority.
18. Where personal data is shared by the Legal Ombudsman to BSB, the lawful basis for sharing is Public Task (Article 6(1)(e) UK GDPR): the sharing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority (i.e., regulating the legal profession and handling consumer complaints).

### **Cooperation and communication**

19. 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 the 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.

### **Operational procedures**

20. This MoU will be complemented and supported by written operational procedures agreed between the BSB and Legal Ombudsman. At a minimum these procedures will cover:
  - routine information sharing including general reporting requirements to support the investigation of complaints by the Legal Ombudsman and the regulatory function of the BSB;
  - arrangements for dealing with hybrid complaints (a complaint which has both a service and conduct element); and

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- dealing with cases or trends that raise broader regulatory, policy or other issues; and
- reporting possible conduct issues.

21. The Head of Communications Engagement and Impact of the Legal Ombudsman and the Head of the Contact and Assessment Team (CAT) of the BSB will be responsible for determining and agreeing these operational procedures and putting in place effective working practices that meet the over-arching objectives of this MoU.

### Information handling instructions

22. The parties agree to:

- a. only use the data for the purposes for which they have received it;
- b. store the data securely;
- c. ensure that only people who have a genuine business need to see the data will have access to it;
- d. report to the originating party without delay any instances of data losses or wrongful disclosure;
- e. only hold the data while there is a business need to;
- f. destroy the data in line with retention policies; and
- g. upon request, provide assurance that they have complied with these principles.

23. The parties agree to ensure that disclosures to the other party are lawful including the common law principles of confidentiality and privacy and the Human Rights Act 1998.

24. The disclosing party also agrees to notify the recipient of:

- a. any restrictions on the use to which the information can be put; and
- b. any restrictions which apply to the onward disclosure of the information; and
- c. in the absence of such notification the receiving party will assume that there are no further restrictions except those which apply as a matter of law.

25. The parties agree that, where one party has received information from the other, they will seek consent before passing the information on to a third party, subject to any purposes required by law.

### Freedom of information Act 2000 (“FOIA”)

26. As a Public Authority, LeO is subject to the statutory provisions laid out in the Freedom of Information Act 2000 (FOIA).

27. The BSB is not subject to the provisions of the FOIA, however, as a transparent regulator will respond to information requests in the spirit of the Act.

28. Where a request for information is received from a member of the public under access to information legislation, including FOIA, (which is binding on the party receiving it or with which the receiving party wishes to voluntarily comply), the party receiving the request will inform the other party and invite representations on the potential impact of disclosure.

### Resolving issues

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29. Issues and problems that arise between the parties will be resolved through discussion by the relevant points of contact as detailed in paragraph 21 with escalation to more senior managers where necessary.

**Duration and review of the MoU**

30. The Legal Ombudsman and BSB will continue to monitor the operation and effectiveness of this MoU, which shall be reviewed and updated on a three-year review cycle.

31. Any minor changes to this memorandum identified between reviews may be agreed in writing between the parties

32. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation.

**Reporting and reviewing arrangements**

33. This MoU will remain in force until terminated by either party.

34. The signatories of the parties will use their best endeavours to review the operation of this MoU on an annual basis.

35. Any changes to this MoU must be agreed in writing.

**Transparency**

36. This MoU is a public document, and the parties may publish it as they separately see fit.