

PROPOSED ADR SCHEME RULES

Response to the Legal Ombudsman's consultation

The consultation

1. The Bar Standards Board (BSB) welcomes the opportunity to respond to the Legal Ombudsman's (LeO) proposed amendments of their scheme rules in order to become a certified Alternative Dispute Resolution entity.
2. The BSB supports LeO becoming a certified Alternative Dispute Resolution entity, and supports LeO taking the necessary steps towards this. The following paragraphs contain the BSB's responses to the specific questions asked by the Legal Ombudsman in their consultation.

Time limits

1. *Is the description of our approach to the application of the rule clear?*
Yes, the approach to the application of the rule is explained clearly in the consultation.
2. *Do you foresee any difficulties in applying the above approach?*
No, the BSB does not foresee any difficulties in applying the approach as outlined in the consultation document.
3. *Should we explore specifying a period of time within b) i) beyond which the presumption should be that the investigation of the case would seriously impair the effective operation of the Scheme? If so what should that period of time be?*
No (see answer to question 4 below).
4. *Or do you consider that no time period should be set because the issues would be case specific?*
The BSB believes that no time limit should be set, and the decision to refuse to deal with a dispute, should be decided on a case by case basis. As LeO outlines in the examples it uses in the consultation document, in some cases it will be possible to conduct investigations fairly and effectively and resolve the complaint, irrespective of the fact that the events occurred some time ago. In these cases the BSB believes that LeO should have the freedom to resolve such cases if possible and not be constrained by a prescribed time limit.
5. *Do you consider it would be reasonable to use the new rule 5.7(d) to refuse to deal with complaints about acts or omissions that took place so long ago that a fair practical and proportionate investigation can no longer be conducted and safe conclusions cannot be reached at all, or without unreasonable or disproportionate commitment of time or resources?*
 - a) *If not how do you think we should deal with these complaints?*
Yes, the BSB believes that this would be reasonable. There will undoubtedly be some complaints for which this is the case, and LeO should have the ability to refuse to deal with them.

Grounds for refusing to deal with a dispute

6. *Is the above description of our proposed approach clear?*

Yes.

7. *Do you foresee any difficulties in applying the above approach?*
In general, no. However, it is not clear how the circumstances set out in Case Example 2 would be addressed. The example refers to refusing to deal with the complaint under 5.7(d) which might be appropriate but also refers to the wording of 5.7(b): frivolous and vexatious. If the intention is to deal such matters under the latter provision, we would see difficulties in this given that the refusal to deal with the dispute would be based on the circumstances of the provider and not the nature of the dispute. In such situations characterising the dispute as frivolous or vexatious seems inappropriate and unfair on the consumer.
8. *As set out above, the ADR Regulations allow ADR entities to refuse to deal with disputes that do not meet a pre-determined minimum and maximum monetary threshold. Should we explore having prescribed monetary thresholds for the value of claims?*
 - a. *If so, what should the thresholds be?*
 - b. *How should we identify and verify the amount?*

The BSB does not believe it is necessary to set a monetary threshold. LeO currently deals with complaints irrespective of how much money is at stake. Consumers of legal services should be entitled to have their complaint heard even in circumstances where there is not a large sum of money involved. If LeO does decide to prescribe a monetary threshold, the minimum amount should be kept very low to allow a wide range of complaints to be heard. A client may have a valid complaint that deserves the attention of an ADR provider, despite their dispute not being involving a significant amount of money. It would be for LeO to decide what any upper limit should be, according to what it felt competent to deal with.
9. *Do you have any other views on our proposed new sub section of chapter 4?*
No
10. *Are there any other grounds which you feel should be in the in the new subsection “complaints not covered”?*
No.

Consequential changes

11. *Are the consequential amendments clear?*
Yes, the consequential amendments are clear and sensible.
12. *Are there any further amendments you think we require?*
No, the BSB believes the amendments outlined are the correct ones.