

As the ombudsman prepares to open shop, solicitors face hurried complaints handling and the possibility of a surge in speculative negligence claims, says **Susanna Heley**

Welcome to the lion's den

IN THE AGE of the legal services revolution, solicitors could be forgiven for thinking the regulatory landscape changes weekly. Rule 2 of the Solicitors Code of Conduct 2007 is undergoing its third set of amendments in the space of little more than a year. The latest upheaval comes as the profession prepares to wave goodbye to the four-year-old Legal Complaints Service.

The Legal Ombudsman, to be known affectionately as 'LeO', opens for business next week, heralding what it promises will be a brand new 'consumer-centric' approach to complaints handling. For the first time, a single independent complaints body will exist for all eight regulated sections of the legal profession – including the Bar.

New angle

One key change the LeO has announced is to give lawyers just eight weeks to resolve client complaints before it intervenes. In some cases, it will also ask firms to explain why complaints were not dealt with sooner. The SRA is clearly supporting the consumer-focused approach, judging by the changes to the guidance to rule 2.05 of the code of conduct which emphasise the need to deal with complaints promptly, fairly and openly and highlight the need for a full investigation even where a complaint lacks merit.

The ombudsman will also take a different approach to the nature of the complaints it is prepared to consider, having decided not to exclude any categories of from its remit. This

means complaints of negligence are now within its powers – although, at least to begin with, the level of compensation it can award will be capped at £30,000.

Any complaint the LeO deems better suited to the court, which should include those higher-value claims, can be passed on at its discretion.

Although it is too early to make confident predictions as to the long-term effect of this approach, I suspect that there will be an increase in lower-value and more speculative negligence complaints because there is, generally speaking, no costs risk for clients making a complaint to the LeO.

It will be interesting to see how the LeO will reconcile its complaints handling requirements with its eight-week deadline. This seems a very short timeframe, particularly in the context of professional negligence complaints given that the Pre Action Protocol of the Civil Procedure Rules allows three months for investigation. It seems the LeO wants firms to undertake the same work within a significantly reduced timescale.

Come prepared

So, how should solicitors prepare for the changeover? I recommend a partner-level review of the LeO's rules of procedure and the brief guides already published. Ensure that fee earners are aware of the changes to professional rules, in particular note the changes to rule 2.05 of the code of conduct

which require solicitors to notify existing clients "at the next appropriate opportunity" of the change. The SRA has not agreed on what might constitute an "appropriate opportunity" yet, so it seems firms will not have to write specifically to clients advising them of the change. However, it is possible that the information should be included the next time a formal communication is made to the client – for example, on sending a bill. At the least clients should be informed upon asking for a copy of the firm's complaints procedure.

The changes to the guidance to rule 2.05 are surprisingly extensive. They focus on the requirement to have an accessible and user-friendly written complaints procedure and suggest that reference should be made to the complaints procedure both online and in promotional material. Therefore, firms should ensure that client care letters, written complaints procedures and firm websites are all updated and ready for 6 October.

While the profession waits to see the practical impact of LeO's changes, firms need to make sure their channels of communication for dealing with complaints, both internally and with their professional indemnity insurers, are properly defined, well known to all fee earners and not subject to any delay at all.

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