

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Legal Complaints

Complaints Handling – the previous position

293. Prior to commencement of the Act, each of the approved regulators maintained its own complaints handling and disciplinary arrangements. A complainant who was dissatisfied with the way in which a complaint had been handled could refer the complaint to the Legal Services Ombudsman (LSO), who could ask an approved regulator to reconsider a complaint.
294. The following bodies were subject to the jurisdiction of the LSO:
- the Law Society (also subject to the jurisdiction of Legal Services Complaints Commissioner),
 - the Bar Council,
 - the Council for Licensed Conveyancers,
 - the Institute of Legal Executives,
 - the Institute of Trade Mark Attorneys, and
 - the Chartered Institute of Patent Attorneys.
295. Under the previous complaints system, anyone who wished to complain about a person regulated by any of the organisations listed above would need to establish and make contact with the appropriate regulatory body. In the event that a complainant was not satisfied with the way in which a complaint had been handled by the appropriate regulatory body they could refer their complaint to the LSO. The LSO investigated the way in which the complaint was handled and the response from the professional body. If the LSO believed that a complaint had not been investigated properly, they could recommend that the professional body looked at the matter again. The LSO also had the power to re-investigate a complaint – in 2006 the LSO widened an investigation to look at the original complaint in less than 1% of cases.¹
296. Sir David Clementi's *Review of the Regulatory Framework for Legal Services in England and Wales*, published in 2004,² observed that there were a number of issues which arise from the manner in which complaints were dealt with under those previous arrangements:
- the record of complaints handling by the approved bodies – substantial delays and questionable quality in terms of outcome,

¹ Legal Services Ombudsman, 2005

² Clementi, 2004

*These notes refer to the Legal Services Act 2007 (c.29)
which received Royal Assent on 30th October 2007*

- the low level of consumer confidence in the independence of the system,
- the inconsistency and lack of clarity for redress arrangements for consumers in respect of regulatory bodies with overlapping activities, and
- the overlaps in the oversight regime.

297. Sir David concluded:

“There is a considerable concern about how complaints are dealt with. The concern arises at a number of levels: at an operating level there is an issue about the efficiency with which the systems are run; at an oversight level there is a concern about the overlapping powers of the oversight bodies; and at a level of principle, there is an issue about whether systems for complaints against lawyers, run by lawyers themselves, can achieve consumer confidence.”³

298. The Government’s 2005 White Paper, *The Future of Legal Services: Putting Consumers First*⁴ proposed the creation of an independent Office for Legal Complaints (OLC), which would be comprised of a management Board and a single complaints handling body that would provide redress for consumers, both of which would enhance consumer confidence in the complaints process.

³ Clementi, 2004

⁴ Department for Constitutional Affairs, 2005