



4 College Hill  
London EC4R 2RB

Tel +44 (0)20 7329 2173

Fax +44 (0)20 7329 2190

DX 98936 – Cheapside 2

[mail@citysolicitors.org.uk](mailto:mail@citysolicitors.org.uk)

[www.citysolicitors.org.uk](http://www.citysolicitors.org.uk)

Regulatory Affairs Board  
The Law Society  
113 Chancery Lane  
London  
WC2A 1PL

By email to: [regulatoryaffairs@lawsociety.org.uk](mailto:regulatoryaffairs@lawsociety.org.uk)

10<sup>th</sup> July 2015

Dear Sirs

**Response of the CLLS Professional Rules and Regulation Committee to the Law Society's discussion paper on the Legal Ombudsman's (LeO) case fee and funding (the "Discussion Paper")**

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees. This response to the Discussion Paper has been prepared by the CLLS Professional Rules and Regulation Committee.<sup>1</sup>

Our responses to the questions in your Discussion Paper are as follows:

**1 How, if at all, has your firm been affected by the change in LeO's approach?**

Our members are likely proportionately to receive the lowest number of complaints, which are then referred to LeO, across the profession, having broadly sophisticated, large corporate clients and thus the lowest number of clients (principally individual consumers, micro enterprises and small clubs and trusts) who would be entitled to complain to LeO. Our experience in the main is that we are not being charged case

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<sup>1</sup> A list of the members of the CLLS Professional Rules & Regulation Committee can be found here: [http://www.citysolicitors.org.uk/index.php?option=com\\_content&view=category&id=151&Itemid=469](http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=151&Itemid=469)

fees because, unsurprisingly, we tend to have bespoke and centralised complaints handling procedures as part of our relatively sophisticated risk management infrastructures; where a client does (unusually) have LeO redress rights, LeO is finding that we first took all reasonable steps to try to resolve the complaint under our own procedures. Thus, whilst the internal cost to our member firms of handling (particularly vexatious) complaints which are capable for escalation to LeO is likely far to exceed £400, our member firms have (so far as the PRRC is aware) not been significantly affected by the change in LeO's approach.

**2 Do you think that the Law Society should:**

- (a) Continue with its existing policy supporting “polluter pays”?**
- (b) Campaign for the return of “free cases”?**
- (c) Campaign for exemptions from the case fee for particular types of firm or practice?**
- (d) Campaign for LeO to provide a stepped case fee depending on where how far the complaint progresses?**

In principle we support the “polluter pays” policy, but we do not consider that the existing policy is particularly effective. As can be inferred from the Discussion Paper, if 7.6% of LeO's budget in 2013/14 was derived from case fees charged to “polluters”, 92.4% was contributed by ‘innocent’ solicitors via LeO's levy on the fees they contribute to the SRA.

Notwithstanding this, we consider the existing approach, including no case fee being charged where a complaint is resolved in favour of the solicitor, should continue to be implemented.

We do not find the concept of case fee exemptions for firms which are most at risk of unjustified complaints appealing because it seems that firms who are most at risk of complaints generally (i.e. those with high numbers of individual consumer clients) are likely to be those which also receive the highest level of unjustified complaints, but it would appear very difficult to distinguish at a high level (i.e. externally and in advance) which complaints which will be justified (so properly attracting a case fee) and which not.

We support a stepped case fee as it seems eminently sensible that any fee should reflect the cost incurred by LeO in handling it, provided fees continue not to be applied to firms in whose favour LeO finds, as the experience of some of our members indicates that vexatious complainants will seek to escalate their complaint to an Ombudsman even where a LeO caseworker has found the firm acted reasonably in its complaint resolution.

More helpful and more in line with the “polluter pays” principle would be the introduction of a case fee payable by the complainant in the event a complaint was found by LeO to be vexatious, although we note that this would require legislative change.

**3 LeO is required to charge a case fee and this is currently set at £400 per case. What do you think an appropriate level would be?**

We do not have a view on whether £400 per case is the appropriate fee, in the absence of visibility over LeO's actual costs base. However, given the significantly higher internal costs being incurred by City firms with vexatious complainants (with LeO redress rights),

it may be on the low side, particularly if it is to act as a deterrent if you agree (and if legislation follows) that complainants who are found to be vexatious should be required to pay it.

**4 Do you agree that it is inappropriate for the Society to press for complainants to be charged other than in the circumstances currently permitted?**

Whilst, in principle, access to LeO should be free to all, we consider that, given the high proportion of vexatious complaints to complaints (as meritorious complaints tend to be properly addressed by our relatively sophisticated complaints handling systems) received by City firms (from the albeit small caucus of City firm clients who have LeO redress rights) and the high internal cost to such firms of dealing with them, it may be appropriate for the Society to press for a basis on which to charge (only) vexatious complainants.

However, we are concerned that any change should not result in legitimate complainants being deterred, so the vexatious hurdle would need to be set suitably high and used reasonably sparingly.

**5 Based on your experiences, how do you think LeO could improve their procedures to make them fairer?**

Whilst generally our members have found LeO complaint handling to be broadly fair and sensible (and often sympathetic), we agree that LeO should act more quickly (at caseworker level) to identify vexatious complaints and more robustly in rejecting them. For example, some of our members have experienced :

- having to provide documents at short notice to a caseworker;
- who, after a further round of questions and priority document provision, sometimes occasioned by the caseworker not being familiar with the type of work which City firms undertake for their individual clients, ultimately finds in favour of the firm;
- the complaint then being referred by the client to an Ombudsman;
- who also finds in favour of the firm; but
- formally makes “no finding” in the absence of the client agreeing to endorse the Ombudsman’s decision.

A “final” decision from an Ombudsman (confirming an earlier caseworker’s findings) that is worded as follows is arguably not a good outcome for anyone:

“If [complainant] decides to accept my decision [that no further remedy is required from the firm] it will be binding on [the firm] and will be in full and final settlement of this matter. If, however, the decision is rejected, the remedy is not binding in any way. If I do not hear from [complainant] by [date] I will assume my final decision has been rejected and the file will be closed without any further action.”

**6 Are there any other important issues relating to LeO that have not been addressed in this Discussion Paper document. If so, please include further information.**

We are not aware of any other important issues which need to be addressed.

In summary, we would submit that there are currently inadequate deterrents and other measures to prevent vexatious complainants from putting City (and possibly other) firms, via LeO involvement, to significant internal time and direct expense in repeat rounds of complaint handling, which all produce the same finding, but offer no final resolution.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY

Professional Rules and Regulation Committee

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Its contents should not be taken as legal advice in relation to a particular situation or transaction.

Individuals and firms represented on this Committee are as follows:

Sarah de Gay (Slaughter and May, Chair)

Roger Butterworth (Bird & Bird LLP)

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)

Clare Wilson (Herbert Smith LLP)

Chris Vigrass (Ashurst LLP)

Antoinette Jucker (Pinsent Masons LLP)

Mike Pretty (DLA Piper UK LLP)

Jo Riddick (Macfarlanes LLP)

Raymond Cohen (Linklaters LLP)

Annette Fritze-Shanks (Allen & Overy)

Heather McCallum (De Vere Group)

Douglas Nordlinger (Skadden)

Tracey Butcher (Mayer Brown)