

Sent by email to: campaigns@lawsociety.org.uk

5 January 2024

Dear Sir / Madam,

Proposals for a 21st Century Justice System

Thank you for the opportunity to respond to The Law Society's Green Paper, *Proposals for a 21st Century Justice system*. We have focused our response on our area of expertise regarding the ombudsman landscape / 'Non-Court Dispute Resolution', particularly Q4 and Q5.

Summary

1. We welcome the Law Society's commitment to finding workable solutions that increase access to justice, the approach taken to draw together existing thinking and recommendations, and in particular the commitment to work with those in the ombudsman landscape to strengthen it.
2. The benefits that a single trusted portal could deliver for the public, such as the 'Solutions Explorer', will not be realised unless there is also broad reform of the 'Non-Court Dispute Resolution' / ombudsman landscape.
3. Effective reform requires three strands of action: a review of gaps in redress into which some of the most vulnerable people in society are falling, and how best to close them; an ambitious programme of education to raise awareness and improve access to justice; and creation of a central point for leading ombudsman policy within government to galvanise action.

Background

4. The Ombudsman Association (OA) is the professional association for ombudsman schemes and complaint handling bodies in the UK, Ireland, the British Crown Dependencies, and the British Overseas Territories.
5. The OA's membership criteria¹, including those relating to independence, are recognised both in the UK and internationally as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*,² which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.³

¹ www.ombudsmanassociation.org/about-us/join-ombudsman-association

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

³ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

6. The Vision of the OA is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
7. As the Lady Chief Justice set out in her speech at the Civil Justice Council Forum⁴, the civil justice system plays three key roles in society: (1) it prevents disputes by guiding behaviour; (2) it resolves disputes without the need to resort to the courts; and (3) in the last resort, the courts determine disputes by adjudication.
8. Whereas most Non-Court Dispute Resolution (NCDR) focuses solely on part (2) of that model, ombudsman schemes aim to deliver both (1) and (2), providing an independent redress model, free at the point of use, that can drive systemic change, tackle injustice, and help organisations (whether public sector or private businesses) to perform more efficiently and effectively.

The ‘Solutions Explorer’

Q3. To what extent will the ‘Solutions Explorer’ help to address the unmet legal need of individuals on low incomes and small businesses?

9. The cost-of-living crisis has brought citizen and consumer rights into even sharper focus, and along with it the importance of increasing access to justice. And yet many people, including those on low incomes, have a rudimentary understanding of the issues around access to justice and redress. That is reflective of the lack of awareness and understanding in wider society, which starts at school and flows from there. When people do come forward the clear gaps in their knowledge often result in ineffective use of the wider justice system, as frequently seen in litigants in person before the courts and tribunals.
10. A long-term approach should be taken to public education on peoples’ rights and access to justice, covering not just the courts and tribunals, but also ombudsman schemes and regulators. This would help shape a curriculum that educates people at the start of their lives about their rights and the role the wider justice system can play in their own and their families lives when needed, as well as develop resources, such as BBC Bitesize and social media material, that are then accessible at all levels of society from school and beyond about how to access the justice system and the right level to do so depending on the issue.
11. The proposed ‘Solutions Explorer’ could play a key part in addressing that unmet need, if provided by a trusted ‘brand’. Clearer signposting raises consumer awareness, making it easier for consumers to explore alternative options and make an informed decision. However, as identified in the Citizens Advice report *Confusion, Gaps, and Overlaps*⁵, a ‘one stop shop’ is only part of the broad reforms required.
12. The UK Government’s 2022 Consumer Protection study estimated that £54 billion of aggregate consumer detriment goes unaddressed each year.⁶ In the current landscape, a consumer’s

⁴ [Speech by the Lady Chief Justice: Civil Justice Council’s 12th National Forum - Courts and Tribunals Judiciary](#)

⁵ [Confusiongapsandoverlaps-Original1.docx.pdf \(citizensadvice.org.uk\)](#)

⁶ [Consumer protection study 2022 - GOV.UK \(www.gov.uk\)](#)

options to use NCDR are often dictated by the product they use / purchase, the shop / provider they purchase it from, and even how they pay for it. Research undertaken by ICF and published alongside the UK Government's Consumer Green Paper highlighted that 70% of consumers who went to the courts did so because the trader refused to participate in NCDR.⁷ And when businesses do choose to use NCDR they are often able to pick their own 'judge and jury', opting for NCDR bodies that do not take an inquisitorial approach or are not fully independent.

13. For example, despite second hand vehicles being identified as the sector with the third highest incidence of consumer detriment,⁸ 'Used Car' sales outlets and independent car garages don't have to sign up to an NCDR service. As c.98% of new car sales dealers, and Franchise Dealers in the Service & Repair sector, are already covered by the Motor Ombudsman, the correlation is that those with more disposable income also have better access to justice. In comparison, those on lower incomes, who will typically purchase lower priced used cars and use cheaper servicing and repair, often don't have access to an ombudsman and also don't have the disposable income to go to court.
14. As a result, without other reforms, the key benefit of a 'Solutions Explorer' would simply be to inform individuals on low incomes more quickly and more accurately of the unsatisfactory options they have; NCDR that is not independent or of poor quality, or in many instances direct them to the courts anyway because of the lack of any NCDR provision at all.

Effective and affordable mechanisms for redress

Q.4 What else could be done to make Ombuds a more effective remedy for consumers (for example, additional powers, funding, marketing and promotion)?

15. An ombudsman is different to the basic transactional NCDR bodies identified in the *Confusion, Gaps, and Overlaps* report,⁹ which simply pick a 'winner' in a dispute. Resolving an individual dispute is of course key to those individuals involved, but the real value in the ombudsman model is their role in feeding back the lessons from their work in order to help secure redress for others in a similar situation, and to improve service delivery and complaints management for the future (part (1) of the three roles of the civil justice system). For that reason, an ombudsman is often described as being more like a doctor than a police officer, diagnosing what is wrong and making recommendations to improve. And it is in that guise, as an 'agent of change', that an ombudsman plays a role in rebuilding trust and consumer confidence.
16. The key aspect to unlocking the benefits of that approach, both for consumers and businesses, is to replace the existing competing multiple redress providers with a single ombudsman within each sector. As the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes* highlights, Departments should "Avoid multiple redress schemes within individual industry sectors, which may confuse consumers and may introduce uneven practices in investigation and redress".¹⁰

⁷ [Resolving consumer disputes: alternative dispute resolution and the court system - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/Resolving_consumer_disputes_alternative_dispute_resolution_and_the_court_system_-_GOV.UK_(www.gov.uk).pdf)

⁸ [Consumer protection study 2022: understanding the impacts and resolution of consumer problems \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/Consumer_protection_study_2022_understanding_the_impacts_and_resolution_of_consumer_problems.pdf)

⁹ [AppendixD-MapofADRProvidersintheUK.docx \(3\).pdf \(citizensadvice.org.uk\)](https://citizensadvice.org.uk/wp-content/uploads/2019/03/AppendixD-MapofADRProvidersintheUK.docx(3).pdf)

¹⁰ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

17. That there should only be one redress provider within a sector, and preferably an ombudsman, is also supported by academia and the advice and advocacy sector.¹¹ Evidence compiled by *Which* highlights the issues caused in the aviation sector by having multiple redress providers.¹² And when Ofgem consulted on whether to introduce an additional redress provider alongside the Energy Ombudsman, both consumer representatives and energy companies stressed that having multiple redress providers would not benefit either consumers or businesses.¹³
18. Those reports, and others, are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits.
19. To be effective and provide the insight and data to drive service improvements an ombudsman needs to have the right powers, both to set complaints standards in the area they cover and to undertake 'own initiative' investigations. Those 'own initiative' powers, common around the world (and held by the Public Services Ombudsman for Wales, the Northern Ireland Public Services Ombudsman, and the Independent Office for Police Conduct), are essential where people are excluded or marginalised from mainstream society or where there is a fear of reprisal from raising a complaint.
20. Access also needs to be simple. Whilst ombudsman schemes do not have the deliberate barriers other NCDR services put in place to restrict access, such as a fee to access or a bar on disputes below a certain monetary value, outdated legislation or regulations can hamper accessibility to an ombudsman, such as a requirement for a complaint to be made 'in writing'.
21. The continuing existence of the 'MP filter' is the most egregious example. UK citizens who want to complain about a public service provided by the Welsh, Scottish, or Northern Irish Governments, or by a local authority in England, can do so directly to the relevant ombudsman. But if those same citizens are unhappy about a service provided by the UK Government, they need permission from an MP to complain to the Parliamentary & Health Service Ombudsman (PHSO). Nowhere else in the world does a citizen need the permission of a politician to complain about a service that they pay for through their own taxes.
22. Yet stronger and more consistent access to justice will not have the impact it should without greater awareness amongst the public of their rights. From Windrush to Grenfell, to those living in mould infested homes, the victims of injustice have struggled to have their voices heard until a scandal, tragedy, or major failing occurs, and barriers to access and awareness of redress means the public are not able to exercise their rights as easily as they should.
23. Whilst ombudsman schemes should, and are, doing more to reach out to under-served and under-represented communities, it is partly the 'postcode lottery' of whether someone can actually take their complaint to an ombudsman or not which creates confusion for the public and those trying to provide advice or advocacy. Additional resource to raise awareness, such as the Government's recent radio campaign signposting the Housing Ombudsman, is required – and that will be cheaper and simpler to provide if the complexities and nuances in the existing landscape are resolved.

¹¹ [Confusiongapsandoverlaps-Original1.docx.pdf \(citizensadvice.org.uk\)](#)

¹² www.which.co.uk/news/2020/10/more-airline-passenger-misery-as-court-cases-could-take-years/

¹³ www.ofgem.gov.uk/publications-and-updates/application-utilities-adr-be-certified-adr-provider-energy-sector-ofgem-decision-following-responses-our-open-letter

Q5. Which Ombuds schemes could be combined to make the landscape less complex?

24. Whilst there are 22 ombudsman schemes in the UK (with varying coverage across the four nations), that is seen as both too many, and not enough. The haphazard way in which ombudsman schemes and other redress bodies have been created has resulted both in multiple NCDR bodies where there could be one unified service, and huge gaps in redress and access to justice in several areas. As the Green Paper highlights, alongside court reforms that has caused confusion for the public on how to access justice.
25. The OA's position is that to ensure access to redress is simple and straightforward, there should be a single ombudsman within a sector, and there should be increased harmonisation of powers and processes between ombudsman schemes in different sectors. New ombudsman schemes should not be created where the role could be appropriately fulfilled by an existing ombudsman, and existing ombudsman schemes should be rationalised where this is in the interests of the public.
26. As the Green Paper references, there is work underway in some areas to make that a reality. The OA welcomes the in-principle commitment from PHSO and the Local Government & Social Care Ombudsman (LGSCO) to bring their jurisdictions together under a single new (UK/England) Public Service Ombudsman. We welcome the intention expressed by the Government not to create a new ombudsman body for the private rented sector, but rather to expand the jurisdiction of the existing Housing Ombudsman. And we also welcome the UK Government's direction of travel to replace the eight existing NCDR bodies in the gambling sector with a single ombudsman.
27. However, in a world where peoples' problems are increasingly multi-faceted, involving several different agencies and organisations in different 'sectors', it can be difficult to decide where the jurisdiction of an ombudsman should best be drawn. The OA uses the Standard Industrial Classifications (SIC) to define an industry, whilst recognising that in some instances the size of a sector may mean that several SIC codes may exist within it, and in some areas within a sector specialist skills may be required that may not be provided in a non-specialist scheme.
28. As the Green Paper notes, any rationalisation of existing ombudsman schemes should not take place without a rigorous analysis of the gaps and overlaps in the existing system. In identifying where access to an ombudsman should be expanded or created, for example in those high detriment areas that both *Which* and the UK Government have highlighted, such as aviation, different solutions to those originally considered might emerge. Without that broader approach, there is a risk that opportunities will be missed to increase access to justice and less coherent 'combinations' of bodies and jurisdictions might be opted for.

We welcome further engagement with The Law Society, and the Project Advisory Group, to take this work forward.

Yours sincerely



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