



COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE OFFICE OF THE LEGAL SERVICES OMBUD: RULES

The Law Society of South Africa (LSSA) has considered the Rules that were published in Government Gazette 46242 dated 14 April 2022. We hereby submit our comments below, which we trust will be favourably considered by the Legal Services Ombud (the Ombud).

1. INTRODUCTION

We commend the Ombud for its apt and inspirational slogan and logo, which encapsulate its significant mandate.

2. PUBLICATION OF THE RULES

2.1 We note that the motivation for the making of Rules without prior publication is necessitated by the Legal Practice Act, No. 28 of 2014 (the LPA) coming into operation in a staggered manner, which in turn impacted on the disciplinary processes of the LPC, including appeals against the conduct or finding of disciplinary committees of the LPC as provided for under section 41 of the LPA.

2.2 However, support for the above motivation is not evident from the content of the Rules given that no further reference is made in the Rules to section 41 of the LPA.

2.3 The LSSA further notes that the establishment and maintenance of the lay person list, as contemplated in section 37 of the LPA, requires the Ombud to be in operation.

- 2.4 Given the significance of the list containing the names of lay persons, the LSSA recommends that the Ombud should introduce a transparent process of establishing and maintaining a list of lay persons, considering their important role within the appeal process. The Rules offer an ideal platform for the introduction of such a transparent process.
- 2.5 Also, the lay persons will be paid an allowance as determined by the LPC and published in the Gazette. This appears to present a further potential delay in relation to the resolution of disputes. A transparent process should also, in our view, accompany the determination of the allowance.

3. SUBMISSION OF COMPLAINTS

- 3.1 The LSSA notes paragraph 2 provides that “A complaint lodged with the Ombud must be lodged on Form 1 or a form substantially to the Form 1 contained in the Annexure hereto.” The form must be lodged directly with the Office of the Ombud.
- 3.2 To avoid potential duplication, it would be prudent for the Rules to provide some guidance regarding what complaints should be lodged with the LPC, as opposed to the Ombud.
- 3.3 We recommend that the Ombud should, given the independent nature of its identity and mandate, consider the introduction of email addresses which are distinct and separate from that of the Department of Justice and Correctional Services (i.e.: @justice.gov.za).

4. SUBSTITUTED SERVICE AND HEARINGS

- 4.1 The LSSA recommends that the method of service as referred to under paragraph 5(1) of the Rules should be extended to cater for contemporary means of service, including email and social media.
- 4.2 Service upon legal practitioners can be facilitated with the assistance of the LPC as regulator and with representative organisations of legal practitioners.

5. SUMMONS

The LSSA recommends that the Rule should make express provision for:

- the nature of the complaint, or the complaint and the context should be clearly set out in the summons; and
- Proceedings to be conducted virtually.

6. ANNUAL REPORT

The LSSA recommends that the ambit of the Ombud's annual report should be expanded to include:

6.1 Reporting against the specific objects of the Ombud, i.e.:

- 6.1.1 protect and promote the public interest in relation to the rendering of legal services as contemplated in the LPA;
- 6.1.2 ensure the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners;
- 6.1.3 promote high standards of integrity in the legal profession; and
- 6.1.4 promote the independence of the legal profession.

6.2 Any financial, funding and strategic risks faced by the Office of the Ombud; and

6.3 Any material losses through criminal conduct, and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year, and any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure.

7. INVESTMENT OF FUNDS AND MANGEMENT OF ASSETS

- 7.1 Sub-sections 51(9) and (12) of the LPA provide for the investment or deposit of money that is not immediately required for contingencies or current expenditure in eligible accounts and the acquisition and alienation of movable and immovable property.
- 7.2 The LSSA recommends that provision be made in the Rules for the introduction of transparent and procedurally fair investment, procurement and alienation processes.

8. DISSOLUTION OF COUNCIL

- 8.1 Section 14 of the LPA makes provision for the dissolution of the LPC. In the unlikely event that this may occur, the Minister of Justice and Correctional Service must (if the lack of confidence prevails) pursuant to section 14(2) request the Ombud to conduct an investigation and make recommendations to him or her.
- 8.2 The LSSA recommends that the Rules should address the manner in which such an investigation be conducted, in the unlikely event that it may be required.