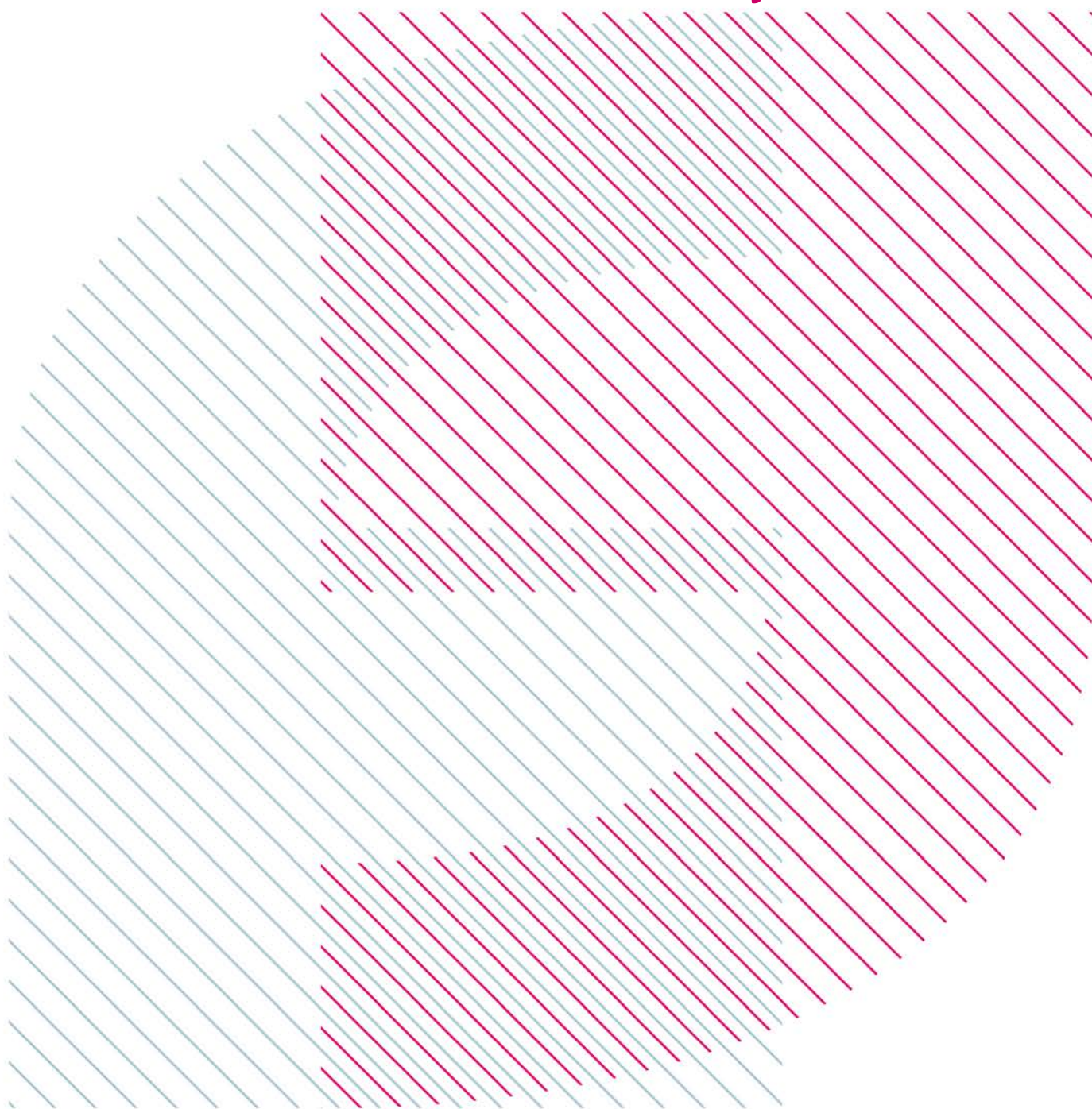



LEGAL
OMBUDSMAN

Scheme Rules Consultation

February 2022



Contents	
Foreword by the Chair	2
Background to consultation.....	4
About this consultation	5
Introduction to the Scheme Rules	5
Review of the Scheme Rules.....	6
Stage 1 Review	6
Overview of proposed changes	8
Impact Assessment	8
Stakeholder engagement.....	9
Key changes to Scheme Rules	10
Rule 4 - Time Limits.....	11
Rule 2.11 - Declining to accept a complaint for investigation	13
Rule 5.7 - Ombudsman discretion to dismiss or discontinue a complaint.....	15
Rule 1.11- The wider delegation of decision making.....	20
Rule 5.19 - Escalation of cases to an Ombudsman for decision	22
Rule 6 - Case fees.....	26
Additional proposed changes.....	27
Summary of Questions	31
Next steps	32
How to respond	32
Annex 1- Proposed Amendments.....	33

Foreword by the Chair

At the heart of any Ombudsman Scheme is the ability to resolve disputes with impartiality and minimum formality.



The Legal Ombudsman has faced significant performance challenges in recent years. There is a substantial backlog of complaints in the Pre-Assessment Pool (PAP), and as a result, the length of time customers are waiting for their case to be investigated is unacceptable. In 2021/22 the Office for Legal Complaints (OLC) outlined a two-year plan for recovery. In it we were clear about the urgent need to reduce the backlog of complaints, improve customer journey times, and be more transparent about performance and the progress being made. We are still not where we need to be, but as we approach the mid-way point in our two-year journey, I am pleased to see that the foundations for investment in people and new ways of working are in place.

It is now vital that these foundations are supported by the right Scheme Rules – a set that support the customer experience and drive efficiency is essential to achieving and sustaining longer-term stability. The current Scheme Rules do not afford the flexibility to execute minimum formality in the complaints process and are in many ways preventing the Legal Ombudsman from providing the best possible service to its customers.

That is what this consultation is about; identifying opportunities to remove barriers which allow us to improve the customer journey and drive forward operational improvements. The review has not been about closing doors to customers but about identifying new freedoms and building in the ability to resolve complaints in a proportionate and more efficient way. It is about achieving a more balanced approach and creating a quicker customer experience, whilst retaining the core benefit of accessing independent and fair legal redress.

We already know that implementing change can bring improvements. During 2021/22 the Legal Ombudsman has undertaken pilot projects, demonstrating valuable improvements can be made to the efficiency of the complaints process. Following a full review of the Scheme Rules, we have a clearer sense of the further impacts and benefits those changes could make. As you will see, the review has been comprehensive. Thought has been given to the interconnectedness of different Scheme Rules and the impact changes could have at different points within the complaints process. We want to ensure delivering change brings improvements which promote consistency of decision making whilst supporting a flexible approach to the resolution of complaints.

This is an important and necessary consultation. Whilst it is a requirement to consult before going to the Legal Services Board, it is also absolutely vital that the OLC hears from you before making a decision which will support the overall recovery of the Legal Ombudsman. Where there is an obstacle to being able to deliver improvements for customers, the OLC is working together with the Legal Ombudsman to help remove it. The messaging has been clear; ‘we need a set of Scheme Rules which supports the delivery of a redress system that our complainants and service providers deserve’.

Listening is not just about the formal consultation period. This document has already been influenced by many interested parties and this will continue. I very much hope you will make the most of the opportunity presented to contribute to delivering an Ombudsman service that is able to respond to the needs of the legal services sector, its providers and its service users.

Elisabeth Davies, Chair of the Office for Legal Complaints

Background to consultation

1. The Scheme Rules were last updated in 2019 to reflect changes in the Legal Ombudsman's jurisdiction following the transfer of the regulation of Claims Management Companies to the Financial Conduct Authority and complaints about those companies passing to the Financial Ombudsman Service. However, the Scheme Rules have not been subject to a comprehensive review since 2012, despite there having been numerous changes in operational processes over that period.
2. The Legal Ombudsman's strategy for 2020-23 outlines a commitment to improving customer service and ensuring the Scheme remains relevant and can adapt to the evolving legal sector. 2020/21 also saw the arrival of new senior leadership within both the Office for Legal Complaints (OLC) and the Legal Ombudsman and that leadership has clearly articulated the intention to improve the customer journey and experience, reduce the amount of time customers have to wait for an investigation to commence, support innovation, and ensure that the Scheme is best placed to support the needs of its customers and the sector as a whole over the coming years.
3. The Legal Ombudsman's improvement plans have always required a multi-year view focussing on building consistent and sustainable levels of performance, bringing the level of service, it provides to its customers back to an acceptable level.
4. The Business Plan for 2021/22 was the first of a two-year recovery programme, which outlined a number of improvement innovations and initiatives that would be undertaken throughout 2021/22 and into 2022/23. As part of this, the OLC and Legal Ombudsman committed to undertaking a review of the Scheme Rules in Quarter 4 of 2021/22. The review was originally intended to look at whether the style and format of the Scheme Rules continued to be suitable and to identify where high level or technical changes were required.
5. However, the scale of the challenge facing the Legal Ombudsman, caused initially by a combination of historic underperformance and high levels of staff attrition, and subsequently exacerbated by the impacts of the Covid pandemic and significant changes within the recruitment market have led to this review being expedited. The need to make significant and radical changes to the Scheme and to do so with pace and urgency is evident.
6. Through the review it became clear that the Scheme Rules contain a number of rules which either create inefficiencies in the business process or do not encourage the resolution of complaints in a proportionate or effective manner. All of these combine to hinder the Legal Ombudsman's ability to progress investigations as quickly and efficiently as our customers would like.

7. As a result, the review of the Scheme Rules has been refocussed on identifying opportunities to improve the customer experience by enhancing operational efficiency, removing historic obstacles to resolving cases quickly and with minimum formality and creating a platform for the continued evolution of the Scheme in the years to come.
8. This consultation represents the culmination of the first stage of the review of the Legal Ombudsman's Scheme Rules

About this consultation

9. This consultation document sets out and seeks views on the proposed changes to the Legal Ombudsman's Scheme Rules.
10. It contains a summary of the proposed changes alongside the rationale for change. A marked-up version of the Scheme Rules, including the draft wording is included in Appendix 1.
11. The proposed wording of the Scheme Rules may change depending on the responses to this consultation. In what follows:
 - Act refers to the Legal Services Act
 - Section (abbreviated to s.) refers to a section of the Legal Services Act
 - Chapter means a chapter in the Scheme Rules
 - Rule means a rule in the scheme rules

Introduction to the Scheme Rules

12. The Legal Services Act 2007 (the Act) created the Office for Legal Complaints and tasked it with establishing an ombudsman scheme to support the regulatory objectives (set out in s.1 of the Act) and in doing so to resolve disputes between consumers and their lawyers quickly and with minimum formality (s.113 of the Act). The OLC is the non-executive board of the Legal Ombudsman and is charged with overseeing the running of the Scheme which opened in October 2010.
13. The Scheme Rules set out the legal framework under which the Legal Ombudsman operates. They underpin decisions by Ombudsmen and operational teams as well as the Ombudsman process. The existing Scheme Rules document describes the combined effect of:
 - provisions in the Act, which only Parliament can change;
 - provisions set by the Lord Chancellor, by Statutory Instrument under the Act;
 - requirements set by the Legal Services Board under the Act;
 - rules set by the Office of Legal Complaints, under the Act.

14. S.155 of the Act states that before the OLC makes any new, or modifies any existing, Scheme Rules it must obtain the consent of the Legal Services Board and in situations where the OLC propose making changes to the provisions relating to the case fee structure (set out in s.136 of the Act) the Lord Chancellor's consent is also required.

Review of the Scheme Rules

Stage 1 Review

15. In conducting the review of the Scheme Rules, the Legal Ombudsman has been guided by its Strategic Objectives of:



And good practice evidenced by other ombudsman schemes and organisations operating within the redress sector.

16. Alongside those principles the review has focussed on ensuring that any proposed changes continue to support the delivery of the regulatory objectives and facilitate the resolution of complaints “quickly and with minimum formality by an independent person”.
17. This review of the effectiveness of the current Scheme Rules has been carried out over the course of 2021/22. It has been undertaken by way of assessment of the existing Scheme Rules, with both internal and external stakeholders. The drive to embed efficiencies within operational processes has also been supported by undertaking and reviewing ‘early resolution’ and ‘proportionality’ pilot initiatives under Priority 1 of the 2021/22 Business Plan. The evidence collected from these initiatives has reinforced the need to review how the Scheme Rules can better support overall operational stability, improve delivery, help reduce wait times and improve the overall customer experience.
18. The purpose of the review has been to:
- improve the experience of our customers;
 - ensure that the Scheme Rules support the focus on resolving cases quickly and with minimum formality;

- ensure that the Scheme Rules support the drive for process efficiency and innovation;
 - identify any areas where changes are needed to support the efficient operation of the Scheme;
 - identify and rectify any errors, omissions, or points of inconsistency within the Scheme Rules; and
 - ensure that the Scheme is best placed to cope with changes in the legal landscape in the future.
19. It is clear that, to reduce the customer journey time to an acceptable position and develop future organisational stability, the Legal Ombudsman must think radically and look at the best ways to overcome ongoing operational challenges, both internally and within the environment it operates.
20. In an effort to drive forward the immediate priorities of reducing the customer journey whilst improving operational delivery and customer experience, the Legal Ombudsman is adopting a two-stage approach to the Scheme Rules review. The proposals outlined in this consultation document form the basis of the Stage 1 review. These changes are focused primarily on ensuring the Legal Ombudsman can progress investigations in a timely, proportionate, and effective manner, whilst also signalling the Legal Ombudsman's intent to make some key longer-term strategic changes. A future, Stage 2, review of the Scheme Rules will look to build on the strategic changes proposed in this review and will also provide a more fundamental review of the Scheme in light of customer expectations and the evolving nature of the legal sector. The outcomes of the Stage 2 review will aim to enable the Scheme to be more agile when responding to any future changes in the external environment.
21. The work undertaken so far has identified a number of potential changes to the Scheme Rules, which will create the efficiencies required to deliver a more effective service. This consultation document will go on to outline those changes and the potential impact they may have for the organisation and its customers. A small number of the longer-term more strategic changes identified in this document, if supported, would require either a change in primary legislation or Lord Chancellor approval. It is important to acknowledge that whilst the potential benefits of these changes have been considered and, where possible, identified and outlined, the additional stages in the approvals process means that their implementation and therefore the realisation of any benefits will take longer when compared to some of the other proposed changes.
22. A number of technical and historical drafting issues, that would benefit from being addressed, have also been identified within the current Scheme Rules. Changes to these points are relatively uncontroversial but would help overcome some of the more

frequent challenges to the operation of the Scheme and therefore free up investigator and Ombudsman time.

Overview of proposed changes

23. There are six key areas for change which are addressed in detail as part of the consultation, alongside a number of additional minor technical changes. The consultation will address the following proposed changes:

Key Changes for consultation	
Rule 4	A review of applicable time limits
Rule 2.11	Declining to accept a complaint for investigation
Rule 5.7 (b), (c), (p), (q)	Ombudsman discretion to dismiss or discontinue a complaint
Rule 1.11	The wider delegation of decision making
Rule 5.19	Escalation of cases to an Ombudsman for decision
Rule 6	Case fees
Additional Changes for consultation	
Rule 1.1	Removing reference to obsolete dates
Rule 2.1	Addressing historic drafting errors
Rule 2.8	Formalising the position on complaints by beneficiaries
Rule 4.5	Removing reference to obsolete dates
Rule 5.4	Addressing formal challenges to ongoing investigations
Rule 5.5	Providing ombudsmen discretion when to accept a complaint for investigation
Rule 5.7 (a), (d)	Clarifying discretion to dismiss a complaint
Rule 5.20	Addressing situations where investigator's findings and recommendations are not accepted
Rule 5.33	Addressing when an Ombudsman can direct that a hearing is required
Rule 5.55	Allowing the Legal Ombudsman to rectify uncontested errors
Rule 5.62	Updating reference to relevant data protection legislation

Impact Assessment

24. Significant work has already been undertaken to consider and assess the potential positive and negative impacts of the proposed changes on any of our customers (complainants and / or service providers). Alongside this we have actively considered whether any of the proposed changes are likely to impact on the Legal Ombudsman's ability to deliver against the Strategic Objectives.

25. Against each of the key proposed changes we have outlined what we foresee as being the possible impacts of the changes. We have also set out our plans to monitor those potential impacts once any of the changes have been approved and implemented.
26. Work has already started on assessing the impact of these changes on our customers from an equality, diversity and inclusion perspective. This initial work has demonstrated the need to have regard to the potential disproportionate impact some of the proposals outlined in this consultation may have on some groups of customers and we are already working to identify ways of mitigating those potential impacts.
27. The Legal Ombudsman will continue to assess the impacts of these changes on customers as the proposals progress through the consultation process. A full equality impact assessment will be conducted once the Legal Ombudsman can take full account of a wider range of views and evidence, to enable a full assessment of the impact of the proposed changes to be brought back to the OLC Board.

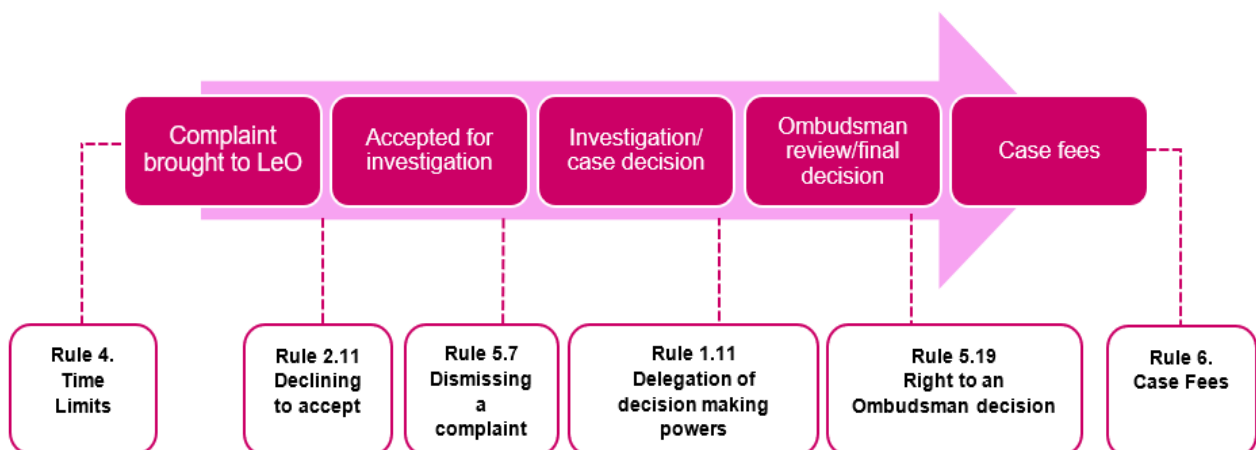
Stakeholder engagement

28. It is critical that the eventual outcome of this review of the Scheme Rules enables the Legal Ombudsman to deliver an enhanced service to all its customers, both complainants and service providers. It is important therefore that the proposed changes do not result in detriment to any one group of customers over the other or adversely impact on the Legal Ombudsman's ability to provide an independent and impartial complaint resolution service.
29. The 2021/22 Business Plan identified the need to review the current Scheme Rules and over the course of the current financial year, the Legal Ombudsman has been actively engaging with internal colleagues and key stakeholders to learn from their experiences and to listen to their ideas and suggestions as to where the operation of the Scheme could be improved.
30. In response to the 2021/22 Business Plan consultation process a number of key stakeholders agreed to form a Challenge and Advisory Group with the intention of helping the Legal Ombudsman identify ways to address the challenges it was facing. Over the course of this year the Legal Ombudsman has worked closely with the Challenge and Advisory Group and their support and constructive insight has played a key role in the progress of this review of the Scheme Rules.
31. As part of the Business Plan and Budget 2022/23 consultation, the Legal Ombudsman identified the completion of the review of the Scheme Rules and subsequent implementation of the revised provisions as a priority area of work. It was explained that the outputs of this review would help enable the Legal Ombudsman to improve the customer experience, reduce the overall customer journey, deliver improved performance and support a sustainable recovery.

32. Feedback from the Business Plan and Budget consultation demonstrated a good level of support for using the review of the Scheme Rules to enable the Legal Ombudsman to deliver a service which supported the early resolution of complaints and provided a more proportionate level of control over the progression of cases.
33. In the lead up to this consultation the Legal Ombudsman has engaged with a number of key stakeholders and the key message that has come from these discussions has been that, in order to address the issue of wait times in the Pre-Assessment Pool and the desire for complaints to be addressed quickly and efficiently, there is a clear need for radical change. It is also acknowledged that the level of change that is sought and needed can only come through a significant review of the Scheme Rules.
34. As well as showing the appetite for change, this early engagement has provided invaluable insight around the proposed areas for change from the perspectives of both the consumers of legal services and the sector. This has enabled us to ensure that the implications of potential changes have been considered from all perspectives and mitigations developed to ensure that risk of an unfair impact on any of the Legal Ombudsman’s customers is managed
35. Alongside and as part of this consultation the Legal Ombudsman will continue to engage with key stakeholders not only to ensure that the views of the regulators, representative bodies, consumers, and service providers are listened to but also to provide clarity and further detail, if needed, on any of the proposed changes and to ensure that all of our stakeholders are best placed to be able to provide informed responses to this consultation.

Key changes to Scheme Rules

36. The following diagram aligns the proposed key changes to the Scheme Rules with the Legal Ombudsman complaints process.



Rule 4 - Time Limits

37. **Rule 4.5** – this rule currently requires a complaint to be brought to the Legal Ombudsman within either six years of the act/omission or three years of the date of awareness (if the date of the act/omission was more than six-years ago).

Rule 4.7 – this rule provides an Ombudsman with discretion to extend the time limits in circumstances where it is fair to do so (for example in situations where serious illness prevented a complaint being raised in time).

38. The Legal Services Act does not define the time limits within which a complaint must be brought to the Legal Ombudsman. The current time limits under rule 4.5 have been in place since 2012, to broadly mirror Court time limits for contractual claims and to therefore ensure that customers are able to bring a complaint to the Legal Ombudsman instead of taking a matter to the Courts.

39. The Legal Ombudsman’s view is that the current time limits have opened the door to complaints that cannot be properly investigated effectively due to the amount of time that has passed since the act or omission that was complained about.

Proposal

40. It is proposed that that the time limit for when a complaint must be referred to the Legal Ombudsman should be changed to not later than:

- **one year** from the date of the act or omission being complained about; or
- **one year** from the date when the complainant should have realised that there was cause for complaint.

41. Although a one-year time limit is not the universal norm across the ombudsman and redress sector, a significant number of ombudsman schemes in England and other devolved public services ombudsman schemes across the nation do apply a one-year time limit. There is merit, from a harmonisation perspective, in bringing the Legal Ombudsman’s time limits into line with others in the sector.

Impact

42. It is in the customers’ best interest to bring a complaint to the Legal Ombudsman at the earliest opportunity. Experience has shown that older cases are much more challenging to investigate, due to difficulties in gathering evidence, particularly where a firm has since closed, files have been archived, or the file handler has moved to another firm. Fixing a lower time limit will ensure that cases can be investigated when

the issues in question are fresh in the minds and memories of both consumer and service provider. This is more likely to aid the investigation process and therefore enable the investigation to be concluded as quickly and efficiently as possible.

43. The Legal Ombudsman does not want to adversely impact individuals who may not become aware of any potential service failing until sometime after the service had been concluded; for example, customers may only become aware of issues relating to the purchase of a property when they come to sell the property at a future point in time. We therefore see the retention of the date of awareness element as being essential in ensuring that access to redress is still open to those customers who find poor service some years after the retainer concluded.
44. An initial high-level review of complaints raised with the Legal Ombudsman within the last 12 months suggests that around 30% could have fallen outside of the time limits if set at 1 year. However, the application of rule 4.7, above, would allow an Ombudsman to exercise discretion to extend the 1 year time limit for specific customers if, on the evidence, it was fair and reasonable to do so.
45. It is acknowledged that, for some consumers of legal services, there might be a hesitation about raising a complaint with their lawyers whilst a legal matter is still ongoing, let alone in escalating that matter to the Legal Ombudsman. Those customers could potentially find themselves falling outside of the revised time limits if they waited until the end of the legal matter to raise their complaint – this could represent a situation where discretion to permit the complaint to be raised out of time could be exercised.
46. Other examples of factors that might be considered when exercising discretion could be:
 - serious health conditions that meant the customer was unable to complain;
 - protracted investigation and handling of internal complaints processes;
 - where there was a justifiable delay in raising the complaint with the service provider; or
 - vulnerable customers or those with the need for reasonable adjustments that would impact their ability to progress a complaint.
47. The change to time limits would not be applied retrospectively and therefore would not impact cases that have already been brought to the Legal Ombudsman. The revised time limits would only be applied to complaints raised with the Legal Ombudsman after a defined point in the future. Advanced communication with consumers and service providers would be a priority, in order to give a clear transition date for when the changes would come into effect and to allow service providers time to amend internal complaints guidance for clients.

48. The Scheme Rules also currently state that, provided the service provider has adequately signposted them to the Legal Ombudsman in their response to the complaint, a complainant must bring their complaint to the Legal Ombudsman within six months of the service provider's response to the complaint. That rule would still apply to new cases if the proposed changes to time limits were introduced.

Question:

Q1. Do you agree that there is merit in reducing the time limit for complaints to be brought to the Legal Ombudsman to one year from the date of act/omission or date of awareness (whichever is the later)?

Rule 2.11 - Declining to accept a complaint for investigation

49. The Legal Ombudsman is committed to reducing wait times for its customers; giving its customers a realistic appraisal as to the prospects of success of a complaint at the earliest possible opportunity; and to resolving cases quickly and with minimum formality.
50. Through 2021/22 the Legal Ombudsman has been piloting a number of initiatives designed to help reduce wait times and deal with complaints as quickly as possible. Through these initiatives, it has become evident that in some cases it is possible to identify from the outset that there is little, if any, benefit in progressing a full investigation. For example, it may be possible to identify that the offer made by the service provider was a reasonable one which the complainant would be wise to accept or where the substance of the complaint is without merit or potential frivolous or vexatious. These cases may be suitable for early dismissal by an Ombudsman under the criteria outlined in Rule 5.7.
51. The Legal Ombudsman believes that it would be in the parties' best interests to deal with those complaints at the earliest possible opportunity.
52. However, the Scheme Rules, as currently drafted, mean that a complaint can only be dismissed or discontinued by an Ombudsman after it has been accepted for investigation. The wait times at the front end of the Legal Ombudsman process mean that customers can wait several months for a case to be accepted for investigation even though the above pilot initiatives have shown that it may have been possible to identify and communicate the likely outcome much sooner.

Proposal

53. The Legal Ombudsman is proposing the introduction of a new Rule which would enable an Ombudsman to exercise their discretion to dismiss a complaint, if specific criteria are met, without the need to first accept that new case for investigation. This

proposed rule would align the Legal Ombudsman with the position taken by other organisations in the redress sector.

Impact

54. As noted, the Legal Ombudsman has carried out a successful pilot of early resolution initiatives in 2021/22. This pilot has shown that the Legal Ombudsman is able to confidently and reliably identify cases in the Pre-Assessment Pool which can be concluded without the need for a full investigation. This provides confidence that similar assessments can be made when new cases are first received by the Legal Ombudsman.
55. Although the Legal Ombudsman accepts that some complainants will be unhappy to have their complaint dismissed so early in the process, from a customer experience perspective we consider there to be significant benefit in being able to provide a realistic assessment of the likely outcome of an investigation at the earliest possible opportunity. If, for example, it is evident that an offer made by a service provider during their internal complaint handling process was a reasonable one, it would be in the complainant's interest that they are advised of that fact at the earliest opportunity and are encouraged to accept that offer. This would enable the complainant to secure an early positive outcome to their complaints. It would also avoid the need for the parties to have to go through a full investigation, which may not result in a preferential outcome, and avoid the risk of the service provider's offer being withdrawn if an investigation was progressed.
56. The application of this new rule would reduce the customer journey for some complaints down to a matter of days and in doing so avoid the need for customers to wait in the Pre-Assessment Pool for what, currently, can be months. The application of this rule would also reduce the number of these complaints being passed to investigators thereby freeing them up to focus on cases which require fuller investigation.
57. The Legal Ombudsman is aware that there is a risk that not all complainants will be able to fully articulate their complaints, particularly if, for example, English is not their first language. To mitigate that risk, before any complaint was dismissed under this proposed new rule the complainant would be provided with an opportunity to explain why the complaint should not be dismissed and that explanation would be considered by an Ombudsman when deciding what action to take. In seeking the customer's views on the proposed dismissal, the Legal Ombudsman would make sure that any request for reasonable adjustments in relation to method of communication or language barrier, for example, was accommodated to ensure that the customers had a fair opportunity to express their views before a decision would be made

Questions:

Q.2 Do you agree that there is benefit in introducing a new Rule 2.11?

Rule 5.7 - Ombudsman discretion to dismiss or discontinue a complaint

58. This rule outlines the situations in which an Ombudsman can consider exercising the discretion to dismiss or discontinue a complaint in full or in part if they consider it fair and reasonable to do so in the circumstances of the complaint.
59. In around 14% of all cases accepted for investigation by the Legal Ombudsman each year, an Ombudsman is asked to consider whether the complaint should be dismissed or discontinued on the basis of it falling into one of the categories listed in Rule 5.7. Around 80% of those requests are approved by an Ombudsman. Although the Legal Ombudsman acknowledges that not all customers will be happy to find that their complaint has been dismissed, we believe that it is in a customer's best interests to understand at the earliest possible opportunity if there is a compelling reason why the Legal Ombudsman should not carry out an investigation.
60. The Legal Ombudsman proposes extending the scope of Rule 5.7 to enable more cases to be concluded earlier in the process where it is fair and reasonable to do so. A fair and proportionate level of access to the Scheme would be retained for those customers whose complaints warrant a full investigation.

The key proposed amendments to Rule 5.7 are:

Rule 5.7 (b) - currently, this rule permits an Ombudsman to consider dismissing a complaint where they are satisfied that the complainant has not suffered any financial loss, distress, inconvenience, or other detriment. The threshold for this test is a high one and prevents the Legal Ombudsman from considering whether carrying out a full investigation is a proportionate use of its resource.

Proposal

61. The Legal Ombudsman is proposing the introduction of the word '*significant*' within Rule 5.7(b) which would then enable an Ombudsman to consider whether conducting an investigation into the complaints that have been raised, given the likely impact on the customer, is a proportionate use of resource.
62. This application of the principle of proportionality, commonly used elsewhere in the redress sector, would enable the Legal Ombudsman to apply a threshold below which it is considered disproportionate to deploy resources to carry out an investigation.

Impact

63. The introduction of 'significant' provides for cases to be dismissed if the loss, detriment or impact is deemed minor enough that it would be disproportionate to conduct a full investigation whereas under current wording a complaint can only be dismissed under this rule if there has been no loss or detriment.
64. As with all dismissals under Rule 5.7 it is important to note that this is a discretion to dismiss that can only be exercised by an Ombudsman and only after the parties have been given the opportunity to explain why the complaint should not be dismissed.
65. The question of what is significant will vary depending on the circumstances of the complaint and, indeed, the complainant and a broad range of factors will have to be considered by an Ombudsman when weighing up whether to dismiss a complaint under this ground. Detailed criteria will be developed for an Ombudsman to refer to when considering dismissing a complaint so as to ensure fair and consistent application of the rule. Some likely considerations could be:
- personal circumstances of the complainant (for example prisoners, elderly customers and the financial means of the customer could all affect the assessment of what is significant);
 - emotional impact given the facts and circumstances of the legal matter;
 - injury to reputation or standing of the complainant in their community;
 - value of an apology to the customer;
 - value of providing learning and feedback to the service provider and sector as a whole;
 - likelihood of complainant receiving the remedy if, for example, the service provider has closed / been closed down or if a sole practitioner, for example, has since retired or even passed away;
 - likelihood of the complainant accepting the possible remedy given their expectations; and
 - public interest in the case itself or as part of a wider pattern of behaviours.
66. The Legal Ombudsman would look to monitor the application of this rule to ensure that it is applied fairly and consistently and to ensure that the criteria being considered remain fair and reasonable in light of changes in the economy and community as a whole. The criteria would need to stand outside of the Scheme Rules so that they could be changed quickly if it became clear that they were having a disproportionate impact on any or all of our customers.

Rule 5.7(c) – currently this rule permits an Ombudsman to dismiss a complaint if they are satisfied that the complainant has rejected a fair and reasonable offer which the service provider made under their own internal complaint handling procedure, and which is still open for acceptance. The Legal Ombudsman believes that extending this

rule to include revised offers could encourage service providers to try to settle complaints after a complaint has been accepted for investigation.

Proposal

67. The Legal Ombudsman is proposing extending the application of 5.7(c) to allow an Ombudsman to consider whether a case should be dismissed if a reasonable revised / increased offer is made by the service provider during the course of an ongoing investigation and the complainant decides to reject that revised offer.
68. It is also proposed that Rule 5.7(c) is amended to address an historic drafting error. This change would ensure that, unless there had been some significant intervening event, customers who have already accepted an offer during their service provider's internal complaint handling process would not be able to have that agreement overturned in the hope of securing a preferential outcome.

Impact

69. The Legal Ombudsman believes that enabling a case to be dismissed when a reasonable revised offer is made, would encourage service providers to proactively engage with the investigation process in the hope of securing an early resolution. In turn this would reduce the overall customer journey for both parties to the complaint.
70. Under the existing Rule 5.7(c), any increased offer made by a service provider during the course of the investigation would still result in a case fee being issued. Under the revised Rule, if a case is dismissed during the investigation process as a result of a reasonable offer being made, the case fee would not be applied.
71. It is also worth noting that securing an early outcome in this way would reduce the risk from a service provider's perspective of the case going to Ombudsman decision and being published externally on the Legal Ombudsman's website. The opportunity to reduce potential adverse publicity could incentivise service providers to make increased offers.
72. The Ombudsman considering the dismissal will need to be assured that the revised remedy offered by the service provider is reasonable in all the circumstances of the complaint and is not something that is likely to be exceeded if the Legal Ombudsman were to continue with its investigation.
73. As noted previously, the dismissal of a complaint on these grounds is within an Ombudsman's discretion and as a result, if on balance the Ombudsman considers that the offer made is not reasonable or that there is a significant public interest in the matter being fully investigated and possibly the subject of an Ombudsman decision then they can decline to dismiss.

74. The Legal Ombudsman would closely monitor the application of this rule and the manner in which service providers approach making revised offers to ensure that the spirit of encouraging early resolution is not lost.
75. When looking at the secondary proposal for rule 5.7(c) the Legal Ombudsman considers that it is in the interests of fairness and certainty for all parties, that matters which have been clearly resolved through a service provider’s complaint handling process should not be reopened for the Legal Ombudsman to carry out a further investigation into those issues. In the event that new evidence which had the potential to go to the heart of the complaint came to light after the complaint had been resolved then the Legal Ombudsman would encourage the customer to raise that new evidence with the service provider under their complaint handling procedure. If that approach was unsuccessful then in the interests of fairness, the Ombudsman would retain the right to accept that matter for investigation.

Rule 5.7 (p) is a proposed new rule to support the Legal Ombudsman’s focus on proportionality.

Proposal

76. The Legal Ombudsman proposes the introduction of a rule which, in limited circumstances, would allow the Scheme to dismiss a complaint where the nature of the complaint, the scope of the complaint, the volume of evidence, or indeed the conduct of the complainant is such that it would be disproportionate for an investigation to be carried out.

Case Study: *Mrs B brought a 500-page complaint to the Legal Ombudsman, which took one of our most experienced investigators nearly 18 months to conclude. The investigation which related to the handling of a professional negligence claim was eventually distilled down to 14 heads of complaint which were then subdivided into 48 individual points of complaint. The investigator’s case decision, which both parties rejected, was over 40 pages in length with 400 pages of supporting evidence. The Ombudsman’s decision totalled 60 pages in length and found limited poor service around the provision of ATE insurance and communication. The Ombudsman directed a remedy of £500 to reflect the inconvenience Mrs B had experienced. Both parties rejected the Ombudsman’s decision, and the service provider has since applied for and is still pursuing a judicial review of the Ombudsman’s decision.*

Impact

77. The proposed new rule would only apply to a small number of complaints but those cases would be ones which are considered to be unreasonably, or unmanageably

imposing and would absorb so much time and resource that it could be considered a disproportionate use of resource to investigate them. The proposed rule would permit an Ombudsman to exercise discretion to dismiss the complaint on that basis. The Legal Ombudsman would specify a strict set of criteria which cases dismissed under this rule must meet. Evidence of appropriate consideration and oversight would be in place to ensure dismissal of the case would be appropriate.

78. The Ombudsman's discretion would still enable a case to be investigated where there is a public interest, a vulnerable customer or significant detriment.

Rule 5.7 (q) is a proposed new rule which would permit an Ombudsman to dismiss a complaint if there has been undue delay on the part of the person wishing to bring the complaint.

79. The significance of this proposed new rule depends upon the proposal to revise the Legal Ombudsman's time limits. Under existing time limits there is a significant window of opportunity for complainants to raise new /additional issues of complaint even though they may have been aware of those issues some years previously but, at that point, elected not to raise them. The Legal Ombudsman believes that it is in both parties' interests for all known complaints to be raised and reviewed at the same time. If new issues come to light at a later point it is right and proper that they should be investigated; this proposed change would not restrict that right.
80. If time limits are reduced, then the window of opportunity to bring new/additional complaints is also reduced, as is the scope for abuse of the spirit and intention of the Scheme Rules.

Proposal

81. This provision is particularly intended to enable the Legal Ombudsman to ensure that complainants raise all the issues that they are aware of and want to have investigated at the same time. Where a complainant has taken a conscious decision not to pursue certain issues under their complaint to the service provider, this rule would provide an Ombudsman with the discretion to dismiss those issues if the complainant sought to raise them and have them added to an ongoing investigation.

Impact

82. The Legal Ombudsman can only investigate issues that have been raised with the service provider under their internal complaint handling processes and if new issues are raised that have not been through that process they cannot be accepted for investigation until the service provider has been given the chance to review them internally.

83. If new issues are raised during an ongoing investigation, that investigation must be suspended until the service provider has reviewed those new issues – this typically creates a delay of at least eight weeks in the middle of an ongoing investigation. It is important that when the Legal Ombudsman issues its findings, it does so on all aspects of the complaint at the same time. If new complaints are accepted for investigation, then the original investigation will very likely need to be further delayed whilst the investigation of the new issues is progressed to a point where findings can be delivered on all complaints at the same time.
84. In circumstances where new, previously unknown, issues are identified after the original complaint has been accepted for investigation, or as a result of the Legal Ombudsman’s investigation, then it is right and proper that the complainant should be able to raise those issues and have them investigated. This proposed rule is intended to prevent additional complaints being added to an ongoing investigation if they could have been raised sooner.
85. The Legal Ombudsman believes that this proposed rule would help facilitate the smooth progression of its investigations and in doing so help reduce delays and improve the overall customer journey.
86. As with all potential dismissals under Rule 5.7, this is a matter for ombudsman discretion and that will be exercised on the specific facts of each case. Whilst in principle the Legal Ombudsman considers that, in the interests of fairness and transparency, all complaints should be raised at the same time, there may be circumstances where a complainant was prevented from raising issues or their decision not to do so was made in good faith. In deciding whether to exercise their discretion the Ombudsman would consider the parties’ views and the circumstances of the case to ensure a fair and reasonable outcome.

Questions:

Q3: Do you support the proposed amendments under Scheme Rule 5.7?

Q4. Do you have any concerns about the implications of the changes to Rule 5.7?

Rule 1.11- The wider delegation of decision making

87. Scheme Rule 1.11 states that the act of determining, dismissing, or discontinuing a complaint can only be made by an Ombudsman. This reflects the provisions of s.134(1)(2)(a)(b) LSA 2007 which also states that although the function of the Ombudsman in making, investigating, and considering a complaint can be delegated to any member of OLC staff, the function of determining or dismissing a complaint cannot be delegated.

88. In around 80% of all the cases that result in a referral to an Ombudsman for a final decision, the eventual outcome mirrors that recommended by the investigator. This reinforces the Legal Ombudsman's confidence in the quality of investigations and conclusions reached. It also demonstrates that the current process has a significant element of duplication and rework built into it which, if it could be removed or reduced, would result in a significant reduction in the customer journey.
89. The Legal Ombudsman is proposing a revision to the Scheme Rules which would enable decision making delegations to be extended more widely so as to facilitate the efficient and proportionate investigation and resolution of complaints.
90. As this is a significant change to the existing Scheme, significant work would need to be undertaken to ensure that it does not result in any adverse consequences for the Legal Ombudsman's customers. Further, as extending these delegations would require a change to primary legislation it is not something that could be implemented immediately. Subject to the above the Legal Ombudsman is keen to understand the level of support for a significant change of this nature.

Proposal

91. The Legal Ombudsman sees a significant benefit in terms of time and efficiency if the ability to make final decisions (determinations) or dismissal decisions could be delegated outside of the Ombudsman cohort. This form of delegation of Ombudsman powers is already employed by a number of other ombudsman schemes.
92. Full delegation of ombudsman decision making powers cannot be implemented or trialed without a change to the primary legislation and therefore even if there is an appetite for this amongst stakeholders it is not something that could be implemented straight away on the back of this review and consultation. The proposed changes to Rule 5.19 (below) will help us start to reduce some of the duplication and rework that is built into the existing process. They will also represent a first step on the path to realising the service improvements and efficiencies which the Legal Ombudsman believe can be achieved through wider delegation of ombudsman decision making.

Impact

93. Delegation of this nature has the potential to remove duplication and re-work for a proportion of Legal Ombudsman complaints. This would have a positive impact on customer journey times as it would allow quicker handling and prioritisation of those cases which do clearly require an Ombudsman decision. This would significantly reduce the reliance on the Ombudsman cohort for all decisions and therefore allow the Legal Ombudsman to reconsider the placement of staff to allow the Legal Ombudsman to reach a better balance in resourcing support from the Ombudsman

cohort with the training, guidance and quality assurance of investigatory staff and decision making.

94. The Legal Ombudsman understands the importance of ensuring that all of its customers have confidence in the competence of the people who are investigating their complaints or issuing decisions on behalf of the Scheme. We are also conscious of the fact that decisions whether issued by an Ombudsman or by someone with delegated authority are potentially legally binding and subject to judicial review. If delegations were extended more widely the Legal Ombudsman would introduce a development programme to provide suitable assurance as to the technical competence and expertise of those staff. Further, the quality of the work undertaken by those staff would be closely monitored both in terms of the service provided and the outcome delivered.
95. The Legal Ombudsman acknowledges that not all complaints would be suited to being handled in this manner and if the extension of delegated powers is approved then criteria would be developed which would enable cases to be escalated for Ombudsman decision if that were considered necessary.

Questions:

Q5: Do you support the intention to look at being able to widening the extent of the delegation of Ombudsman decision making powers?

Rule 5.19 - Escalation of cases to an Ombudsman for decision

96. Rule 5.19 sets out at a high level the process that Legal Ombudsman's investigations should follow. It states that once an investigator has concluded their investigation and shared their findings, either party can request that the complaint be escalated to an Ombudsman for a final decision if they disagree with the conclusions and recommendations that the investigator has made. There is currently no requirement for that disagreement to have a substantive basis.
97. Currently, around 40% of all the complaints that the Legal Ombudsman investigates result in an escalation to an Ombudsman for decision. This percentage is significantly higher than at other ombudsman schemes and this is an issue which the Legal Ombudsman is committed to addressing. Significant work is already being undertaken to review the way investigation staff understand the drivers behind customers' complaints, how they engage with customers and manage their expectations during an investigation, and how they share their findings. Improving in all of these areas will help increase customers' confidence in the work of the Legal Ombudsman's investigation staff which will, in turn, reduce customers' need to escalate matters to an Ombudsman for a decision.

98. The Legal Ombudsman takes confidence from the fact that in over 80% of the cases that are referred for an Ombudsman decision, the eventual outcome mirrors the conclusions outlined in the investigator's case decision. As the above initiatives reduce the level of demand on the Ombudsman cohort, their knowledge and expertise will be fed back into the investigation process. This will enable us to improve investigator output yet further, reduce the number of instances where an Ombudsman disagrees with the investigator's findings, and drive a further increase in the levels of cases resolved by way of agreed outcome.
99. However, as noted above, the Scheme Rules currently still provide customers with the option to escalate their complaint to an Ombudsman if they disagree with the investigator's views.
100. The Legal Ombudsman acknowledges that there are many situations and circumstances where recourse to an Ombudsman for a decision, after all other processes have been exhausted, is the only way to conclude a complaint. It is important that those situations are accommodated to ensure a full and fair investigation of those cases. However, passing a matter for an Ombudsman decision extends the overall customer journey for all involved and, in circumstances where neither party can demonstrate any substantive reason for the matter to be escalated to an Ombudsman, that additional delay is something that the Legal Ombudsman is keen to try to avoid.
101. Currently, on an annual basis, the Ombudsman cohort spend around 11,000 hours on decision making alone. The Legal Ombudsman believes that by dealing with cases where there is no substantive basis for rejecting an investigator's findings in a more proportionate way, the level of demand on the Ombudsman cohort could be reduced. This would not only enable the Ombudsmen to focus their time, knowledge and expertise on cases where there are substantive points of dispute but also free them up to invest yet more time in the continued upskilling of our investigator cohort.
102. The Legal Ombudsman believe that in terms of customer journey and customer experience, wherever possible, it is preferable to reach a mutually agreed outcome or other early resolution to the investigation of a complaint rather than having an outcome imposed by way of an Ombudsman decision following further resource and time invested in investigation and decision making. We are confident that investing Ombudsman time and expertise in supporting and upskilling the investigator cohort will help increase the number of cases that are resolved earlier and by way of agreed outcome This will, in turn, reduce the overall customer journey and, it is hoped, improve the overall customer experience.
103. This approach is in line with the approaches seen in other Ombudsman organisations.

Proposal

104. The Legal Ombudsman is proposing a revision to Rule 5.19(c) to enable an Ombudsman to conclude that a final decision is not needed on a case if no substantive issues (such as an error in fact or law, or additional new evidence) have been raised in response to the investigator's findings. In those circumstances, the case would be deemed to have been resolved by the investigator's findings, using an amended version of the existing Rule 5.20 provision.
105. The rules will still provide an Ombudsman with discretion to pass a case for final decision irrespective of the responses to the investigator's findings if, for example, there were vulnerability issues, or if the service provider was closed and a decision needed for a claim against the firm's run off insurance, or if the decision was needed for enforcement purposes. Similarly, for cases where there is a significant public interest in the subject matter of the investigation, a final Ombudsman decision could be provided.
106. As noted above, in the rare instances where a service provider refuses to honour an investigator's recommendations, a case closed under rule 5.20 could be reopened and passed for an Ombudsman decision.
107. It is also proposed that Rule 5.19(b) be amended to remove the requirement for an investigator to formalise the findings of their investigation in a case decision. It will still be expected that investigators will share their findings with the parties to a complaint, as well as the evidence that they have relied upon when reaching those findings and that they will give both parties the chance to respond. However, this change would enable an investigator to use their knowledge, experience and understanding of the parties' preferences and needs to choose the best and most appropriate way to communicate their findings.

Impact

108. The proposal to revise Rule 5.19 will also support the longer-term intention of extending delegated authority for decision making under Rule 1.11. The combination of Rule 5.19 and Rule 1.11 would enable the Legal Ombudsman to streamline its investigation and decision-making processes which would, in turn, support reductions in the customer journey and an increase in operational performance.
109. As the changes to Rule 1.11 are a somewhat longer-term objective it is important to understand how changing Rule 5.19 alone can help improve the customer journey as well as potentially help drive earlier resolutions of complaints by way of agreed outcome.
110. As noted above, reducing the number of cases which are passed for Ombudsman decision would reduce the level of demand on that cohort of staff. This would not only

enable the Ombudsman cohort to address cases where an Ombudsman decision is required more quickly, it would also enable that cohort to provide additional support to investigation staff elsewhere into the business process, driving improvements in quality and case progression.

111. The Legal Ombudsman acknowledges the risk that customers for whom English is not a first language, vulnerable customers, or those requiring reasonable adjustments, by way of example, might not be able to adequately express their concerns around an investigator's findings and that this could be interpreted as there having been no substantive response. The process which would underpin this revised rule could require that, in each case where an investigator's findings are not accepted there is a high-level review by an Ombudsman to assess whether a final decision is required. That review could take into account factors such as:

- All comments received from the parties in response to the investigator's findings
- Any language barriers, vulnerabilities or reasonable adjustments that might be needed
- Substance of the comments received
- Any additional evidence provided by the parties
- Whether a decision is needed for enforcement or other reasons
- Whether there is any particular public interest in the case

112. Although the Ombudsman review will have a time implication (which will be continually assessed) the Legal Ombudsman is confident that the time required for the review and actioning the case under the revised process is likely to be significantly less than the time needed for a formal decision. Therefore, in cases where the parties have not provided any substantive basis for their disagreement, the benefit to the Legal Ombudsman's customers is in the time saved through triaging a decision request as compared to drafting and issuing a full decision.

113. Reducing the number of cases where Ombudsman decisions are issued would mean that fewer cases would be published on the Legal Ombudsman's website – it could possibly also have an adverse impact on the amount of learning and insight that could be gathered from the Legal Ombudsman's casework. These possible effects will be kept under close observation to ensure that this important aspect of the Legal Ombudsman's role is not significantly impacted. Although we are confident that this proposal will reduce the number of cases going for decision it is not expected to reduce the number of cases where a decision is needed to a level where it will critically affect the Legal Ombudsman's commitment to impact and insight work or driving improvements in the sector.

114. The proposed change to Rule 5.19(b) would also provide the Legal Ombudsman's investigation staff with the flexibility to tailor their approach to sharing views and

findings to the parties' needs and preferences. Investigators could still decide to issue their findings by way of case decision, if that was in the customers' best interests or at their request.

Questions:

Q6: Do you support the proposal to limit the right to an Ombudsman decision where no substantive issues are raised with the investigator's findings?

Q7: What factors should an Ombudsman consider when deciding whether a decision is required?

Q8: Are there any alternative ways in which the Legal Ombudsman could adjust the rules to achieve a reduction in the number of complaints going to final Ombudsman decision?

Rule 6 - Case fees

115. Under the terms of the Scheme Rules case fees are potentially chargeable on all cases that are accepted for investigation and can only be waived when specific criteria (set out on Rule 6.2) are met. The case fee, if charged, is set at a flat fee of £400 irrespective of how, or at what stage in the Legal Ombudsman process the complaint is resolved. This approach does nothing to motivate service providers to try to resolve complaints as early as possible in the Legal Ombudsman's investigative process.
116. Initial feedback from some stakeholders showed an appetite for an approach which uses case fees as a means of incentivising early resolution of complaints. The Legal Ombudsman is keen to assess ways in which the case fee position could be revised and whether there is any appetite to develop alternative case fee structures for subsequent consultation.
117. The Legal Ombudsman acknowledges that there are a wide range of alternative ways to apply the case fee structure and that assessing the positive and potentially negative implications of the available options is a significant endeavour.
118. In considering introducing alternative case fee structures, and particularly a tiered case fee structure based on the stage of the process when the complaint was resolved, it is important to acknowledge the risk that this could result in an increase in the number of case fee payment challenges from service providers. The time and internal resource deployed to addressing any increase in case fee challenges would need to be balanced against any gains achieved through the revised process.
119. The Legal Ombudsman is keen to introduce efficiencies or revise existing process, as soon as possible, so as to encourage early resolution of complaints. However, under the provisions of the Legal Services Act, any change to the charges paid by

respondents (s.136 LSA) requires the consent of the Lord Chancellor. This additional approval makes any changes to the case fee structure a more involved process and not one that can be progressed with the same level of pace and urgency that is driving the other changes outlined in this paper.

Questions:

Q9: Do you support a review of the case fees model with a view to implementing a model which better encourages early resolution of cases?

Additional proposed changes

120. The Scheme Rules review identified a number of other areas for potential revision. The proposed changes outlined below are intended to remove references to dates that over time have become obsolete, to address historic drafting errors, and remove obstacles to efficient and proportionate case progression:

Rule 1.1: Removing reference to obsolete dates

121. The Legal Ombudsman proposes removing reference to 6 October 2010 as, given the passage of time, that date is now obsolete. This rule will also be updated to reflect the date from which any approved changes will come into effect.

Rule 2.1: Addressing historical drafting error

122. The changes to this Rule would address an historic drafting error. The Rule currently states that complaints brought by the trustee of a trust, under Rule 2.1(e), must relate to services provided to someone who has died and not referred their complaint the Legal Ombudsman before their death – this reference is incorrect. Further, the reference to 2.1(f) is a duplication of the wording in 2.1(f) and therefore also obsolete.

Rule 2.8: Formalising the position on complaints by beneficiaries

123. The proposed change to this Rule would address an inconsistency in relation to beneficiaries' rights to complain to the Legal Ombudsman.

124. The Legal Ombudsman frequently sees service providers in complaints relating to the administration of estates arguing that they do not owe a duty to the beneficiaries of the estate and that their duty is only to their client (which in the case of a probate is the executor). It is the Legal Ombudsman's established position that beneficiaries benefit from the service provided and that they are therefore entitled to raise a complaint about that service. This rule change would address that and clearly protect the interests of beneficiaries.

Rule 4.5: Removing reference to obsolete dates

125. The Legal Ombudsman proposes the deletion of Rule 4.5 (a) as it currently states that the issue complained about, or the date when the complainant ought to have known there was an issue to complain about, must have been after 5 October 2010. Given the passage of time, and the time limits the Legal Ombudsman works to, this date is now obsolete.
126. The provision of Rule 4.5 (b) will remain unchanged (albeit renumbered as Rule 4.5) and will continue to set out the time limits for complaints to be brought to the Legal Ombudsman. Rule 4.6 will be updated to reflect the deletion of Rule 4.5 (a).

Rule 5.4: Addressing formal challenges to ongoing investigations

127. The Legal Ombudsman proposes amending Rule 5.4 (which deals with the circumstances under which service providers can challenge the Legal Ombudsman's jurisdiction or request that investigations be dismissed) to require that, in the absence of extenuating circumstances, any such challenge should be raised at the first possible opportunity.
128. The provisions of Rule 5.4 currently do not set any such expectation which can leave the process open to abuse. Introducing this new time element will encourage issues and challenges to be raised and addressed at the outset of an investigation and therefore, once addressed, investigations will be able to progress to resolution unhindered by deliberately late or vexatious challenges. This will allow case closures to happen at an earlier stage and deliver a reduction in the customer journey time.

Rule 5.5: Providing Ombudsmen with discretion when to accept a complaint for investigation

129. The proposed revision to Rule 5.5 will introduce a new ground under which an Ombudsman can decide that a complaint should not be accepted for investigation, in line with the provisions of Rule 2.11 above.

Rule 5.7(a): Clarifying grounds for dismissal of a complaint

130. It is proposed that the current Rule 5.7(a) be separated into two separate grounds:
- The revised 5.7 (a) would enable an Ombudsman to dismiss if they were satisfied that the complaint had no reasonable prospect of success.
 - A new Rule 5.7 (o) would be created to focus on the dismissal of cases that were considered to be frivolous or vexatious.
131. By separating out the two distinct grounds it will be possible for the Legal Ombudsman to consider dismissing complaints on the basis that they do not have any realistic

prospect of success without risking customers being offended by a perceived suggestion that the complaints being raised are either frivolous or vexatious.

Rule 5.7(d): Clarifying grounds for dismissal of a complaint

132. The Legal Ombudsman proposes to delete reference to “*predecessor complaints scheme*” from this Rule as, with the passage of time, this reference has become obsolete. Cases that would have been dealt with by a predecessor organisation would now be out of time under Rule 4.5.

Rule 5.20: Addressing situations where investigator’s findings and recommendations are not accepted

133. The application of this Rule will support the more substantive changes proposed in relation to Rule 5.19 (c) above.

134. The Legal Ombudsman intends to extend the wording of this rule to allow an ombudsman to treat a complaint as having been resolved by the investigator’s findings and recommendations if neither party to the complaint has raised any substantive challenge to the investigator’s findings. This change will reduce the level of demand upon the Ombudsman cohort. In doing so, it will enable the Ombudsmen to focus their skills and knowledge on cases where a decision is required and to support investigation staff.

Rule 5.33: Addressing when an Ombudsman can direct that a hearing is required

135. The current wording of Rule 5.33 only permits an Ombudsman to hold a hearing when they consider that a complaint cannot be fairly determined without one.

136. The proposed revision to this rule would permit an Ombudsman to hold a hearing on a complaint where they consider it fair and reasonable to do so. The Legal Ombudsman considers that there will be cases where a face-to-face meeting or hearing could help facilitate the early resolution of a complaint. This revision could also provide a mechanism through which initiatives such as mediation, shuttle negotiation and adjudication could be piloted and implemented, if successful.

Rule 5.55: Allowing the Legal Ombudsman to rectify uncontested errors in Ombudsman decisions

137. The Legal Ombudsman acknowledges that there will on occasion be instances where administrative or typographical mistakes are made on Ombudsman decisions. Currently, if any such decision is accepted by the complainant it is binding and can only be rectified by applying to have the decision quashed by a Court.

138. The Legal Ombudsman believes that, in the interests of the efficient administration of the Scheme, it would be appropriate to include a new rule which permits obvious errors to be rectified without the need for a formal application to the Courts. By way of an illustrative example, if a complainant accepted an Ombudsman decision where the figures in a financial remedy were inadvertently incorrectly transposed thereby increasing a remedy from £3,600 to £6,300 it would be unreasonable to expect the service provider to be bound to pay that incorrect remedy and this rule would enable that kind of error to be rectified.

Rule 5.62: Updating reference to relevant data protection legislation

139. The Legal Ombudsman proposes updating existing Rule 5.61 (Rule 5.62 under the proposed revised numbering) to reflect GDPR legislation.

Questions:

Q10: Do you support the proposals outlined in the additional changes? If not, please outline which ones you do not support and your reasons why.

Summary of Questions

Question 1: Do you agree that there is merit in reducing the time limit for complaints to be brought to the Legal Ombudsman to one year from the date of act/omission or date of awareness (whichever is the later)?

Question 2: Do you agree that there is benefit in introducing a new Rule 2.11?

Question 3: Do you support the proposed amendments under Scheme Rule 5.7?

Question 4: Do you have any concerns about the implications of the changes to Rule 5.7?

Question 5: Do you support the intention to look at being able to widening the extent of the delegation of Ombudsman decision making powers?

Question 6: Do you support the proposal to limit the right to an Ombudsman decision where no substantive issues are raised with the case decision?

Question 7: What factors should an Ombudsman consider when deciding whether a decision is required?

Question 8: Are there any alternative ways in which the Legal Ombudsman could adjust the rules to achieve a reduction in the number of complaints going to final Ombudsman decision?

Question 9: Do you support a review of the case fees model with a view to implementing a model which better encourages early resolution of cases?

Question 10: Do you support the proposals outlined in the additional changes? If not, please outline which ones you do not support and your reasons why?

Next steps

Consultation dates

140. This consultation will run from 16 February until 13 April 2022.
141. Once the consultation closes, the Legal Ombudsman will analyse all responses and will then decide what proposals to take forward.

Publishing responses

142. Please note that, unless otherwise stated, we will publish responses to our consultations

How to respond

143. The Legal Ombudsman welcomes views and comments on all aspects of the Scheme Rules consultation by 12pm on Wednesday 13 April 2022.
144. Responses should be sent to:

Email: consultations@legalombudsman.org.uk
Post: Legal Ombudsman
PO Box 6803
Wolverhampton
WV1 9WF

145. If you have any questions concerning this publication or how to engage with us on the topic of transparency, please email support@legalombudsman.org.uk

Annex 1- Proposed Amendments

Scheme Rules

1 Introduction and definitions

Contents

- 1.1 These scheme rules are about complaints made ~~from 6 October 2010~~ to authorised persons including legal practitioners and others, authorised in England and Wales.
They explain which complaints are covered by the Legal Ombudsman and how it will deal with them.
This version includes amendments that apply to complaints referred to the Legal Ombudsman from ~~1 April 2019~~ DD/MM/YY.
- 1.2 Parliament, in the Act:
created the Legal Services Board (to oversee Approved Regulators) and the Office for Legal Complaints (to establish the Legal Ombudsman);
gave the Lord Chancellor power to make orders, including orders modifying who would be able to bring a complaint to the Legal Ombudsman.
gave the Legal Services Board power to set requirements for the rules of Approved Regulators about how authorised persons handle complaints and cooperate with an ombudsman; and
gave the Office for Legal Complaints power to make rules affecting which complaints can be handled by the Legal Ombudsman and how those complaints will be handled.
- 1.3 These scheme rules include:
a summary of relevant provisions in the Act, as modified by orders made by the Lord Chancellor (though it is the Act and the orders themselves that count);
a summary of requirements on complaint-handling made by the Legal Services Board under the powers given to it by the Act; and
rules made by the Office for Legal Complaints under the powers given to it by the Act.
The endnotes identify the section of the Act that is being summarised, or under which an order, requirement or rule has been made; and which are the rules made by the Office for Legal Complaints for the Legal Ombudsman.
- 1.4 This book also includes some general guidance. There are six chapters –
1: Introduction and definitions:

- contents of this book;
 - meaning of words that are underlined.
- 2: Who can complain about what:
- who can complain;
 - what they can complain about.
- 3: What authorised persons must do:
- dealing with complaints themselves;
 - cooperating with the Legal Ombudsman.
- 4: When complaints can be referred to the Legal Ombudsman:
- after complaining to the authorised person;
 - time limit from act/omission;
 - ombudsman extending time limits.
- 5: How the Legal Ombudsman deals with complaints:
- first contact;
 - grounds for dismissal;
 - referring a complaint to court;
 - referring to another complaints scheme;
 - related complaints; - resolution and investigation;
 - evidence;
 - procedural time limits;
 - hearings;
 - determinations and awards by an ombudsman;
 - acceptance/rejection of determinations;
 - publication.
 - enforcement.
- 6: Case fees payable by authorised persons.

Meaning of words that are underlined

- 1.5 The Act means the Legal Services Act 2007.
- 1.6 Complaint means an oral or written expression of dissatisfaction which:
- a) alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience, or other detriment; and
 - b) is covered by chapter two (who can complain about what).
- 1.7 Authorised person means:
- a) someone authorised, in England and Wales, to carry out a reserved legal activity at the time of the relevant act/omission or covered under section 129 of the Act, including:
 - alternative business structures (licensed under part 5 of the Act);
 - barristers;
 - costs lawyers;
 - chartered legal executives;

- licensed conveyancers;
 - notaries;
 - patent attorneys;
 - probate practitioners;
 - registered European lawyers;
 - solicitors; or
 - trade mark attorneys;
- b) (under section 131 of the Act):
- a business that is responsible for an act/omission of an employee; and
 - a partnership that is responsible for an act/omission of a partner.
- 1.8 Approved Regulator means:
- a) a regulator approved under schedule 4 of the Act, including:
- the Association of Chartered Certified Accountants (for reserved probate activities);
 - the Association of Costs Lawyers, through the Costs Lawyer Standards Board;
 - the Bar Council, through the Bar Standards Board (for barristers);
 - the Chartered Institute of Patent Attorneys, through the Intellectual Property Regulation Board;
 - the Council for Licensed Conveyancers;
 - the Institute of Chartered Accountants in England and Wales (for reserved probate activities)
 - the Institute of Chartered Accountants in Scotland (for reserved probate activities);
 - CILEX Regulation, through the Chartered Institute of Legal Executives;
 - the Chartered Institute of Trade Mark Attorneys, through the Intellectual Property Regulation Board;
 - the Law Society, through the Solicitors Regulation Authority;
 - the Master of the Faculties (for notaries); and
 - the Legal Services Board (but only for any alternative business structures it licenses directly);
- 1.9 Determination means a final decision that is made by an ombudsman on a complaint.
- 1.10 Legal Ombudsman means the ombudsman scheme established by the Office for Legal Complaints.
- 1.11 Ombudsman means:
- a) any ombudsman from the Legal Ombudsman; and
- b) any Legal Ombudsman staff member to whom an ombudsman has delegated the relevant functions (but an ombudsman cannot delegate the functions of determining a complaint or of dismissing or discontinuing it for any of the reasons under paragraph 5.7).

- 1.12 Party includes:
- a) a complainant (covered by chapter two);
 - b) an authorised person (covered by chapter two) against whom the complaint is made;
 - c) an authorised person (covered by chapter five) whom an ombudsman treats as a joint respondent to a complaint.
- 1.13 Public body means any government department, local authority or any other body constituted for the purposes of the public services, local government or the administration of justice.
- 1.14 Reserved legal activity (as defined in schedule 2 of the Act) means:
- a) exercising a right of audience;
 - b) conducting litigation;
 - c) reserved instrument activities;
 - d) probate activities;
 - e) notarial activities;
 - f) administration of oaths.

2 Who can complain about what

Who can complain

2.1 A complainant must be one of the following:

- a) an individual;
- b) a business or enterprise that was a micro-enterprise (European Union definition) when it referred the complaint to the authorised person;
- c) a charity that had an annual income net of tax of less than £1 million when it referred the complaint to the authorised person;
- d) a club/association/organisation, the affairs of which are managed by its members/a committee/a committee of its members, that had an annual income net of tax of less than £1 million when it referred the complaint to the authorised person;
- e) a trustee of a trust that had an asset value of less than £1 million when it referred the complaint to the authorised person; or
- f) a personal representative or beneficiary of the estate of a person who, before he/she died, had not referred the complaint to the Legal Ombudsman.

~~For (e) and (f) the condition is that the services to which the complaint relates were provided by the respondent to a person –~~

~~a) who has subsequently died; and~~

~~b) who had not by his or her death referred the complaint to the ombudsman scheme.~~

2.2 If a complainant who has referred a complaint to the Legal Ombudsman dies or is otherwise unable to act, the complaint can be continued by:

- a) anyone authorised by law
(for example: - the executor of a complainant who has died; or - someone with a lasting power of attorney from a complainant who is incapable); or
- b) the residuary beneficiaries of the estate of a complainant who has died.

2.3 A complainant must not have been, at the time of the act/omission to which the complaint relates:

- a) a public body (or acting for a public body) in relation to the services complained about; or
- c) an authorised person who procured the services complained about on behalf of someone else.

2.4 For example, where the complaint is about a barrister who was instructed by a solicitor on behalf of a consumer, the consumer can complain to the ombudsman, but the solicitor cannot.

2.5 A complainant can authorise someone else in writing (including an authorised person) to act for the complainant in pursuing a complaint, but the Legal

Ombudsman remains free to contact the complainant direct where it considers that appropriate.

What they can complain about

- 2.6 The complaint must relate to an act/omission by someone who was an authorised person at that time but:
- a) an act/omission by an employee is usually treated also as an act/omission by their employer, whether or not the employer knew or approved; and
 - b) an act/omission by a partner is usually treated also as an act/omission by the partnership, unless the complainant knew (at the time of the act/omission) that the partner had no authority to act for the partnership.
- 2.7 The act/omission does not have to:
- a) relate to a reserved legal activity; nor
 - b) be after the Act came into force (but see the time limits in chapter four).
- 2.8 The complaint must relate to services which the authorised person:
- a) provided to the complainant; or
 - b) provided to another authorised person who procured them on behalf of the complainant; or
 - c) provided to an estate of a person who is deceased where the complainant is a beneficiary of that estate; or
 - d) provided to (or as) ~~a personal representative~~/trustee where the complainant is a beneficiary of the ~~estate~~/trust; or
 - e) offered, or refused to provide, to the complainant.
- 2.9 A complaint is not affected by any change in the membership of a partnership or other unincorporated body.
- 2.10 Where authorised person A ceases to exist and B succeeds to the whole (or substantially the whole) of A's business:
- a) acts/omissions by A become acts/omissions of B; and
 - b) complaints already outstanding against A become complaints against B.
- Unless an Ombudsman decides that this is, in his/her opinion, not fair and reasonable in all the circumstances of the case.
- 2.11 The Legal Ombudsman may decline to accept a complaint for investigation if, in an Ombudsman's reasonable opinion, the complaint is frivolous, vexatious, lacks merits, where there has been no significant detriment caused to the complainant or where there is a compelling reason not to accept it.

3 What authorised persons must do

Dealing with complaints themselves

- 3.1 Authorised persons including legal practitioners and others must comply with their Approved Regulator's rules on handling complaints, including any requirements specified by the Legal Services Board.
- 3.2 The Legal Services Board has required that:
- a) authorised persons tell all clients in writing at the time of engagement, or existing clients at the next appropriate opportunity that they can complain, how and to whom this can be done;
 - b) this must include that they can complain to the Legal Ombudsman at the end of the authorised person's complaints process, the timeframe for doing so and full details of how to contact the Legal Ombudsman; and
 - c) authorised persons tell all clients in writing at the end of the authorised person's complaints process that they can complain to the Legal Ombudsman, the timeframe for doing so and full details of how to contact the Legal Ombudsman.
- 3.3 The Legal Services Board expects that regulation of complaint handling procedures by Approved Regulators will:
- a) give consumers confidence that:
 - effective safeguards will be provided; and
 - complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary;
 - b) provide processes that are:
 - convenient and easy to use (in particular for those that are vulnerable or have disabilities);
 - transparent, clear, well-publicised, free and allow complaints to be made by any reasonable means;
 - prompt and fair, with decisions based on sufficient investigation of the circumstances, and (where appropriate) offer a suitable remedy.

Cooperating with the Legal Ombudsman

- 3.4 Authorised persons must comply with their Approved Regulator's rules on cooperating with an ombudsman, including any requirements specified by the Legal Services Board.

4 When complaints can be referred to the Legal Ombudsman

After complaining to the authorised person

- 4.1 Ordinarily, a complainant cannot use the Legal Ombudsman unless the complainant has first used the authorised person's complaints procedure (referred to in chapter three). Time limit from authorised person's final response
- 4.2 But a complainant can use the Legal Ombudsman if:
- a) the complaint has not been resolved to the complainant's satisfaction within eight weeks of being made to the authorised person; or
 - b) an ombudsman considers that there are exceptional reasons to consider the complaint sooner, or without it having been made first to the authorised person; or
 - c) where an ombudsman considers that in-house resolution is not possible due to irretrievable breakdown in the relationship between an authorised person and the person making the complaint.
- 4.3 For example, an ombudsman may decide that the Legal Ombudsman should consider the complaint where the authorised person has refused to consider it, or where delay would harm the complainant.
- 4.4 a) This time limit applies only if the authorised person's written response to a complaint included prominently:
- an explanation that the Legal Ombudsman was available if the complainant remained dissatisfied;
 - full contact details for the Legal Ombudsman; and
 - a warning that the complaint must be referred to the Legal Ombudsman within six months of the date of the written response;
- b) If (but only if) the conditions in (a) are satisfied, a complainant must ordinarily refer the complaint to the Legal Ombudsman within six months of the date of that written response.

Time limit from act/omission

- 4.5 Ordinarily:
- ~~a) the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and~~
 - ~~b) the complainant must refer the complaint to the Legal Ombudsman no later than:~~
 - ~~six years~~ **one year** from the act/omission; or
 - ~~three years~~ **one year** from when the complainant should reasonably have known there was cause for complaint.
- 4.6 In relation to 4.5(~~b~~):

- a) where a complaint is referred by a personal representative or beneficiary of the estate of a person who, before he/she died, had not referred the complaint to the Legal Ombudsman, the period runs from when the deceased should reasonably have known there was cause for complaint; and
- b) when the complainant (or the deceased) should reasonably have known there was a cause for complaint will be assessed on the basis of the complainant's (or the deceased's) own knowledge, disregarding what the complainant (or the deceased) might have been told if he/she had sought advice.

Ombudsman extending time limits

- 4.7 If an ombudsman considers that there are exceptional circumstances, he/she may extend any of these time limits to the extent that he/she considers fair.
- 4.8 For example an Ombudsman:
 - a) might extend a time limit if the complainant was prevented from meeting the time limit as a result of serious illness; and
 - b) is likely to extend a time limit where the time limit had not expired when the complainant raised the complaint with the authorised person.

5 How the Legal Ombudsman will deal with complaints

- 5.1 The Legal Ombudsman may require a complainant to complete its complaint form.
- 5.2 In the case of a partnership (or former partnership), it is sufficient for the Legal Ombudsman to communicate with any partner (or former partner).

First contact

- 5.3 Unless:
- a) the authorised person has already had eight weeks to consider the complaint; or
 - b) the authorised person has already issued a written response to the complaint; or
 - c) an ombudsman considers that there are exceptional reasons;
- the Legal Ombudsman will:
- a) refer the complaint to the authorised person;
 - b) notify the complainant; and
 - c) explain why to both of them.
- 5.4 If the authorised person claims that all or part of the complaint:
- a) is not covered by the Legal Ombudsman under chapter two; or
 - b) is out-of-time under chapter four; or
 - c) should be dismissed under paragraph 5.7;
- then the authorised person should provide reasons for their challenge at the earliest possible opportunity following which an ombudsman will give all parties an opportunity to make representations before deciding.
- 5.5 Otherwise, if an ombudsman considers that all or part of the complaint:
- a) may not be covered by the Legal Ombudsman under chapter two; or
 - b) may not be appropriate for the Legal Ombudsman to investigate; or
 - c) may be out-of-time under chapter four; or
 - d) should be dismissed under paragraph 5.7;
- the ombudsman will give the complainant an opportunity to make representations before deciding.
- 5.6 The ombudsman will then give the complainant and the authorised person his/her decision and the reasons for it.

Grounds for dismissing or discontinuing a complaint

- 5.7 An ombudsman may (but does not have to) dismiss or discontinue all or part of a complaint if, in his/her opinion:
- a) it does not have any reasonable prospect of success, ~~or is frivolous or vexatious;~~ or

- b) the complainant has not suffered (and is unlikely to suffer) significant financial loss, distress, inconvenience or ~~other~~ detriment; or
- c) the authorised person either offers fair and reasonable redress in relation to the circumstances alleged by the complainant during the course of the ombudsman's investigation or has already offered fair and reasonable redress in relation to the circumstances alleged by the complainant which has either already been accepted by the complainant or ~~and the offer~~ is still open for acceptance; or
- d) the complainant has previously complained about the same issue to the Legal Ombudsman ~~or a predecessor complaints scheme~~ (unless the ombudsman considers that material new evidence, likely to affect the outcome, only became available to the complainant afterwards); or
- e) a comparable independent complaints (or costs assessment) scheme or a court has already dealt with the same issue; or
- f) a comparable independent complaints (or costs-assessment) scheme or a court is dealing with the same issue, unless those proceedings are first stayed (by the agreement of all parties or by a court order) so that the Legal Ombudsman can deal with the issue; or
- g) it would be more suitable for the issue to be dealt with by a court, by arbitration or by another complaints (or costs assessment) scheme; or
- h) the issue concerns an authorised person's decision when exercising a discretion under a will or trust; or
- i) the issue concerns an authorised person's failure to consult a beneficiary before exercising a discretion under a will or trust, where there is no legal obligation to consult; or
- j) the issue involves someone else who has not complained, and the ombudsman considers that it would not be appropriate to deal with the issue without their consent; or
- k) it is not practicable to investigate the issue fairly because of the time which has elapsed since the act/omission; or
- l) the issue concerns an act/omission outside England and Wales and the circumstances do not have a sufficient connection with England and Wales; or
- m) the complaint is about an authorised person's refusal to provide a service and the complainant has not produced evidence that the refusal was for other than legitimate or reasonable reasons; or
- n) there are other compelling reasons why it is inappropriate for the issue to be dealt with by the Legal Ombudsman.
- o) it is frivolous or vexatious; or
- p) it would not be a proportionate use of the ombudsman's time to investigate the complaint, due to the likely impact or due to its complexity, the amount of evidence provided, or due to the conduct of the complainant during the investigation; or

- q) the ombudsman considers that there has been undue delay in the complainant raising the complaint

Referring a complaint to court

- 5.8 Exceptionally (at the instance of an ombudsman) where the ombudsman considers that:
- a) resolution of a particular legal question is necessary in order to resolve a dispute; but
 - b) it is not more suitable for the whole dispute to be dealt with by a court; the ombudsman may (but does not have to) refer that legal question to court.
- 5.9 Exceptionally, (at the instance of an authorised person) where:
- a) the authorised person requests, and also undertakes to pay the complainant's legal costs and disbursements on terms the ombudsman considers appropriate; and
 - b) an ombudsman considers that the whole dispute would be more suitably dealt with by a court as a test case between the complainant and the authorised person; the ombudsman may (but does not have to) dismiss the complaint, so that a court may consider it as a test case.
- 5.10 By way of example only, in relation to a test case (at the instance of an authorised person) the ombudsman might require an undertaking in favour of the complainant that, if the complainant or the authorised person starts court proceedings against the other in respect of the complaint in any court in England and Wales within six months of the complaint being dismissed, the authorised person will:
- a) pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis);
 - b) pay these in connection with the proceedings at first instance and also any subsequent appeal made by the authorised person; and
 - c) make interim payments on account if and to the extent that it appears reasonable to do so.
- 5.11 Factors the ombudsman may take into account in considering whether to refer a legal question to court, or to dismiss a complaint so that it may be the subject of a test case in court, include (but are not limited to):
- a) any representations made by the authorised person or the complainant;
 - b) the stage already reached in consideration of the dispute;
 - c) how far the legal question is central to the outcome of the dispute;
 - d) how important or novel the legal question is in the context of the dispute;
 - e) the remedies that a court could impose.
 - f) the amount at stake; and
 - g) the significance for the authorised person (or similar authorised persons) or their clients.

Referring to another complaints scheme

- 5.12 An ombudsman may refer a complaint to another complaints scheme if:
- a) he/she considers it appropriate; and
 - b) the complainant agrees.
- 5.13 If an ombudsman refers a complaint to another complaints scheme, the ombudsman will give the complainant and the authorised person reasons for the referral.

Arrangements for assistance

- 5.14 The Legal Ombudsman may make such arrangements as it considers appropriate (which may include paying fees) for Approved Regulators or others to provide assistance to an ombudsman in the investigation or consideration of a complaint.

Related complaints

- 5.15 The Legal Ombudsman may:
- a) tell a complainant that a related complaint could have been brought against some other authorised person; or
 - b) treat someone else who was an authorised person at the time of the act/omission as a joint respondent to the complaint.
- 5.16 Where two or more complaints against different authorised persons relate to connected circumstances:
- a) the Legal Ombudsman may investigate them together, but an ombudsman will make separate determinations; and
 - b) the determinations may require the authorised persons to contribute towards the overall redress in the proportions the ombudsman considers appropriate.

Resolution

- 5.17 The Legal Ombudsman will try to resolve complaints at the earliest possible stage, by whatever agreed outcome is considered appropriate.
- 5.18 If a complaint is settled, abandoned or withdrawn, an ombudsman will tell both the complainant and the authorised person.

Investigation

- 5.19 If the Legal Ombudsman considers that an investigation is necessary, it will:
- a) ensure both parties have been given an opportunity of making representations;

- b) ~~share with both parties the findings of its investigation send the parties a case decision (which the Act calls an 'assessment')~~, with a time limit for response; and
 - c) if any party indicates disagreement within that time limit, arrange for an ombudsman to issue a final decision (which the Act calls a 'determination') ~~but only in circumstances where the disagreement is either based on new facts or evidence which may have a bearing on the investigator's findings, or on the basis of a challenge of the facts and or evidence on which the investigator's findings relies, or in circumstances where the ombudsman determines it fair and reasonable to issue a determination.~~
- 5.20 If neither party, in their response to the investigator's findings, indicates disagreement within that time limit, ~~or in circumstances where no new facts or evidence has been provided in response to the investigator's findings, or where the disagreement is not based on a challenge of the facts or evidence on which the case decision the investigator's findings rely,~~ the Legal Ombudsman may treat the complaint as resolved ~~by the case decision~~ in accordance with the investigator's findings.

Evidence

- 5.21 An apology will not of itself be treated as an admission of liability.
- 5.22 An ombudsman cannot require anyone to produce any information or document which that person could not be compelled to produce in High Court civil proceedings, and the following provisions are subject to this.
- 5.23 An ombudsman may give directions on:
 - a) the issues on which evidence is required; and
 - b) the way in which evidence should be given.
- 5.24 An ombudsman may:
 - a) take into account evidence from Approved Regulators or the Legal Services Board;
 - b) take into account evidence from other third parties;
 - c) treat any finding of fact in disciplinary proceedings against the authorised person as conclusive;
 - d) include/exclude evidence that would be inadmissible/admissible in court;
 - e) accept information in confidence where he/she considers that is both necessary and fair;
 - f) make a determination on the basis of what has been supplied;
 - g) draw inferences from any party's failure to provide information requested; and
 - h) dismiss a complaint if the complainant fails to provide information requested.

- 5.25 An ombudsman may require a party to attend to give evidence and produce documents at a time and place specified by the ombudsman.
- 5.26 An ombudsman may require a party to produce any information or document that the ombudsman considers necessary for the determination of a complaint.
- 5.27 An ombudsman may:
- a) specify the time within which this must be done;
 - b) specify the manner or form in which the information is to be provided; and
 - c) require the person producing the document to explain it.
- 5.28 If the document is not produced, an ombudsman may require the relevant party to say, to the best of his/her knowledge and belief, where the document is.
- 5.29 If an authorised person fails to comply with a requirement to produce information or a document, the ombudsman:
- a) will tell the relevant Approved Regulator;
 - b) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - c) may report any failure by that Approved Regulator to the Legal Services Board.
- 5.30 Subject to this, if any party fails to comply with a requirement to produce information or a document, the ombudsman may enforce the requirement through the High Court.

Procedural time limits

- 5.31 An ombudsman may fix (and may extend) a time limit for any stage of the investigation, consideration and determination of a complaint.
- 5.32 If any party fails to comply with such a time limit, the ombudsman may:
- a) proceed with the investigation, consideration and determination;
 - b) draw inferences from the failure;
 - c) where the failure is by the complainant, dismiss the complaint; or
 - d) where the failure is by the authorised person, include compensation for any inconvenience caused to the complainant in any award.

Hearings

- 5.33 An ombudsman may hold a hearing where he/she considers that it is appropriate to do so in the circumstances ~~will only hold a hearing where he/she considers that the complaint cannot be fairly determined without one~~. In deciding whether (and how) to hold a hearing, the ombudsman will take account of article 6 in the European Convention on Human Rights.
- 5.34 A party who wishes to request a hearing must do so in writing, setting out:
- a) the issues he/she wishes to raise; and
 - b) (if appropriate) any reasons why the hearing should be in private;
- so, the ombudsman may consider whether:

- a) the issues are material;
 - b) a hearing should take place; and c) any hearing should be in public or private.
- 5.35 A hearing may be held by any means the ombudsman considers appropriate in the circumstances, including (for example) by phone.

Determinations and awards by an ombudsman

- 5.36 An ombudsman will determine a complaint by reference to what is, in his/her opinion, fair and reasonable in all the circumstances of the case.
- 5.37 In determining what is fair and reasonable, the ombudsman will take into account (but is not bound by):
- a) what decision a court might make;
 - b) the relevant Approved Regulator's rules of conduct at the time of the act/omission; and
 - c) what the ombudsman considers to have been good practice at the time of the act/omission.
- 5.38 The ombudsman's determination may contain one or more of the following directions to the authorised person in favour of the complainant:
- a) to apologise;
 - b) to pay compensation of a specified amount for loss suffered;
 - c) to pay interest on that compensation from a specified time;
 - d) to pay compensation of a specified amount for inconvenience/distress caused;
 - e) to ensure (and pay for) putting right any specified error, omission or other deficiency;
 - f) to take (and pay for) any specified action in the interests of the complainant;
 - g) to pay a specified amount for costs the complainant incurred in pursuing the complaint;
 - h) to limit fees to a specified amount.
- 5.39 As a complainant does not usually need assistance to pursue a complaint with the Legal Ombudsman, awards of costs are likely to be rare.
- 5.40 If the determination contains a direction to limit fees to a specified amount, it may also require the authorised person to ensure that:
- a) all or part of any amount paid is refunded;
 - b) interest is paid on that refund from a specified time;
 - c) all or part of the fees are remitted;
 - d) the right to recover the fees is waived, wholly or to a specified extent;
 - or
 - e) any combination of these.
- 5.41 An ombudsman will set (and may extend) a time limit for the authorised person to comply with a determination (and may set different time limits for the authorised person to comply with different parts of a determination).

- 5.42 Any interest payable under the determination will be at the rate:
- a) specified in the determination; or
 - b) (if not specified) at the rate payable on High Court judgment debts.
- 5.43 There is a limit of £50,000 on the total value that can be awarded by the determination of a complaint in respect of:
- a) compensation for loss suffered;
 - b) compensation for inconvenience/distress caused;
 - c) the reasonable cost of putting right any error, omission, or other deficiency; and
 - d) the reasonable cost of any specified action in the interests of the complainant.
- 5.44 If (before or after the determination is issued) it appears that the total value will exceed £50,000, an ombudsman may direct which part or parts of the award are to take preference.
- 5.45 That limit does not apply to:
- a) an apology;
 - b) interest on specified compensation for loss suffered;
 - c) a specified amount for costs the complainant incurred in pursuing the complaint;
 - d) limiting fees to a specified amount; or
 - e) interest on fees to be refunded.

Acceptance/rejection of determinations

- 5.46 The determination will:
- a) be in writing, signed by the ombudsman;
 - b) give reasons for the determination; and
 - c) require the complainant to notify the ombudsman, before a specified time, whether the complainant accepts or rejects the determination.
- 5.47 The ombudsman may require any acceptance or rejection to be in writing but will have regard to any reason why the complainant may be unable to use writing.
- 5.48 The ombudsman will send copies of the determination to the parties and the relevant Approved Regulator.
- 5.49 If the complainant tells the ombudsman that he/she accepts the determination, it is binding on the parties and final.
- 5.50 Once a determination becomes binding and final, neither party may start or continue legal proceedings in respect of the subject matter of the complaint.
- 5.51 If the complainant does not tell the ombudsman (before the specified time) that he/she accepts the determination, it is treated as rejected unless:
- a) the complainant tells the ombudsman (after the specified time) that he/she accepts the determination; and
 - b) the complainant has not previously told the ombudsman that he/she rejects the determination; and

- c) the ombudsman is satisfied that there are sufficient reasons why the complainant did not respond in time.
- 5.52 If the complainant did not respond before the specified time, the ombudsman will notify the parties and the relevant Approved Regulator of the outcome, describing the provisions concerning late acceptance that are set out above.
- 5.53 If the complainant accepts or rejects the determination, the ombudsman will notify the parties and the relevant Approved Regulator of the outcome.
- 5.54 If a determination is rejected (or treated as rejected) by the complainant, it has no effect on the legal rights of any party.
- 5.55 However, if after the determination the ombudsman becomes aware of either a procedural defect or a fundamental error contained within the determination which, in the ombudsman's reasonable opinion, renders it wrong or unsafe, then the ombudsman may withdraw the determination and provide a new determination, taking into account the procedural defect or fundamental error

Publication

- 5.56 The Legal Ombudsman may publish a report of its investigation, consideration and determination of a complaint. The report will not name (or otherwise identify) the complainant, unless the complainant agrees.

Enforcement

- 5.57 A binding and final determination can be enforced through the High Court or a county court by the complainant.
- 5.58 A binding and final determination can also be enforced through the High Court or a county court by an ombudsman, if:
 - a) the complainant agrees; and
 - b) the ombudsman considers it appropriate in all the circumstances.
- 5.59 A court which makes an enforcement order must tell the Legal Ombudsman, and then an ombudsman:
 - a) will tell the relevant Approved Regulator;
 - b) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - c) may report any failure by that Approved Regulator to the Legal Services Board.

Misconduct

- 5.60 If (at any stage after the Legal Ombudsman receives a complaint) an ombudsman considers that the complaint discloses any alleged misconduct about which the relevant Approved Regulator should consider action against the authorised person, the ombudsman:
 - a) will tell the relevant Approved Regulator;

- b) will tell the complainant that the Approved Regulator has been told;
 - c) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - d) may report any failure by that Approved Regulator to the Legal Services Board.
- 5.61 If an ombudsman considers that an authorised person has failed to cooperate with the Legal Ombudsman, the ombudsman:
- a) will tell the relevant Approved Regulator;
 - b) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - c) may report any failure by that Approved Regulator to the Legal Services Board.
- 5.62 An ombudsman, the Legal Ombudsman and members of its staff will disclose to an Approved Regulator any information that it requests in order to investigate alleged misconduct or to fulfil its regulatory functions, so far as an ombudsman considers that the information:
- a) is reasonably required by the Approved Regulator; and
 - b) has regard to any right of privacy of any complainant or third party involved (including rights of confidentiality or rights under the Data Protection Act 1998 [and the General Data Protection Regulation 2018](#) or the Human Rights Act 1998)

6 Case fees payable by authorised persons

- 6.1 A complaint is potentially chargeable unless:
 - a) it is out of jurisdiction; or
 - b) it is dismissed or discontinued under paragraph 5.7.
- 6.2 A case fee is payable by the business/partnership or individual authorised person for every potentially chargeable complaint when it is closed unless:
 - a) the complaint was:
 - abandoned or withdrawn; or
 - settled, resolved or determined in favour of the authorised person; and
 - b) the ombudsman is satisfied that the authorised person took all reasonable steps, under his/her complaints procedures, to try to resolve the complaint.
- 6.3 The case fee is £400 for all chargeable complaints.
- 6.4 The remaining costs of running the Legal Ombudsman are covered by a levy on Approved Regulators by the Legal Services Board.
- 6.5 There is no charge to complainants.