
*Scheme Rules: technical
changes for CMC transfer*

LEGAL
OMBUDSMAN

Overview

1. The Legal Services Act 2007 created the Office for Legal Complaints (OLC) and tasked it with establishing an Ombudsman scheme to resolve disputes between consumers and their lawyers quickly and with minimum formality. The OLC is the non-executive board of the Legal Ombudsman (LeO), and is charged with overseeing the running of the scheme which opened in October 2010.
2. The Scheme Rules set out the legal framework under which the Legal Ombudsman operates. They underpin decisions by our operational team as well as the Ombudsman process. Our existing Scheme Rules document describes the combined effect of:
 - provisions in the 2007 Act, which only Parliament can change;
 - provisions set by the Lord Chancellor, by statutory instrument under the 2007 Act;
 - requirements set by the Legal Services Board for Regulators, under the 2007 Act;
 - rules set by the Office of Legal Complaints, under the 2007 Act.
3. Rules set by the OLC have to be approved by the Legal Services Board (and, for some specific aspects, by order of the Lord Chancellor).
4. We are seeking views on **technical changes** to the Scheme Rules to remove all mention of our ability to consider complaints about claims management companies (CMCs). This is in preparation for the transfer of complaints about CMCs to the Financial Ombudsman Service (FOS), from 1 April 2019.
5. These changes to the Scheme Rules are being made to reflect a new piece of primary legislation, the Financial Guidance and Claims Act 2018, through which Parliament sanctioned the transfer of CMC regulation from the Ministry of Justice (MoJ) to the Financial Conduct Authority (FCA). They are presented here to ensure compliance with Section 205 of the Legal Services Act 2007.
6. We are proposing to remove mention of CMCs and their regulator from eleven (11) different paragraphs in our Scheme Rules. Where necessary, we will add in connecting words to ensure that the rules still make sense.
7. Support for these changes has been given by the Legal Service Consumer Panel by way of an informal consultation.
8. The Legal Ombudsman will consider all responses to proposed changes. We welcome the support of stakeholders to ensure that all technical changes are clear to service providers and consumers.

9. Please note that responses should relate **only** to the changes cited above. Wider consideration of the content of our Scheme Rules is not included in this current period for representations. Any evidence provided should be objective, factual information about the impact or effect of the changes to the Scheme Rules.
10. The period for representations will run for 4 weeks from 2 – 30 January.
11. After consideration of representations duly made, the revised version of the Legal Ombudsman’s Scheme Rules will be submitted to the LSB for approval as required by Section 155 of the Legal Services Act, with the intention of implementing the changes from 1 April 2019.

Consultation Question

Are the proposed technical changes to the Scheme Rules reasonable and clear?

How to respond

The exact changes in wording are detailed in Annex 1 below. Only sections with proposed changes have been included. We welcome any comments, and have offered the question above to provide structure.

If possible, please send your responses electronically, although hard copy responses by post are also welcome. Please also use the contact details below to ask any clarifying questions about this paper.

Email: consultations@legalombudsman.org.uk

Post: Parliamentary and Policy Officer
Legal Ombudsman
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Annex 1: Draft rules

Amendments are shown as follows – additions involve adding the text in **bold** and deletions show the text in ~~strikeout~~.

Chapter 1: Introduction and definitions

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; ~~and extending the jurisdiction of the Legal Ombudsman to claims management services;~~
- 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.

1.7 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; ~~or~~
- ~~b) (for the purpose of these rules) someone authorised in England and Wales by the Claims Management Services Regulator;~~

- c) (under section 131 of the Act) ~~includes:~~
- 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);.
- ~~b) (for the purpose of these rules) the Claims Management Regulator (for claims management services).~~

Chapter 3: What authorised persons must do

- 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 ~~or, for persons authorised by the Claims Management Services Regulator, any requirements specified by the Secretary of State.~~
- 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 ~~or, for persons authorised by the Claims Management Services Regulator, the Secretary of State.~~

Chapter 5: How the Legal Ombudsman will deal with complaints

- 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 ~~(other than the Claims Management Services Regulator)~~ to the Legal Services Board.
- 5.58 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 ~~(other than the Claims Management Services Regulator)~~ to the Legal Services Board.

Misconduct

- 5.59 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 (~~other than the Claims Management Services Regulator~~) to the Legal Services Board.

5.60 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 (~~other than the Claims Management Services Regulator~~) to the Legal Services Board.

Chapter 6: Case fees payable by authorised persons

6.4 The remaining costs of running the ~~legal jurisdiction of the~~ Legal Ombudsman are covered by a levy on Approved Regulators by the Legal Services Board.

~~6.5 The remaining costs of running the claims management jurisdiction of the Legal Ombudsman are covered by the Lord Chancellor's fee collected by the Claims Management Services Regulator on behalf of the Lord Chancellor from the authorised claims management sector.~~

End notes

~~¹ Section 161~~

~~³⁴ Compensations Act 2006, Schedule 11.~~

For any questions about this paper please contact our Parliamentary and Policy Officer at sarah.ritzenhaler@legalombudsman.org.uk.