



Legal Ombudsman

CONSULTATION ON SCHEME RULES

A response by
CILEx Regulation

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EXECUTIVE SUMMARY

1. CILEx Regulation Limited (CRL) welcomes the Legal Ombudsman's (LeO) consultation and is supportive of proposals to improve the customer journey and experience, reduce waiting times for resolution of claims, and improve operational efficiency.
2. It is important for consumers that complaints can be escalated to the Legal Ombudsman for redress and will be responded to in a timely and efficient way. Whilst CRL recognises that there may be operational challenges in achieving this aim, it considers that fair and independent access to the Ombudsman are essential.
3. As the Legal Ombudsman develops its proposals, we would encourage further consideration of the following points:
 - a) Whether the proposed reduction from a six-year to a one-year time limit is adequately underpinned by robust analysis and evidence.
 - b) Whether the stage 1 review should adopt a more measured reduction to time limits to minimise the risk of unintended consequences.
 - c) That detailed planning for the implementation of the proposed timeframe and supporting communications is undertaken to ensure that the proposed changes do not have a negative impact on consumers seeking redress.
 - d) That detailed supporting information, criteria and guidance are provided to ensure to that discretion is exercised consistently and appropriately.
 - e) That the Legal Ombudsman commits to publishing a full analysis of the equality implications of its proposals.

RESPONSE

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)?

4. CRL agrees that it is in the best interests of consumers and service providers for a complaint to be brought to the Legal Ombudsman at the earliest opportunity and recognises the desire of the Legal Ombudsman to enable cases to be progressed in a timely and efficient manner.
5. However, CRL has concerns that a reduction from six years to one year may prejudice consumers whose cases are still in progress and who may thus be reluctant to escalate their complaint to the Ombudsman until the legal matter

has been resolved. This may then result in consumer detriment in some cases, as consumers may be unable to gain resolution of their complaint.

6. Research¹ has found that consumers are reluctant to complain while their case is live because they fear it will impact on the outcome of their legal matter. It appears that many consumers “would (and did) sacrifice full resolution to their complaint if it increased their chances of a swift and satisfactory result in the initial legal case.”
7. In addition, many people are vulnerable during a legal process and poor service can have a more profound impact in these circumstances. In such cases a reduction in the time limit to one year may not allow consumers who have experienced highly stressful situations sufficient time to reflect on and process their experiences or build up the emotional effort required to complain and maintain a complaint.
8. CRL considers that if the proposal outlined goes ahead the issue of consumer vulnerability coupled with consumer reluctance to complain while a case is in progress will almost certainly deliver the desired outcome of a reduction in the number of complaints. However, this may lead to an unintended consequence of closing the door to valid claims, leading to consumer detriment.
9. The consultation indicates that reducing the time limit to one year is likely to lead to a reduction of about 30% of complaints made to the Legal Ombudsman. CRL considers that it would be useful to receive further data on the nature of the complaints which would fall outside the new time limits. This would provide more meaningful evidence on which to base the appropriate timescales and assess the potential impact on particular cohorts of consumers.
10. An argument is made within the consultation that the longer the timescale between bringing a case and the original action, the harder it is to obtain supporting evidence to assess the complaint. CRL considers that it is difficult to assess the accuracy of this statement without reviewing the quantitative data underpinning this assumption, which in turn makes it difficult to assess the impact of the proposal.
11. CRL would welcome greater clarity around how any changes would be implemented to understand better the potential impact on firms and consumers. From the proposals outlined, LeO will need to ensure clear communication with consumers currently accessing legal services, as well as past service users. If this is the case, CRL considers that there is a risk that implementation could significantly increase the workload of firms, which could be seen as disproportionate, given that the number of consumers who complain to the Legal Ombudsman is relatively small.

¹ YouGov in 2012 [Consumer experiences of complaint handling in the legal services market](#)

12. CRL believes that it would be helpful to discuss whether a transition period might be used to implement the change together with appropriate guidance for practitioners.
13. CRL considers that the change may lead to a short-term increase in the number of cases received by the Legal Ombudsman, as consumers realise they may need to expedite their complaints, thereby adding to the pressure on an already stretched service.
14. The position could be further exacerbated as more cases may require consideration by LeO as to whether to exercise its discretion to extend the one-year time limit under Rule 4.7.

Q2. Do you agree that there is benefit in introducing a new Rule 2.11?

15. CRL agrees that the idea of early identification of cases for quick resolution benefits both parties. However, CRL would have welcomed additional information from the pilot which was undertaken in order to understand better any potential impact the new rule will have on consumers.
16. CRL notes and welcomes that before any complaint were to be dismissed under the new rule, the complainant will have an opportunity to explain why it should not be dismissed and that the explanation will be considered by an Ombudsman when deciding what action to take. This is proposed specifically to assist consumers who may have difficulties in articulating their claim.
17. Again, the experience gained through the pilot would have helped CRL assess how this will work in practice and to understand how vulnerable consumers will be protected and guided through the process.
18. CRL suggests that a clear set of criteria are required when refusing to investigate a matter. It would be helpful to have details of how decision-making and the use of any discretion will be applied consistently. Given that only one person at the Legal Ombudsman might see details of a dismissed claim, the arrangements for moderation will be important as they provide an additional safeguard for consumers.
19. CRL would welcome the opportunity to discuss how decisions will be communicated to complainants. If consumers feel that the Legal Ombudsman has not 'accepted' a complaint, there is a risk that this might lead to increased complaints being made to the legal regulators.

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?

20. CRL agrees that the Legal Ombudsman should seek to resolve cases earlier and has commented on the key proposals as follows:

Rule 5.7 (b)

21. CRL supports the proposal to add 'significant' to the rules and believes that this will provide the additional scope to deal with cases at an earlier stage. The development of the criteria, as suggested, will be important to aid the decisions when considering dismissing a case and should help to ensure fair and consistent application of the rule.
22. CRL supports the intention 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.
23. CRL believes that it would be helpful to receive further detail to understand the factors and the skills required to answer the question of 'what is significant' in each case. For example, will there be means testing of consumers to work out financial significance, and how will emotional impact be assessed as meeting the significance threshold? It is likely that these cases will require much more engagement with a complainant and will necessitate specific communication skills, which may give rise to additional resource implications for the Legal Ombudsman.

Rule 5.7(c)

24. CRL supports the proposal and welcomes the introduction of monitoring to ensure that 'offers and revised offers' are used correctly by service providers. CRL believes that it is reasonable that the Legal Ombudsman will not charge a case fee if a case is dismissed during the investigation process as a result of a reasonable offer being made.

Rule 5.7 (p)

25. CRL agrees with the proposal in principle, given the small number of complaints where it would be disproportionate for an investigation to be carried out. However, it is important that the investigator has explored with the complainant the issue(s) and has asked the complainant to provide only that information/evidence that is relevant to support the complaint. If the complainant is not prepared to engage on the basis of the criteria set, then subject to the exclusions related to public interest, where the consumer is vulnerable or there is significant detriment, then dismissing the case would be acceptable.

Rule 5.7 (q)

26. CRL supports, in principle, the desire to avoid unnecessary delays to an investigation where issues could have been raised at the outset. However, there will need to be clarity on this point at the outset of any complaint being

received by the Legal Ombudsman to ensure that consumers are aware of the potential ramifications of failing to disclose all relevant matters without undue delay.

27. CRL also notes the benefit that this rule will have in helping to reduce instances of cases being prolonged by complainants who do not accept a decision.

28. However, CRL is concerned that this proposal, coupled with the reduction in the time limit to bring a case, and noting our prior comments in relation to consumer reluctance to raise a case when a legal matter is ongoing, may create an additional barrier for consumers. Careful interpretation of this rule will be critical.

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

29. CRL agrees with the intention to widen the powers of delegation as being sensible and proportionate in improving the efficiency of the Legal Ombudsman and providing more timely responses to complainants.

30. With any delegation of powers, it is important that there is appropriate oversight both in relation to the ways that these powers are exercised and the outcomes that come from their use.

Q6. Do you support the proposal to limit the right to an Ombudsman decision where no substantive issues are raised with the case decision?

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?

31. CRL supports the proposal to limit the right to an Ombudsman decision in certain situations and agrees that it should enable more effective use to be made of an Ombudsman's time.

32. It will be important that there is oversight of the decisions that investigators make to ensure that the 80% minimum level of consistency referred to in decision-making process is both maintained and improved. Similarly, that all the necessary factors have been considered and documented before a decision is reached.

33. CRL believes that it is important that the factors set out in para 111 are considered at an early stage by an investigator, rather than later, when a review is requested. This would ensure that vulnerable clients are identified early within the process.

34. Successful implementation of this rule will depend on appropriate communication between investigators and complainants, so that complainants understand and have confidence in the decision made.

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?

35. CRL agrees that it is appropriate to conduct a review of the case fees model. CRL would be happy to engage with this review, as it considers that any new fees model should support good behaviours from service providers, be set at a proportionate level, and reinforce the good practice of resolution of complaints at an early stage.

36. How the fees are structured will be important in ensuring that the early closure of cases linked to an offer to a complainant maintains the desire to progress cases in a timely manner but does not create a culture of 'paying off' parties to gain an early settlement.

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?

37. CRL agrees with the other additional proposed changes to the rules. Given the change proposed to Rule 5.7 (a) separating it into two separate grounds, a revised 5.7 (a) and a new Rule 5.7 (o), CRL would suggest that consideration is given as to whether the new Rule 2.11 would also benefit from similar clarity.