

## **The Association of Consumer Support Organisations (ACSO) response to the Legal Ombudsman scheme rules consultation**

The Association of Consumer Support Organisations (ACSO) welcomes the opportunity to respond to the Legal Ombudsman (LeO) scheme rules [consultation](#).

ACSO represents the interests of consumers in the UK's civil justice systems. Its members and partners include organisations from across the legal and insurance sectors who provide the highest standards of service and support to consumers when they need it the most.

Recent years have seen a renewed focus on improving the efficiency and effectiveness of LeO, including the two-year corporate strategy for recovery.<sup>1</sup> As recognised in the consultation document, LeO is behind the trajectory of performance improvement and recovery that it set for itself.<sup>2</sup> The draft 2022/23 business plan and budget predicated that the size of the pre-assessment pool (PAP) would increase to 6,732 by March 2022, rather than the expected reduction to below 5,000.<sup>3</sup>

As the Scheme Rules have not been subject to a comprehensive review since 2012, it is both sensible and timely to do so now with the aim of increasing the efficiency and effectiveness of the ombudsman service.

We welcome LeO's intention to continue to assess the impact of its proposed changes on consumers as the proposals progress through the consultation process.<sup>4</sup> However, additional information on what this assessment will consist of is needed, as would a widening of the review to all consumers and their ability to seek redress, as opposed to only those with protected characteristics. Moreover, following implementation, LeO should commit to reviewing regularly the impact of the Scheme Rules to ensure the changes to them have not adversely affected complainants and legal service providers, its commitment to impact and insight work or driving improvements in the sector.

### **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 later)?**

As stated in the consultation document, one of the leading purposes of the review has been to improve the experience of LeO's customers.<sup>5</sup> Undoubtedly, this can be achieved through a reduction in the backlog of complaints and consumer wait times. Yet it is not apparent that a significant reduction in the time limit for when a complaint must be referred to LeO, from six years to one year, is in the best interest of consumers.

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<sup>1</sup> Legal Ombudsman (LeO), [Consultation: OLC Corporate Strategy 2020-23](#), December 2019.

<sup>2</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.2.

<sup>3</sup> LeO, [Business plan consultation 2022 - 2023](#), 3 November, p.19

<sup>4</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.9.

<sup>5</sup> *Ibid*, p.6.

That it is in the consumers' best interest to bring a complaint to LeO at the earliest opportunity is common sense. As stated in the consultation document, older cases are far more challenging to investigate owing to difficulties in gathering data, particularly if a firm has since closed, files have been archived or the file handler has moved to another firm.<sup>6</sup> Moreover, individuals' recollections of events can fade over time. Although the current time limits mean there are complaints that cannot be investigated easily due to the amount of time that has passed since the act or omission, the reduction is substantial and not the universal norm across the ombudsman and redress sector. Moreover, there may be multiple reasons as to why a consumer is delayed in raising a complaint with LeO, including a lack of awareness of the service.

The multitude of legal services regulators are often a source of confusion for consumers who are not aware of the remit and role of each body. As one ACSO member explained, "there are a number of complainants who seem to think LeO and the [Solicitors Regulation Authority (SRA)] are one and the same, or indeed that the SRA is the one who should investigate a complaint. As a result, consumers may approach the SRA first rather than LeO. However, this appears to be the case when [a consumer] raises a complaint directly themselves rather than going through a firm's internal complaint procedure".<sup>7</sup> LeO's annual awareness survey from 2019/20, the latest available version, found that 71 per cent of the public had heard of the Legal Ombudsman; an increase from 56 per cent in 2017/18.<sup>8</sup> Yet, the survey does not reveal whether individuals understand the role and remit of the service.

LeO's initial high-level review of complaints raised within the last 12 months suggests that approximately 30 per cent of complaints would have fallen outside of the time limits if set at one year.<sup>9</sup> It is noted that approximations have been provided by LeO, rather than detailed analysis. A wider remit for the review would also be welcome (i.e., longer than 12 months) to understand better how many complaints are likely to be affected by the proposals.

The examples of factors that might be considered when exercising a discretion appear sensible, although broad and therefore open to wide interpretation. Exceptions should be considered on a case-by-case basis, yet there may be inconsistencies in how they are applied across complaints. For example, it is not clear how individual case handlers will determine which consumers fall into the category of being vulnerable and therefore likely to be exempt from the one-year time limit.

We agree with the proposed application of rule 4.7 which would allow the Ombudsman to exercise discretion to extend the one-year time limit for specific customers if, on the evidence, it was fair and reasonable to do so. However, we would welcome further detail on what would be considered 'fair and reasonable' under these proposals and how LeO will ensure these exceptions are applied consistently across all the complaints it receives.

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<sup>6</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.11.

<sup>7</sup> The Association of Consumer Support Organisations (ACSO), *Feedback from members on the efficiency of the Legal Ombudsman Service*, 29 November 2021, p.3.

<sup>8</sup> LeO, [Annual report and accounts for the year ending 31 March 2020](#), 14 July 2020, p.19.

<sup>9</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.12.

In short, additional evidence and analysis on the number of complaints that are likely to be affected by the proposed time limit would be welcome. We suggest that LeO reviews whether a less substantial reduction in the time limit (for example, a three-year time limit) would have the same desired effect of reducing the number of complaints that cannot be investigated properly due to the amount of time that has passed since the act or omission that was complained about.

Finally, LeO will need to ensure that any reduction in the time limit for bringing a complaint to the service is communicated effectively to consumers. No mention has been made by LeO as to how it intends to raise consumer awareness of the need to bring a complaint within the new time limits. That consumers may be hesitant to bring a complaint before the conclusion of their legal matter, which could lead to them falling outside of the revised time limits, further reflects the importance of informing consumers about the changes to the Scheme Rules, regardless of whether LeO considers exercising discretion in these cases.

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

Yes, we agree there is benefit in LeO providing consumers with a realistic assessment of the likely outcome of an investigation at the earliest possible opportunity. In order to ensure that consumers are not left wholly dissatisfied that their complaint has been dismissed, it is essential that LeO explains fully its reasons for dismissal. We suggest that examples of similar complaints and their outcomes are provided to consumers at the time of dismissal.

The proposal to allow complainants an opportunity to explain why their complaint should not be dismissed is welcome, as is LeO's intention to accommodate any requests for reasonable adjustments in relation to communication or language barriers.

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

Yes.

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

The proposed amendment to Rule 5.7(b) will allow an Ombudsman to dismiss a complaint where they are satisfied that the complainant has not suffered any *significant* financial loss, distress, inconvenience or other detriment.<sup>10</sup> In practice, it may be difficult to determine what should be considered *significant* under the new rules.

ACS0 welcomes LeO's intention to monitor the application of Rule 5.7 to ensure it is applied fairly and consistently. It is sensible that the criteria being considered will be kept outside of the Scheme Rules so they can be amended swiftly should it become clear they were having a disproportionate impact upon consumers.

We agree with the proposed extension to Rule 5.7(c) which would allow an Ombudsman to dismiss a complaint if a reasonable revised/ increased offer has been made by the service

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<sup>10</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.15.

provider during the course of an ongoing investigation. Consumers should be made aware from the outset of their complaint that their complaint may be dismissed in such circumstances.

The introduction of Rule 5.7(p) would allow LeO to dismiss a complaint which is deemed unreasonably or unmanageably imposing and would absorb a disproportionate amount of time and resource to investigate. The consultation document states that “the proposed new rule would only apply to a small number of complaints”, yet no data has been provided to demonstrate how many complaints would likely be affected.<sup>11</sup> Further information would be welcome, however in principle we agree with the proposed new Rule.

The proposed new Rule 5.7(q) 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. If new issues are raised during an ongoing investigation, this results in delays to the investigation process. However, consumers may bring a complaint to LeO whilst their legal matter is still ongoing, particularly if the proposed reduction in the time limit to make a complaint is introduced. As Rule 5.7(q) depends upon the proposal to revise LeO’s time limits, and therefore no timeframe has been proposed on the opportunity to bring new/additional complaints has been provided, we are not able to either support or oppose the introduction of the Rule.

It is important that LeO explains fully to the complainant the reasons for dismissing a complaint. By clearly stating what LeO is able to investigate and the options available to consumers in its settling of a complaint, LeO will help to avoid eroding public trust in its function and service. Moreover, it is essential that LeO ensures Rule 5.7 is applied fairly and consistently across all complaints.

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

As stated in the consultation, in around 80 per cent of cases that result in a referral to an Ombudsman for a final decision, the eventual outcome mirrors that recommended by the investigator.<sup>12</sup> Yet as 20 per cent of cases differ, there is a risk that that the proposed revision to the Scheme Rules will result in adverse consequences for consumers, not least as decisions are potentially legally binding and subject to judicial review.

Generally speaking, we are not opposed to the extension of the delegation of Ombudsman decision-making powers. However, further information is required on the development programme that LeO would introduce to provide suitable assurance as to the technical competence and expertise of the staff to whom decision making will be delegated. Moreover, additional information is needed as to how LeO intends to monitor the service provided and the outcome delivered by these staff.

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

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<sup>11</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.19.

<sup>12</sup> *Ibid*, p.21.

In general, we are not opposed to the proposal to limit the right to an Ombudsman decision if no substantial issues have been raised in response to an investigator's findings, such as an error in fact or law, or additional new evidence. That the rule will still provide an Ombudsman the opportunity to pass a case for final decision in certain circumstances, such as if there were vulnerability issues or significant public interest in the subject matter of the investigation, is welcome.

The consultation document states that LeO does not expect the proposal to reduce the number of cases where a decision is needed to a level where it critically affects LeO's commitment to impact and insight work or driving improvements in the sector.<sup>13</sup> If any evidence is found that the proposals have caused a negative impact upon these commitments, they should be reviewed and amended as appropriate.

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

The factors listed in the consultation document that LeO will review when considering whether a final decision is required all appear sensible.

**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?**

It would be appropriate to consider amending Rule 5.19 once LeO's review has been concluded on "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."<sup>14</sup> There may be reasons why 40 per cent of all the complaints that LeO investigates result in an escalation to an Ombudsman for decision, which can be addressed without the need to implement substantive changes to the Scheme Rules.

**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?**

Yes. We agree that the current flat fee of £400, irrespective of how or at what stage in the LeO process the complaint is resolved, does little to encourage service providers to try and resolve complaints as early as possible in the investigative process. An introduction of a tiered case fee structure is likely to reduce the significant backlog of complaints which currently characterises LeO. Moreover, it may change the perception held by some legal service providers that LeO attempts to recover the case fee from them wherever it can and sometimes in unfair situations.<sup>15</sup>

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<sup>13</sup> LeO, [Scheme Rules Consultation](#), February 2022, p.25.

<sup>14</sup> *Ibid*, p.22.

<sup>15</sup> The Association of Consumer Support Organisations (ACSO), *Feedback from members on the efficiency of the Legal Ombudsman Service*, 29 November 2021, p.5.

**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.**

Yes. The proposals outlined in the additional changes which appear sensible and unlikely to have any negative impact upon consumers.

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For further information, please contact:

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