

November 2012

Legal
Ombudsman
scheme rules
revision

LEGAL
OMBUDSMAN

Foreword

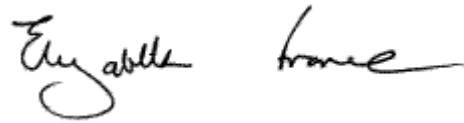
The Legal Services Act 2007 gives us our existence, requires us to set up and run an ombudsman service and sets out in considerable detail how the scheme will work and what it will cover. In some cases the legislative requirements are explicit, in others parameters are set but there is room for interpretation in the scheme rules. When we presented our first suggested scheme rules to the Legal Services Board and to the Lord Chancellor we had to make assumptions about the way the scheme would be used. We made it clear then that there were areas where experience of running the service might lead to our seeking change, and other areas where there were differences of view on what the appropriate rule should say, and where we promised to reconsider once we had some knowledge of practice.

We said we would review the rules once we had 18 months' data; we began the review in March. Just as we did at the outset, and when looking at other changes, such as how we would publish decisions taken by our Ombudsmen, we issued a consultation draft and proactively sought views by arranging a series of consultation events. As well as members of the Ombudsman's team, these events were attended by board members. We were impressed by the openness of the contributors and their willingness to explore with us the need for change. On some of the areas for the debate there was broad consensus, on others there would never be agreement. Our task has been to find the right balance. We have looked for an evidence base for any change and kept to the forefront of consideration our determination to deliver effective redress fairly and efficiently.

We have also had in mind the importance of a set of rules which will meet the needs of an expanded jurisdiction. Since we began the review, Ministers have announced that section 161 of the Legal Services Act will be activated in 2013 so that complaints about Claims Management Companies will be considered by the Legal Ombudsman. There are process issues for us to address before we begin to take these complaints, but a set of rules which applies to all complaints the Legal Ombudsman's staff need to address is a prerequisite for a successful move into this new area of complaint handling.

I am grateful for the work which has been done by the Legal Ombudsman and his staff and by my colleagues on the board, in

particular David Thomas and Professor Mary Seneviratne, in preparing the final versions for consideration.

A handwritten signature in black ink, reading "Elizabeth France". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Elizabeth France

Chair

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1. Introduction

The Legal Ombudsman was established by the Legal Services Act 2007 (the Act). Our role is two-fold: to provide consumer protection and redress when things go wrong in transactions within the legal services market; and to feed the lessons we learn from complaints back to the profession, regulators and policy makers, to allow the market to develop and improve.

The scheme rules set out the legal framework under which the Legal Ombudsman operates. They underpin decisions by ombudsmen and operations teams as well as the ombudsman process. The scheme rules describe 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 (LSB), under the Act; and
- rules set by the Office of Legal Complaints (our Board), under the Act.

In March 2012, with the benefit of eighteen months operational experience, the Legal Ombudsman launched a consultation as part of a scheme rules review. When the rules were first formulated, the Legal Ombudsman made a commitment to revisit them after this timeframe. A review seemed timely in light of changes in the legal sector, the experience the Legal Ombudsman has gained to date, and potential changes to our jurisdiction. The Legal Ombudsman also wanted to ensure that the rules continued to promote and protect the interests of consumers in line with the regulatory objectives.

We ran a public consultation from March until June 2012 which set out our proposed scheme rules revisions. Our Board scrutinised the responses we received from stakeholders and made their recommendations. They recommended that we:

- allow complaints from prospective customers
- increase our financial limit for compensation up to £50,000
- increase our time limit to six years since the alleged act or omission took place or three years since the complainant should reasonably have known there was cause for complaint, and

- remove free cases for firms.

The Board also approved smaller drafting revisions and recommended that an additional rule is added to 5.7 of the scheme rules following feedback from stakeholders. This rule would allow ombudsmen to discontinue cases where the authorised person has refused to provide a service and the complainant has not produced evidence that the refusal was unreasonable.

Any changes to the scheme rules need to be approved by the LSB in accordance with section 155 of the Legal Services Act 2007. Our recommendations were approved by the LSB in September 2012.

The changes relating to the financial limit and complainants eligible to use our service – in this situation, allowing prospective complaints - require statutory instruments to be made by the Lord Chancellor under sections 139 and 128 (4) (d) of Act respectively. Changes to the case fee structure need to be approved by the Lord Chancellor in accordance with section 155 (1) (b) of the Act.

Our proposals have now been submitted to the Lord Chancellor and subject to gaining formal approval, and the orders being laid in Parliament, we hope to implement the revised rules¹ early in the New Year. The exception to this will be the proposed changes to the case fee structure which we plan to implement in April 2013, in line with the Legal Ombudsman's financial reporting year.

This report sets out our recommended changes to the scheme rules and shows how we have considered the feedback we received as part of the consultation, revising our recommendations where appropriate.

2. Regulatory objectives and the Ombudsman Association's principles of good complaints handling

¹ See annex B for full revised rules

When considering whether the proposals should be adopted we have taken into account how they fit with the regulatory objectives described in Section 1 of the Act and the Ombudsman Association (OA) principles for good complaints handling². Section 116 (2) of the Act requires that the Legal Ombudsman, as far as is reasonably practicable, is compliant with the regulatory objectives and acts in a way which he considers most appropriate for the purpose of meeting the regulatory objectives.

Section 116 (3) of the Act requires that the Legal Ombudsman has regard to best practice in other ombudsman schemes. In this consultation, we took into account the principles of the OA. These say that good ombudsman schemes should:

1. establish measures to feed back information and systematic advice;
2. give feedback to organisations on their performances at periodic intervals;
3. be aware of the wider public benefit that they can provide, including adding value for stakeholders such as by holding organisations to account for the ways in which they deal with people and respond to their complaints; and
4. ensure that learning is widely spread across the sector and generally raise standards.

The Legal Ombudsman developed some principles to guide this consultation which provided a framework for how the proposals should develop. These principles were included in the consultation and we invited stakeholders to comment on their suitability.

The principles were:

1. revisiting areas of the rules which have proved problematic in view of the experience of operating the scheme in practice;
2. making sure changes are consistent with the possibility of establishing a voluntary jurisdiction in the future or taking on claims management complaints;
3. harmonising with other ombudsman schemes, particularly the Financial Ombudsman Service. This is in response to changes in the market/regulatory environment where the boundaries between legal and professional services are becoming increasingly blurred; and

² <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

4. using evidence to inform changes.

These principles were broadly supported by stakeholders. The majority of responses either supported the principles or did not comment.

When we initially developed our scheme rules, we looked to other ombudsman schemes for examples of best practice. The Financial Ombudsman Service's scheme most closely echoed our jurisdiction and legislative footing.

Since we began operating in October 2010, it has become increasingly apparent that the traditional sectoral approach to professional services is eroding and therefore boundaries between our service and other ombudsman schemes, particularly Financial Ombudsman Service, are blurring. We therefore took it as one of the principles governing our approach to look for opportunities to harmonise our service with other similar schemes. Therefore several of our proposed changes are prompted in part by this principle.

In their totality, we believe that our proposals support the regulatory objectives. Widening our jurisdiction to include prospective customers and increasing time limits, for example, will improve access to justice and protect the interests of customers. There is a public interest argument for increasing the financial limit as our service is a cheaper alternative to the courts. Abolishing the free cases for firms will continue to encourage good complaints handling at the first tier. In addition, the removal of free cases will lead to an increase in income generated by the case fees and a corresponding decrease in the amount borne by all firms through the levy on their regulators.

3. Chapter 1: Introduction and definitions

Amendments to chapter 1 reflect the introduction of alternative business structures, and changes in the identities and names of authorised regulators. This involved changes to paragraphs 1.1, 1.7 and 1.8.

In our consultation, we asked two questions related to this chapter:

- i. "Do you have any views on these proposed changes to the scheme rules?"*

- ii. *“Are there any additional changes to Chapter 1 that in your view are necessary?”*

Consultation responses:

In response to the first question, there were no objections to the proposed changes and several respondents noted that these are consistent with the creation of Alternative Business Structures (ABS).

In response to the second question, the Chartered Institute for Legal Executives (CILEX) requested that “chartered” be inserted before any mention of themselves or their practitioners to reflect their recent acquisition of chartered status.

We agree that the changes requested by CILEX are appropriate and have therefore inserted the word “chartered” where CILEX and their practitioners are mentioned.

The Board of the Legal Ombudsman has decided to make the proposed changes to the drafting of chapter 1 of the scheme rules. These have been agreed by the LSB.

4. Chapter 2: Who can complain about what?

These specifications are largely prescribed by section 128 of the Legal Services Act, with power for the Lord Chancellor to make changes by statutory instrument.

In 2010, after recommendations from us, the Lord Chancellor prescribed that micro-enterprises, charities, trustees and personal representatives and beneficiaries be able to use our scheme.

Charities

In our consultation, we asked:

“How appropriate do you think the current £1 million income/asset limit for charities and trusts is? Why do you think this?”

Background:

The Legal Ombudsman was asked to reconsider the limits for charities which appear in 2.1(b) of the rules by a number of stakeholders including regulators and charities who argue that the current limits may be too restrictive. They suggested that the threshold should be increased, to allow more charitable organisations and trusts into our jurisdiction.

Consultation responses:

The majority of respondents did not comment on this question or thought that the current arrangements were adequate. The Legal Services Consumer Panel, the Solicitors Regulation Authority and Which? supported a change in the rules to allow charities with higher incomes to use our service as they believed the income/asset limit to be too restrictive.

The Board of the Legal Ombudsman has decided to retain the current financial limit for charities and trusts.

The Legal Ombudsman appreciates that charities with higher incomes are unable to use our scheme and may also be unwilling to use donated income for court action. However, we have seen little evidence from charities themselves – or from stakeholders – that this is a concern from them and research commissioned by the Legal Services Consumer Panel³ showed that the vast majority of charities already fall under our jurisdiction. The current limit is consistent with that which applies to the Financial Ombudsman Service.

Prospective customers

In our consultation, we asked:

“Do you agree with our proposal to bring our service in line with other ombudsman schemes and accept complaints from prospective customers?”

³http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/MVA_SmallCharities_ResearchReport.pdf

Background:

When the Legal Ombudsman first drafted the scheme rules, we recommended to the Lord Chancellor that in some cases it would be appropriate for people other than those who have directly engaged a lawyer to be able to complain to the Legal Ombudsman. The Lord Chancellor agreed and made orders under section 128 (3) of the Act to allow beneficiaries of wills and personal representatives to use our scheme.

Since we launched in October 2010, it has become apparent that there are further people, who arguably should have access to redress for losses caused by poor service.

Currently, under the scheme rules a complainant has to have actually received a service from a legal provider before the Legal Ombudsman can accept a complaint for investigation. We proposed to widen our jurisdiction so that those who have been unreasonably offered or refused a service can use our scheme. There are at least two important situations where consumer loss as a result of a service provision failure can be recognised by the relevant regulator as misconduct but the complainant cannot seek redress for that loss.

The first of these is when a consumer is unreasonably refused a legal service; for example, due to discrimination. The second situation is when a consumer feels that they have been unreasonably and persistently offered an unwanted service by a legal provider; for example, where an authorised person continues to make unsolicited phone calls to a consumer despite being asked to stop.

These are the most common examples of the problems faced by prospective customers but there are other circumstances in which legal services may be offered or refused about which we believe individuals should be able to complain. We therefore propose that the Ombudsman scheme be extended to include complaints about offers or refusals of legal services generally.

Another reason for this change is to future proof our scheme in anticipation of changes in the legal sector. ABS and other market changes mean that the legal sector is becoming increasingly commoditised and marketing techniques are becoming more competitive

and aggressive. These practices are already evident in the claims management sector and we consider it prudent to prepare ourselves for complaints about them. However, since there is evidence that some of the most aggressive techniques are used by firms operating outside the UK, we may not be able to act unless there are close links between these agencies and regulated organisations who use the data elicited.

In the future we are likely to see more complaints about ABS firms which cross jurisdictional boundaries with the Financial Ombudsman Service who currently accept complaints from prospective consumers⁴

It would make sense to harmonise our rules with the Financial Ombudsman Service to ensure that a comprehensive system of redress is in place; particularly, as the Ministry of Justice have recently announced that our jurisdiction will be expanding to include claims management companies (CMCs).

Consultation responses:

Agree: Legal Services Consumer Panel, Which?, Solicitors Regulation Authority

Supporters of this amendment emphasised the importance of covering prospective clients in light of future developments, particularly the expansion of our jurisdiction to cover claims management. Some suggested that it is in the public interest for the Legal Ombudsman to be available to people who are impacted by actions of an authorised person, even if they have not engaged the lawyer.

Respondents argued that the current measures – for example, reporting issues to regulators – fail to encourage people to report poor service as there is no redress available for prospective customers. They also felt that recourse for members of the public to the Legal Ombudsman could provide a deterrent.

"Allowing such complaints should serve as an important deterrent against cold-calling and other undesirable sales techniques" (Legal Services Consumer Panel).

⁴ DISP 2.7.6 of the Financial Services Authority (FSA) handbook

During one of the consultation events, some of the representatives from professional indemnity insurance companies expressed surprise that prospective customers are not already covered by the Legal Ombudsman. Regulators were keen to work in partnership with the Legal Ombudsman to share information and implement any changes.

Disagree: Council for Licensed Conveyancers, Law Society, Bar Standards Board

Some stakeholders were concerned that accepting complaints from prospective customers could create extra duties for lawyers. They were apprehensive that complaints from potential customers, who had been declined services for legitimate reasons, would be investigated. They also felt that sufficient arrangements already exist, allowing recourse to regulators, the Equality Act 2010, courts and tribunals. There was some concern from respondents that there is not enough evidence to support allowing complaints from prospective customers into our scheme and that it would be difficult to define “prospective customers”.

The Legal Ombudsman is confident that the more substantial concerns raised during the consultation can be dealt with through the scheme rules. We propose the rules are changed to allow complaints from people who have been unreasonably offered or refused a service. We also propose to amend paragraph 5.7 to allow the Legal Ombudsman to dismiss complaints without investigation where the complainant does not produce evidence that the service was refused by a lawyer or firm for anything other than legitimate business reasons (for example, lack of capacity to handle the work or where there are concerns about money laundering).

The Board of the Legal Ombudsman has recommended to the Lord Chancellor that Section 128 (d) be amended under Section 128 of the Act to allow complaints from people who have been unreasonably offered or refused a legal service.

Third party complaints

In our consultation, we asked:

“Do you think there is evidence to support a change to the rules to include a list of specific categories of third parties who may complain to the Ombudsman? Which categories would you favour?”

Background:

When we developed our existing scheme rules, third party complaints were raised as an issue by consumer groups. Since we launched our service, we have received complaints which we have been unable to investigate from members of the public who have not engaged a lawyer directly but the lawyer has acted in their interests. A common example of this is where there is a packaged remortgage and the lawyer has been engaged by the mortgage company. Currently, we are unable to accept these cases.

In the consultation, we offered stakeholders four options:

1. to leave the provisions as they are
2. to include specific circumstances where we would be able to look at complaints from third parties
3. to write the rules to specify that where there is a direct duty of care for a third party, we would consider the complaint
4. to allow all third party complaints.

The second of these options was our preferred approach and we invited stakeholders to provide a list of circumstances which they felt would be appropriate for us to accept.

Consultation responses:

Agree: Legal Services Consumer Panel, Which? Solicitors Regulation Authority

Those who supported a change to allow third party complaints varied in approach. The consumer bodies thought an approach should be adopted, going further than the list approach suggested in the consultation paper. The Legal Services Consumer Panel suggested that the Legal Ombudsman adopts a list of cases we would not accept and then allow all other third party complaints to be considered. Which? and

the Chairman of the Institute of Professional Willwriters⁵ thought that the Legal Ombudsman should have the discretion to choose whether third party complaints were accepted or not (option four in the consultation paper). Both of these organisations were concerned that a list approach would be challenging.

Disagree: Council for Licensed Conveyancers, Law Society, Bar Standards Board

The main concerns amongst those who did not support the proposals were that they might create new duties for lawyers which would stand in direct opposition to a lawyer's duties to clients and courts. They felt that this could increase costs to lawyers and these costs would eventually be passed down to clients. Some of the respondents felt that there is already sufficient recourse to the regulators for third parties. There were also concerns that there is not enough evidence to support a change in the rules.

Several opponents of the proposal stated that if there had to be a change, a list approach should be adopted. They felt that the circumstances in which complaints should be accepted for investigation would need to be very specific.

The Board of the Legal Ombudsman has not made a recommendation to LSB or the Lord Chancellor at this time but has agreed in principle to option two.

No change will be proposed or implemented at present. However, we will work with stakeholders over the next months to create a specimen list for consultation. This list will comprise third party complaints where there is no conflict of interest between the complainant and the person who engaged the authorised person. This would exclude, for example, complaints by litigants against the opposing party's lawyer.

Successor firms

In our consultation, we asked:

“Are there any additional changes to Chapter 2 that in your view are necessary?”

⁵ Personal submission from the Chairman

Background:

Section 132 of the Act 2007 sets out protections for consumers when firms merge, divide or close and then reopen under new arrangements.

Section 132 (2) requires the Legal Ombudsman to make rules, “determining the circumstances in which, for the purposes of the ombudsman scheme, an act or omission of a person (“A”) is, where A ceases to exist and another person (“B”) succeeds to the whole or substantially the whole of the business of A, to be treated as an act or omission of B.”

Paragraph 2.10 of the scheme rules lays out the approach regarding successor practices. However, in practice there can be confusion by authorised persons and regulators over what constitutes a successor firm.

To give the Ombudsman flexibility in determining which firms can be considered as successor firms, we proposed to add the following line to the end of the rule:

“Unless an ombudsman decides that this is not fair and reasonable in the circumstances of the case.”

Consultation responses:

Many respondents did not comment on this proposal.

Agree: Solicitors Regulation Authority

The SRA suggested that this change is desirable in light of changes to the legal sector, particularly ABS, as firms are more likely to rebrand and change their arrangements as legal practices are taken on by new enterprises.

Disagree: Some law firms, CILEX and IPS

Those who disagreed with the addition to paragraph 2.10 argued that it is not up to the Legal Ombudsman to decide whether a firm is a successor or not and, in some cases, challenged the definition, stating that it does

not take account the complexities of the law in relation to successor firms.

The Legal Ombudsman takes the view that it is Section 132 (2) of the Legal Services Act 2007 that provides the definition of successor firms. The amendment to the rules does not affect this definition, it allows us to dismiss cases if it is fair and reasonable to do so. The Legal Ombudsman does not feel that sufficient evidence was provided to change this view.

The Board of the Legal Ombudsman has decided to adopt the addition to Chapter 2 paragraph 10 of the rules. This has been agreed by the LSB.

5. Chapter 4: When complaints can be referred to the Legal Ombudsman

In our consultation, we asked:

“Do you agree with the proposed change so that complaints can be accepted up to six years from the event or three years from the knowledge of the event? Please provide evidence to support your view. If you think the current arrangements are problematic, please provide solutions you would find appropriate.”

Background:

There were both strategic and operational reasons for reviewing the rules regarding time limits. A key reason for the change is that our scheme should harmonise as much as possible with the courts and other ombudsman schemes. Strategically, with the onset of ABS, we were keen that time limits harmonised with other ombudsman schemes, particularly the Financial Ombudsman Service (who can receive complaints about alleged poor service which happened up to six years ago or where the date of awareness was up to three years ago)⁶ as it is very likely that we will see more hybrid cases covered by both schemes.

Operationally, since we opened in October 2010 a lot of time and resources have been spent resolving issues around time limits. In

⁶ DISP 2.8.2 of the FSA Handbook

addition, the existing rule can be very restrictive as it only allows us to accept cases which exceed these relatively tight time limits under exceptional circumstances. Often, people have legitimate but not exceptional reasons for not complaining within a year.

We also took the review as an opportunity to look at how the rules work when someone dies with an outstanding complaint.

In the consultation, we offered five options:

- A. To clarify the drafting of 4.4 (which deals with the time since the complaint was made to the lawyer) without making any change of substance.
- B. To amend 4.6 (which deals with the time limit from the date of awareness) so that if a consumer dies before referring the complaint to us, the time limit does not start again on their death.
- C. To extend the time limits in 4.5 to six years from the date of the alleged poor service and three years from the date of awareness. [If these basic time limits were extended, it would not be necessary to proceed with alternatives D and E.]
- D. If the time limits in 4.5 remain at one year, add a further one-year time limit running from the end of the lawyer's retainer [this would not apply if alternative C were adopted]
- E. If the time limits in 4.5 remain at one year, extend ombudsmen's discretion [this would not apply if alternative C were adopted].

We proposed adopting options A, B and C.

Consultation responses:

Due to the range of alternatives offered, responses to the extension of the basic time limits were varied.

Agree: SRA, CLC, Consumer Panel and Which?

Support for this change came from some regulators and consumer groups who acknowledged that the current arrangements were unsuitable. Respondents thought that an extension would support consumers who may require more time because of their lack of knowledge of law, and would allow consumers to complain after a retainer had finished. They also thought it would take the pressure off the courts and that it would be helpful to harmonise our timescales with the Financial Ombudsman Service in the light of ABS.

Middle ground: BSB, Law Society, Society of Scrivener Notaries and some law firms.

These respondents agreed to an extension of the time limits; however, they preferred a two year time limit or one year from the end of a retainer. One of the main arguments for this approach was that we should be encouraging consumers to bring complaints as soon as possible.

“It is an axiom of good complaints management that complaints should be raised as soon as possible after the event” (Law Society).

These respondents did not think that there is enough evidence to support a change in line with other ombudsmen and courts.

Disagree: CILEX, Institute of Professional Will Writers and Association of Women Solicitors, some law firms.

Respondents raised concerns about how the change will work operationally, mentioning for example that timescales for misconduct referrals with some regulators are less than three years. They thought that this change could be unfair on practitioners who may have to change their policies for retaining files and thought that the change could impact on professional indemnity insurance premiums. Others were concerned that the change could compromise the simplicity of the Legal Ombudsman. A couple of respondents were concerned that the change would diminish ‘buy-in’ to the scheme on the part of the profession. Respondents commented that any additional costs for lawyers would eventually fall on the public through increased bills. There was also a suggestion that “pro bono” work may become unattractive.

We do not anticipate that this rule change would be difficult operationally. Where the date of awareness of the alleged poor service is less than a year we already accept complaints for investigation. This means that we routinely deal with older cases. Six years is the standard document retention requirement in many circumstances. If we receive a complaint where there is insufficient evidence on which to base an investigation and it is not reasonable to expect the firm to have held onto the records - for example, when the case is more than six years old - paragraph 5.7(k) of the scheme rules allows an ombudsman to dismiss the case where 'it

is not practicable to investigate the issue fairly because of the time which has elapsed since the act/omission.'

The Board of the Legal Ombudsman has decided to increase the time limits for making complaints to 6 years since the act or omission or 3 years since the date of knowledge (option C) as well as amending the rules in line with options A and B. This has been agreed by the LSB.

In response to concerns expressed by stakeholders and in order to minimise the impact of this change on the profession, the Legal Ombudsman will not accept complaints about issues that took place before 6 October 2010, the date that LeO opened for business, unless there are exceptional reasons as set out under rules 4.5(a) and 4.

6. Chapter 5: How the Legal Ombudsman will deal with complaints

In our consultation, we asked:

“What do you think our financial limit should be for compensation? Please provide evidence to support your view.”

Background:

Section 138 of the Act sets the financial limit for compensation payable by an authorised person to a complainant at £30,000; this is reflected in Chapter 5 of the Legal Ombudsman’s scheme rules.

The financial limit covers:

- 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 (5.43 of the Legal Ombudsman scheme rules).

The limit does not apply to:

- a) an apology;

- b) interest on specified compensation for loss suffered;ⁱ
- 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 (5.45 of the Legal Ombudsman scheme rules).

With the benefit of 18 months operational experience, we decided to consult on raising this limit because – although, in the majority of cases where we order compensation the financial value of the redress is less than £1,000 – we have had a number of cases where the upper limit of £30,000 has been insufficient.

The Legal Ombudsman believes that this is a small but significant enough number of cases to merit extending the financial limit, and that it would be in the public interest to provide a viable and cost-effective route for consumers to obtain redress for cases which are potentially of a higher value (but not legally complex).

Cases with higher financial values are usually connected to conveyancing or probate issues where the impact of poor service is relatively easy to identify. We feel that it would be protecting and promoting the interests of consumers, in line with the regulatory objectives,⁷ to be able to access higher levels of redress through our scheme without the consumer having to go through the courts.

In the consultation document, we proposed a recommendation to increase our limit to £50,000 and we invited feedback from stakeholders.

Consultation responses:

Agree: Consumer Panel, Which?, BSB, CLC.

Respondents felt that an increase to £50,000 would be a step in the right direction and help to make LeO a viable alternative to the courts; although, consumer groups thought that the limit should be in line with the Financial Ombudsman at £150,000.

"As the Legal Ombudsman is an alternative to court we therefore naturally favour a higher limit. On the other hand, we recognise that the

⁷ Legal Services Act 2007 Section (1) (d)

Legal Ombudsman is not a court of law so higher value claims should be excluded. We consider the dividing line is better set at £150,000" (Which?)

Middle Ground: SRA and some insurers.

These respondents supported the idea that awards could go over the current limit but did not go as far as supporting the proposed change. Suggestions were given such as keeping the current limit but having discretion to go further. One insurer said they already contest any order of compensation above the value of £20,000.

Disagree: Cost Lawyer Standards Board, and Association of Women Solicitors, some insurers.

Feedback from insurers was mixed, some did not think it likely that insurance premiums would rise but others felt that firms already struggling to pay their insurance premiums may experience increased financial pressures. They noted that it is consumers who ultimately pay the cost. Another respondent felt that high value cases should be resolved in court:

"Increasing the financial limits will invite more and more complicated complaints which would be better resolved in Court" (Association of Women Solicitors).

There was some concern that the higher the level of compensation on offer, the more our service would be open to abuse. Some critics thought that there was insufficient evidence to support an extension in the financial limit and others commented that £50,000 is equally as arbitrary as £30,000.

Given the small number of cases involved, overall the Legal Ombudsman does not expect an increase in the insurance premiums. It is expected that it will be cheaper for the profession (and their indemnity insurers) if cases up to a limit of £50,000 are dealt with through the Legal Ombudsman. The Chairman of the Institute of Professional Willwriters submitted a personal response to this consultation. He commented that – if he was covered by the Legal Ombudsman – he would prefer it if there was no financial limit at all. He stated that he would much rather go through the Legal Ombudsman than go through the expense of going to court.

We accept that there are cases which, for various reasons, would be better dealt with in court. We can discontinue cases which we think are better dealt with by the courts by using 5.7 of the scheme rules. However, there are also cases that have come to us which have not been too complex for our service to deal with and where consumers would have benefited from a higher level of compensation. Consumer organisations believe that the maximum level of financial redress available through our service should be higher; some other stakeholders, including law firms, thought it should remain the same. Our proposal of £50,000 is a good compromise.

The Board of the Legal Ombudsman has recommended to the Lord Chancellor that he makes an order under section 139 (2) of the Act to amend section 138 (1) increasing the financial limit from £30,000 to £50,000.

7. Chapter 6: Case fees payable by authorised persons

In our consultation, we asked:

“Please express your preferences in relation to options one and two. Please explain your reasons.”

Options:

1. Retain the current system
2. Remove or reduce the number of free cases allowed per annum.

Background:

The scheme rules set out the conditions in which the Legal Ombudsman charges case fees. A £400 case fee becomes chargeable when the Legal Ombudsman has finalised an investigation into a case and decided there is no basis for waiving the fee. Currently, we allow an authorised person two free cases per year. In addition, where the ombudsman is satisfied that the customer service was adequate and that any remedy offered was reasonable, we waive case fees.

When the Legal Ombudsman was set up in 2010 it reviewed a variety of options for the case fee structure. We settled on the current model of £400 per chargeable case with two free cases per financial year.

One of the key assumptions behind the introduction of the two free cases was a concern from the profession that small firms, and those operating in contentious areas of law, would generate more complaints and therefore be unfairly affected by the case fees. At the time of the original case fee consultation the profession were unable to provide any direct evidence for this, but provided sufficient anecdotal evidence to suggest that free cases were warranted, and would also provide a measure of goodwill to the profession and remove unwanted pressure on some of the lawyer population.

Our complaint data shows that very few firms exceed the current allowance of two free cases - in 2011/2012 it was approximately 400 authorised providers.

In practice, we have found that we waive more fees than we anticipated. Our modelling for this was based on other ombudsman schemes, we estimated that we would waive fees in 10% of cases; however for the financial year 2011/2012 we waived around 35% of case fees. This indicates that more authorised providers are following reasonable first tier complaints procedures than expected.

In practice, we have found that the fee waiver rule covers smaller firms doing high risk activities as, if they deal with complaints adequately at the first tier, the fee will be waived anyway.

Consultation responses:

The majority of responses favoured the option two, removing or reducing the free cases. The BSB thought that the number of free cases should be reduced and the Consumer Panel, CILEX, CLC, Law Society and the Cost Lawyers Standards Board thought that they should be removed altogether. Others were satisfied with the argument that there would not be an adverse impact on those operating in more contentious areas of law.

A few respondents preferred option one. This included the SRA and some individual firms. The SRA felt that the current system should

remain as there was no evidence of a negative impact on consumers, and some felt the current system worked well. Two respondents did not go so far as supporting option two but stated that they were not averse to it.

It is clear that there is majority support for the removal of the free cases. Moreover, the rationale for the initial decision to introduce the free case policy is now not as convincing as it was. The profession has had a chance to gain confidence that case fees will be waived where entities have handled the complaint reasonably. The Legal Ombudsman therefore believes that the additional administrative complexity introduced by free cases is no longer required.

The Board of the Legal Ombudsman has recommended to the Lord Chancellor that the free cases provision is removed.

We also asked if stakeholders had:

“Any views about whether it would be worthwhile to consider a different approach to the collection of unpaid case fees through, for instance, the levy?”

Consultation responses:

Several stakeholders expressed dissatisfaction with the levy system: the CLC thought that it would be better for a higher proportion of running costs to be paid through fees rather than the levy; the CLSB took the view that lower risk professions should not have to contribute as much to the levy; CILEX and the IPS suggested that firms who did not pay fees should be referred to regulators for misconduct. Several stakeholders mentioned that they would be happy to explore this further with the Legal Ombudsman, perhaps through a further consultation.

The Law Society thought that the current system is simple and changing it would create unnecessary complexity. This may be something that we want to look into further in the future.

If you have any queries relating to our scheme rules changes please get in touch with Laura Wigan at laura.wigan@legalombudsman.org.uk

Annex A: Impact assessment

Section A: Overview

Name of the function, policy or strategy to be assessed: Scheme rules and case fee structure review

Person completing the assessment: Alexandra Moore

Date of assessment: 9/8/2012



1. Aims, objectives and purpose of the function, policy or strategy

The Legal Ombudsman has recently completed an external consultation for its Scheme Rules. Following this the board of the Office

for Legal Complaints has decided to recommend the following key changes to be made to the rules.

Chapter 2.

- To allow complaints from prospective customers.
- To give the ombudsman discretion to consider whether complaints against successor firms are justified.

The aim is:

- To promote the regulatory objectives of improving access to justice and protecting and promoting the interests of consumers. The proposed amendment will allow those who have been discriminated against and unreasonably refused a service by a authorised person to obtain redress for the lack of service. It will also allow those who are persistently offered unwanted services by a authorised person to obtain redress.
- To harmonise the Legal Ombudsman with other ombudsman schemes in preparation for Alternative Business Structures (ABS).
- To prepare for the introduction of Complaints Management Companies (CMC's) to LeO's jurisdiction.

Chapter 4.

- To extend the time limit within which consumers can complain to LeO to 6 years from the act or omission or 3 years since the date of awareness.
(To implement this no complaints will be accepted about events that took place before 6 October 2010, or where the complainant's date of knowledge is before 6 October 2010.)

Chapter 5.

- To increase the financial limit for compensation from £30,000 to £50,000.

The aim is:

- To harmonise the Legal Ombudsman with other ombudsman schemes in preparation for Alternative Business Structures (ABS).
- To ensure the Legal Ombudsman continues to be a viable alternative to the courts for resolving (appropriate) complaints about the service from authorised persons.

Chapter 6.

- To remove the two free cases allowance.

The aim is:

- To use the case fee structure to encourage good in-house complaints handling at the first tier.
- To minimise unnecessary operational and administrative complexity.

2. Policy objectives and intended effect

- To review the rules after 18 months of operation and identify changes which would support the business process.
- To honour the undertaking given to the profession that we would review the case fee structure once we had an opportunity to assess how it was working.
- To review the rules in the light of changes in the wider profession (such as the introduction of Alternative Business Structures (ABS) for firms) to the Legal Ombudsman's jurisdiction.
- To ensure the rules continue to promote the regulatory objective of protecting and promoting the interests of consumers.

3. Governance

Until September the management of the project lies with the Policy team (Senior manager – Sam Berrisford, Project team – Laura Smith, Laura Wigan, Alex Moore). This will be until approval is obtained from the LSB and MoJ.

From September the management of the project will move over to the Operations team (Senior manager – Liz Shepherd, Project Team – Jag Sahota).

Sign-off of overall policy decisions will be through the OLC Board and the Executive Management Team.
Sign-off for operational matters will be through the Knowledge Board or through the Review and Coordination Board.

4. Assumptions and Risks?

Assumptions:

- That the new scheme rules (with the exception of the case fee changes) will come on line from 1 January 2013. The case fee changes will commence on 1 April 2013 to fall into line with the financial year.

Risks:

- The changes to the case management system need to be agreed and submitted to LeO's IT provider prior to LSB and MOJ sign-off.
- Any delays in implementing changes to the case management system will impact on the start date for the scheme rules.
- Delays in approval from the Ministry of Justice (MOJ) will affect the amount of notice we can give to the profession and may impact on the overall implementation date for Scheme Rules. [We are working closely with the MOJ to ensure the work progresses to timetable.]
- Consumers and/or the profession do not understand the scheme rule changes and potential impact on complaints. [A clear communications plan is being put in place, including for the transition period between approval and actual implementation date].

Section B: External Impact

4. Key Identified Stakeholder groups

- Consumers
- Profession

5. Analysis

Key Stakeholders	Reason for Impact	Cost / Benefit
Consumers	Prospective customers	Currently consumers who have unreasonably been refused a service or who have persistently been offered an unwanted service have no right of redress to the Legal Ombudsman. They can make a complaint to the regulator, but this does not entitle them to redress. This amendment will allow consumers to obtain redress.

	Time limits	The current 12 month time limit is a relatively short period in which to bring a complaint. Some consumers do not wish to bring a complaint until the end of their retainer, which may result in some or all of the complaint being outside the 12 month time limit. An extended time limit will be in line with the courts and other ombudsman schemes.
	Financial limits	Although most cases have resulted in awards much lower than the existing £30,000 limit, there have been a few occasions when higher awards would have been appropriate. It is in the interests of consumers to have the ability to access a higher level of redress, without having to take a case through the courts.
Profession	Prospective customers	<p>A concern was raised during the consultation that adding prospective customers to the list of parties who can complain would create extra obligations on authorised persons. The proposed amendment to paragraph 5.7 will allow the Legal Ombudsman to dismiss complaints where a service has been refused for legitimate business reasons.</p> <p>Prospective customers will still need to make a first tier complaint before the Legal Ombudsman can investigate. Given that no service will have been provided we recognise that firms will have minimal evidence for responding to a first tier complaint. Our communications will make it clear what type of response we expect from firms and the level of evidence that complainants will have to provide.</p> <p>It is not anticipated that this change will lead to a significant number of new complaints for authorised persons. At the moment just 0.26% of Legal Ombudsman cases include an element</p>

		of discrimination.
	Time limits	<p>During the consultation concerns were raised about the extended time limits, for example how they would be implemented. To deal with this concern the full six and three year time limit will be implemented gradually with no complaints being accepted about acts/omissions that took place or where the date of awareness is before 6 October 2010.</p> <p>Some concerns were raised about data retention and the impact on firms having to keep files for up to six years. In practice however the Legal Ombudsman already investigates complaints about cases that are older than 12 months because the current time limits apply to the date of awareness. In cases where there is a lack of evidence the Legal Ombudsman has the power to dismiss cases. In addition authorised persons are required to have a data retention policy, and six years is a standard limit across many professions.</p> <p>A further concern was raised by one respondent that the increased time limit would impact on the cost of indemnity insurance, which may impact on small and BME firms in particular. We do not expect an increase in indemnity insurance as solicitors are already required to have the run-off cover in place for six years. In addition none of the insurers have raised the issue of increased premiums because of this change.</p>
	Financial limits	<p>Only a minority of cases have led to financial compensation of £20,000 or more. For example between April and July 2012 it was less than 0.5% of ombudsman decision cases.</p> <p>While authorised persons, or their insurers, will be liable for awards that are made, it is unlikely that there will be a significant number of cases attracting awards at the higher end of the</p>

		spectrum. Because of this we do not expect that insurance premiums will increase.
	Case Fees	<p>Initially free cases were introduced because of a concern that legal providers operating in contentious areas of law could be disproportionately penalised by the case fee. At the time there was limited evidence on which to rely in setting the fee structure and in practice we have not found any evidence to support the concern about disproportional impact.</p> <p>There will be an impact on firms as we expect to increase the number of case fee invoices we send out from 750 to 4,200. However this will potentially be offset to a certain degree by the reduction in the overall levy.</p> <p>In addition we have found that we are waiving the case fees in a much higher percentage of cases than we expected. If a firm has followed a reasonable procedure with the first tier complaints process they will not incur a case fee. There may be an adverse impact on authorised persons who do not deal with complaints reasonably. However, the change to the rules should continue to encourage better complaints handling at first tier level. Authorised persons with a good complaints policy should not be impacted.</p>

Section C: Internal Impact

6. Key Identified areas of the business process

- Finance
- Operations
- Compliance

7. Analysis

Business Process	Reason for Impact	Cost / Benefit
Finance	Case fee	<p>The amendments to the case fee structure will incur costs for the Legal Ombudsman. The expectation is that the amendment will increase the amounts paid directly by respondents from 2% of budgeted costs to 11% of budgeted costs; an increase of £1.4m per annum. This is as a result of an increase from around 750 invoiced cases per year, to 4,200 per year (forecast is based on actual 2011-2012 volumes). This will reduce the costs borne by regulators by a corresponding amount of £1.4m (whose costs are in turn met by the legal profession including firms who deal effectively with their complaints internally).</p> <p>This costs of introducing the change are expected to be £60,000. LeO expects to incur one-off costs for updating its finance system of about £20,000 and the ongoing administrative costs (for invoicing and collecting cases fees) are expected to increase by £40,000.</p>
Operations	Time limits	<p>It is expected that the increase in time limits will have a substantial impact in this area of the business. Based on an analysis of cases which have not been investigated over the last 18 months because they were outside of the current time limits, we are forecasting a 10% increase in case volumes. In turn this will lead to a reduction in our unit cost of approximately £100-£120 (from £2,000 to £1,900).</p> <p>The increase in case levels will mainly be absorbed by current staffing levels.</p> <p>In addition we also expect that this change will significantly reduce the number of requests we receive to use our discretion to extend the current 12 month time limit.</p>
	Financial limits	<p>As indicated above only a minority of cases attract awards around our current top limit of £20 - £30,000. We do not expect any significant increase in cases or impact on unit costs</p>

		and staffing levels.
Compliance	Time limits	We are reviewing the impact of the time limits on our IT systems and data retention policy. At the moment our data retention policy is to keep cases on our case management system for two years before deleting them. The increase in time limits will mean that the data retention policy will have to be extended, and over time this will require further capacity for data storage.
Impact on KPI's	Unit cost	<p>We expect the unit cost to decrease by approximately £100, from £2,000 to £1,900 (in July 2012 the average rolling unit cost for the last 12 months was £2,055). This will primarily come from the expected 10% increase in cases accepted due to the extended time limits. The 10% increase is based on an analysis of cases we were unable to investigate over the last 18 months because they were outside of our time limits.</p> <p>Both the inclusion of prospective customers and the increase in financial limits are also expected to contribute to the decrease in the unit cost, although their contribution is not expected to be as significant as the change in time limits. No other complaint handling bodies collect data on prospective customers; however we do know that currently 0.26% of cases investigated since October 2010 contained an element of discrimination. We also know that at the moment 0.5% of cases receive compensation of more than £20,000 (this is based on Ombudsman's decision between April and July 2012). However it should also be noted that it is difficult to predict the number of cases we will deal with in this area as consumers who value their cases at around £30,000 or more will not have approached the Legal Ombudsman in the past.</p>

		The change in the case fee structure is not expected to lead to an increase in cases or impact on the unit cost. Potentially the removal of the two free cases could further encourage firms to deal with complaints at the first tier, which will could in time lead to a decrease in the number of resolvable cases which are brought to the Legal Ombudsman. This is in line with the overall policy intention.
	Timeliness and Quality	The expected increase in cases will be absorbed within the current staffing levels, and therefore we do not expect there to be any negative impact on either the timeliness or quality of the work. In 2011/2012 we met our target of resolving 50% of cases within three months and 80% within six months. We do not expect this to change.

Section D: Equality Impact

5a. Is the aim of the function, policy or strategy, along with any of its intended outcomes, designed to: eliminate discrimination, promote equality of opportunity and/or promote good relations between different groups?

Yes No Please explain below

The change to allow prospective clients to use the Legal Ombudsman will allow those who have been refused a legal service for discriminatory reasons to access redress.

5b. From the available evidence, what level of impact (H = High, M = Medium and L = Low), if any, is the delivery of this function, policy or strategy going to have on the different equality groups set out below.

Stakeholder	Positive impact	Negative impact	No impact	Reason and evidence supporting your assessment for each of the equality groups
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	H	M	L	H	M	L		
Consumers			√					The change to allow prospective customers to be able to complain to LeO will mean that people who are discriminated against on the basis of a protected characteristic and refused a service will be able to seek redress. We have considered the impact of this across all equality groups: gender, ethnicity and race, disability, age, pregnancy and maternity, transgender and gender reassignment, religion or belief, and sexual orientation.

Authorised persons

√

We are aware that the free cases were initially introduced because of a concern that small firms may be disproportionately affected, and that Black and Minority Ethnic firms are often classed as small firms. Research by the Law Society in 2010⁸ suggested that BME solicitors are more likely to work in personal injury, immigration and family specialities. These areas are regarded as 'high risk' and are particularly susceptible to attracting complaints. Because of this, the removal of the free cases may disproportionately affect these firms.

However any possible negative impact on ethnic minorities stemming from abolishing free cases can be mitigated by the firms themselves as we only charge a case fee if the firm failed to deal with the complaint adequately at the first tier.

⁸ Law Society (November 2010) Ethnic Diversity in Law Firms: Understanding the Barriers - http://www.lawsociety.org.uk/secure/file/189202/e:/teamsite-deployed/documents//templatedata/Publications/Research%20Publications/Documents/BME%20solicitors_final.pdf

Annex B: Draft scheme rules

1 Introduction and definitions

Contents

[No change in rule-drafting from proposal in consultation paper]

Add the text shown below in bold **[alternative start dates in (c)]** –

1.1

a) These scheme rules are about complaints made from 6 October 2010 to authorised persons including legal practitioners and others, authorised in England and Wales.

b) They explain which complaints are covered by the Legal Ombudsman and how it will deal with them.

c) **This version includes amendments that apply to complaints referred to the Legal Ombudsman from 1 January 2013 (chapters 1 to 5) and from 1 April 2013 (chapter 6).**



LEGAL
OMBUDSMAN

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 complaintsⁱⁱ and cooperate with an ombudsmanⁱⁱⁱ; 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 an order made by the Lord Chancellor (though it is the Act and the order 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 of 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;

- informal 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).^{iv}

[No change in rule-drafting from proposal in consultation paper]

Add the text shown below in **bold** and deleting the text shown below in *strikeout* –

1.7 Authorised person means:

- a) someone authorised, in England and Wales, to carry out a reserved legal activity^v at the time of the relevant act/omission or covered under section 129 of the Act^{vi}, including:
 - **alternative business structures (licensed under part 5 of the Act)**;
 - barristers;
 - **costs lawyers** ~~law costs draftsmen~~;
 - **chartered** legal executives;
 - licensed conveyancers;
 - notaries;
 - patent attorneys;
 - probate practitioners;
 - registered European lawyers;
 - solicitors;
 - trade mark attorneys; and

- b) (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.^{vii}

1.8 Approved Regulator means 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** ~~Law Costs Draftsmen~~, **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 Scotland (for reserved probate activities)

- the **Chartered** Institute of Legal Executives;

- the Institute of Trade Mark Attorneys, **through the Intellectual Property Regulation Board;**

- the Law Society (~~for solicitors~~), **through the Solicitors Regulation Authority;**

- the Master of the Faculties (for notaries)⁷; **and**

- the Legal Services Board (but only for any alternative business structure it licenses directly).

1.9 Legal Ombudsman means the ombudsman scheme established by the Office for Legal Complaints.

1.10 Ombudsman means:

- a) any ombudsman from the Legal Ombudsman;^{viii} 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).^{ix}

1.11 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.^x

1.12 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.^{xi}

1.13 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; or
- f) administration of oaths.

2 Who can complain about what

Who can complain

[No change in rule-drafting from proposal in consultation paper]

To clarify the drafting of paragraph 2.1, without making any change of substance, delete the existing text and substitute the following –

- 2.1 A complainant must be one of the following:⁹
- 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;¹⁰
 - 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

⁹ Individuals are covered under section 128(3). The others are covered under the Legal Services Act 2007 (Legal Complaints)(Parties) Order 2010 made by the Lord Chancellor.

¹⁰ Defined in European Commission Recommendation 2003/361/EC – broadly a business or enterprise with fewer than 10 employees and turnover or assets not exceeding €2 million.

- 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:^{xii}
- 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.^{xiii}
- 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
- b) an authorised person who procured the services complained about on behalf of someone else.^{xiv xv}
- 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.^{xvi}

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^{xvii} 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;^{xviii} 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.^{xix}

- 2.7 The act/omission does not have to:
- a) relate to a reserved legal activity^{xx}; nor
 - b) be after the Act came into force^{xxi} (but see the time limits in chapter four).

[No change in rule-drafting from proposal in consultation paper]

subject to the Lord Chancellor agreeing to issue the necessary statutory instrument add the text shown below in **bold** and delete the text shown below in ~~strikeout~~ –

- 2.8 The complaint must relate to services which the authorised person provided:

- a) **provided** to the complainant; or
- b) **provided** to another authorised person who procured them on behalf of the complainant; or
- c) **provided** to (or as) a personal representative/trustee where the complainant is a beneficiary of the estate/trust.^{xxii}; **or**
- d) **offered, or refused to provide, to the complainant.**^{xxiii}

- 2.9 A complaint is not affected by any change in the membership of a partnership or other unincorporated body.^{xxiv}

[No change in rule-drafting from proposal in consultation paper]

*To increase ombudsman discretion where there is a successor firm add the text shown below in **bold** –*

- 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;^{xxv} and
- b) complaints already outstanding against A become complaints against B.^{xxvi}

unless an Ombudsman decides that this is, in his/her opinion, not fair and reasonable in all the circumstances of the case.

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.^{xxvii}

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.^{xxviii}

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).^{xxix}

[No change in rule-drafting from proposal in consultation paper]

*Insert a new subheading before paragraph 4.2, in the form of the text shown below in **bold** –*

Time limit from authorised person's final response

4.2 But a complainant can use the Legal Ombudsman if:^{xxx}

- 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.

[No change in rule-drafting from proposal in consultation paper]

To clarify the drafting of paragraph 4.4, without making any change of substance, delete the existing text and substitute the following [unchanged from the consultation paper] –

- 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

[Some changes, highlighted yellow, in rule-drafting from proposal in consultation paper]

*Includes a cut-off for events before 6 October 2010 when LeO started to operate, add the text shown below in **bold** and delete the text shown below in ~~strikeout~~^{*} –*

4.5 Ordinarily:

- a) **the act or omission must have been after 5 October 2010;**
and
- b) **the a** complainant must **also** refer **the a** 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 ~~without taking advice from a third party.~~^{xxx1}

[No change in rule-drafting from proposal in consultation paper]

*Stop time limits re-starting for personal representatives and beneficiaries, and clarify the drafting of the rest, by adding the text shown below in **bold** –*

4.6 In relation to 4.5(b):

^{*} If a complainant tries to recycle a complaint previously made and ruled out-of-time, note that rule 5.7(c) already provides –

5.7 An ombudsman may (but does not have to) dismiss or discontinue all or part of a complaint if, in his/her opinion: ... (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 ...

- (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.^{xxxii}

[No change in rule-drafting from proposal in consultation paper]

Add the text shown below in bold –

- 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^{xxxiii}
- 5.1 The Legal Ombudsman may require a complainant to complete its complaint form.^{xxxiv}
- 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).^{xxxv}

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.^{xxxvi}
- 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 ;
- an ombudsman will give all parties an opportunity to make representations before deciding.^{xxxvii}
- 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 be out-of-time under chapter four; or
 - c) should be dismissed under paragraph 5.7 ;
- the ombudsman will give the complainant an opportunity to make representations before deciding.^{xxxviii}

- 5.6 The ombudsman will then give the complainant and the authorised person his/her decision and the reasons for it.^{xxxix}

Grounds for dismissing or discontinuing a complaint^{xl}

[New drafting, highlighted yellow, responding to concerns in consultation responses.]

subject to the Lord Chancellor agreeing to issue the necessary statutory instrument insert a new sub-clause in 5.7 by adding the text shown below in **bold** and re-lettering existing sub-clause (m) as (n) –

- 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) financial loss, distress, inconvenience or other detriment; or
 - c) the authorised person has already offered fair and reasonable redress in relation to the circumstances alleged by the complainant 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;^{xli} 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;

- 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;^{xlii}
- 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.

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.^{xliii}

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.^{xliv}

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.^{xlv}

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.^{xlvi}

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.^{xlvii}

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.^{xlviii}

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;^{xlix} or
- b) treat someone else who was an authorised person at the time of the act/omission as a joint respondent to the complaint.ⁱ

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;ⁱⁱ and
- b) the determinations may require the authorised persons to contribute towards the overall redress in the proportions the ombudsman considers appropriate.ⁱⁱⁱ

Informal resolution

5.17 The Legal Ombudsman will try to resolve complaints at the earliest possible stage, by whatever means it considers appropriate – including informal resolution.ⁱⁱⁱⁱⁱ

5.18 If a complaint is settled, abandoned or withdrawn, an ombudsman will tell both the complainant and the authorised person.^{iiiv}

Investigation

[No change in rule-drafting from proposal in consultation paper]

*To clarify the drafting of paragraph 5.19 and 5.20, without making any change of substance, add the text shown below in **bold** and delete the text shown below in ~~strikeout~~ –*

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) send the parties a **recommendation report** ~~provisional 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').^{lv}
- 5.20 If neither party indicates disagreement within that time limit, the Legal Ombudsman may treat the complaint as resolved by the **recommendation report** ~~provisional decision~~.^{lvi}

Evidence

- 5.21 An apology will not of itself be treated as an admission of liability.^{lvii}
- 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.^{lviii}
- 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.^{lix}
- 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;^{lix}
 - 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.^{lxi}
- 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.^{lxii}
- 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.^{lxiii}
- 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.^{lxiv}
- 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.^{lxv}
- 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.^{lxvi}
- 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.^{lxvii}

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.^{lxviii}
- 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.^{lxi}

Hearings

5.33 An ombudsman 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.^{lxx}

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.^{lxxi}

5.35 A hearing may be held by any means the ombudsman considers appropriate in the circumstances, including (for example) by phone.^{lxxii}

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.^{lxxiii}

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.^{lxxiv}
- 5.38 The ombudsman's determination may contain one or more of the following directions to the authorised person in favour of the complainant:^{lxxv}
- 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;^{lxxvi}
 - 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;^{lxxvii lxxviii}
 - 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:^{lxxix}
- a) all or part of any amount paid is refunded;
 - b) interest is paid on that refund from a specified time;^{lxxx}
 - 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).^{lxxxii}

- 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.^{lxxxii}

[No change in rule-drafting from proposal in consultation paper]

subject to the Lord Chancellor agreeing to issue the necessary statutory instrument add the text shown below in **bold** and delete the text shown below in ~~strikeout~~ –

- 5.43 There is a limit of **£50,000** ~~£30,000~~ on the total value that can be awarded by the determination of a complaint in respect of:^{lxxxiii}
- e) compensation for loss suffered;
 - f) compensation for inconvenience/distress caused;
 - g) the reasonable cost of putting right any error, omission or other deficiency; and
 - h) 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** ~~£30,000~~, an ombudsman may direct which part or parts of the award are to take preference.^{lxxxiv}
- 5.45 That limit does not apply to:
- f) an apology;
 - g) interest on specified compensation for loss suffered,^{lxxxv}
 - h) a specified amount for costs the complainant incurred in pursuing the complaint;
 - i) limiting fees to a specified amount; or
 - j) interest on fees to be refunded.

Acceptance/rejection of determinations

- 5.46 The determination will:^{lxxxvi}
- 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.^{lxxxvii}
- 5.48 The ombudsman will send copies of the determination to the parties and the relevant Approved Regulator.^{lxxxviii}
- 5.49 If the complainant tells the ombudsman that he/she accepts the determination, it is binding on the parties and final.^{lxxxix}
- 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.^{xc}
- 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.^{xcii}
- 5.53 If the complainant accepts or rejects the determination, the ombudsman will notify the parties and the relevant Approved Regulator of the outcome.^{xciii}

- 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.

Publication

- 5.55 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.^{xciii}

Enforcement

- 5.56 A binding and final determination can be enforced through the High Court or a county court by the complainant.^{xciv}
- 5.57 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.^{xcv}
- 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 to the Legal Services Board.^{xcvi}

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 to the Legal Services Board.^{xcvii}
- 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 to the Legal Services Board.^{xcviii}
- 5.61 An ombudsman, the Legal Ombudsman and members of its staff will disclose to a 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 or the Human Rights Act 1998).^{xcix}

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. ^c

[No change in rule-drafting from proposal in consultation paper]

subject to consent from the Lord Chancellor add the text shown below in bold and delete the text shown below in ~~strikeout~~

~~6.2 [Rule 6.2 removed with effect from 1 April 2013] No case fee is payable for the first two potentially chargeable complaints closed during the Legal Ombudsman's financial year relating to:~~

- ~~a) a business/partnership that is responsible for any act/omission of any employee/partner; or~~
- ~~b) any individual authorised person for whom no business/partnership is responsible. ^{ci}~~

6.3 A case fee is payable by the business/partnership or individual authorised person for every additional potentially chargeable complaint **when it is closed** during the Legal Ombudsman's financial year 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. ^{cii}

6.4 The case fee is £400 for all chargeable complaints. ^{ciii}

6.5 The remaining costs of running the Legal Ombudsman are covered by a levy on Approved Regulators by the Legal Services Board. ^{civ}

6.6 There is no charge to complainants.



End notes

- ii Section 112.
- iii Section 145.
- iv To distinguish complaints about service from those which relate solely to professional misconduct.
- v Sections 12 and 129.
- vi This section covers the equivalent practitioners before the commencement of the Act.
- vii [OLC rule] Sections 133(8) and 147(7).
- viii Section 122(5).
- ix Section 134.
- x [OLC rule]. Where it is apparent that another legal practitioner was also involved. Section 133(3)(c).
- xi Section 128(7).
- xii [OLC rule] Section 132(4).
- xiii To save their having to take out a grant of representation if one is not otherwise required.
- xiv Section 128(5).
- xv The Lord Chancellor can **exclude** others under section 130.
- xvi [OLC rule] Section 133(1).
- xvii Section 128(1) part.
- xviii Section 131(1).
- xix Section 131(2) and (3).
- xx Section 128(1) part.
- xxi Section 125(2).
- xxii Section 128(4).
- xxiii The Lord Chancellor can **include** others under section 130.
- xxiv Section 132(1).
- xxv [OLC rule] Section 132(2).
- xxvi [OLC rule] Section 132(3).
- xxvii Section 112(2)
- xxviii Section 145.
- xxix Section 126(1).
- xxx [OLC rule] Section 126(3).
- xxxi [OLC rule].
- xxxii [OLC rule] Section 133(2)(b).
- xxxiii Section 133(1).
- xxxiv [OLC rule] This gives the Ombudsman service the right to require a complaint form, but does not oblige it to do so.
- xxxv [OLC rule] To make it clear that the Ombudsman service does not have to communicate with each partner individually.
- xxxvi [OLC rule] Section 135.

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- xxxvii [OLC rule] Section 135.
- xxxviii [OLC rule] Section 135.
- xxxix Section 135.
- xl [OLC rule] Section 133(3)(a).
- xli Where a complaint is about professional negligence or judgement, the OLC will consider (on a case-by-case basis) whether the issue is one that the OLC can deal with or whether the issue would be better dealt with in court.
- xliv [OLC rule] For example, a French client wishes to complain about advice on French law given in France by a French lawyer who is also qualified in England and Wales.
- xlvi [OLC rule].
- xlvii Paragraph 5.9 only applies if the legal practitioner so requests. The idea is that, in suitable cases, the legal practitioner can go to court, provided the complainant's legal costs are met. In other circumstances, an Ombudsman cannot force a legal practitioner to pay the complainant's costs of going to court.
- xlvi [OLC rule].
- xlvi [OLC rule] Section 133(3)(b).
- xlvi [OLC rule] Section 135.
- xlvi Schedule 15, paragraph 18.
- xlix Where it is apparent that the complaint was made against the wrong legal practitioner.
- l [OLC rule] Where it is apparent that another legal practitioner was also involved. Section 133(3)(c).
- li There need to be separate determinations because of the £30,000 limit.
- lii [OLC rule].
- liii [OLC rule].
- liv Section 135.
- lv [OLC rule].
- lvi [OLC rule].
- lvii [OLC rule] To ensure legal practitioners are not discouraged from saying 'sorry'.
- lviii Sections 133(5) and 147(6).
- lix [OLC rule].
- lx Including, but not limited to, information which is "restricted information" under section 151.
- lxi [OLC rule].
- lxii [OLC rule] Section 133(3)(e).
- lxiii Section 147(1) and (3).
- lxiv Section 147(2) and (4).
- lxv Section 147(5).
- lxvi Section 148.
- lxvii Section 149.
- lxviii [OLC rule].
- lxix [OLC rule].
- lxx [OLC rule].
- lxxi [OLC rule].

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- lxxii [OLC rule]. The OLC has not exercised the power in section 133(3)(g) enabling it to make a rule about the OLC awarding expenses in connection with attending a hearing.
- lxxiii Section 137(1)
- lxxiv [OLC rule] Section 133(3)(f).
- lxxv Section 137(2).
- lxxvi Section 137(4)(b).
- lxxvii [(g) is OLC rule] Section 133(3)(h).
- lxxviii The OLC has not exercised the power under section 133(3)(i) to make a rule requiring any party who has behaved unreasonably to pay costs to the Ombudsman service.
- lxxix Section 137(2)(b)(ii).
- lxxx Section 137(4)(b).
- lxxxi [OLC rule].
- lxxxii [OLC rule] Section 137(4).
- lxxxiii Section 138(1) and (2). The Lord Chancellor can increase the limit under section 139.
- lxxxiv [OLC rule].
- lxxxv Section 138(3).
- lxxxvi Section 140(1) and (2).
- lxxxvii [OLC rule].
- lxxxviii Section 140(3).
- lxxxix Section 140(4).
- xc [(c) is OLC rule] Section 140(5) and (6).
- xcI Section 140(7) and (8).
- xcii Section 140(7).
- xciii Section 150.
- xciv Section 141.
- xcv [OLC rule] Section 141(5).
- xcvi Section 142.
- xcvii Section 143.
- xcviii Section 146.
- xcix [OLC rule] Section 144(1).
- c [OLC rule].
- ci [OLC rule].
- cii [OLC rule].
- ciii [OLC rule].
- civ Sections 173 and 174.