

26 March 2012

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# Review of the scheme rules and case fee structure: consultation paper and discussion draft

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The logo for the Legal Ombudsman features the word "LEGAL" in a bold, sans-serif font, with a stylized, flowing script element above it. Below "LEGAL" is the word "OMBUDSMAN" in a bold, sans-serif font.  
LEGAL  
OMBUDSMAN

## Introduction to scheme rules

The Legal Services Act 2007 (the Act) created the Office for Legal Complaints (OLC) and tasked it with establishing an Ombudsman scheme to resolve disputes between consumers and their lawyers quickly and with minimum formality. The OLC is the non-executive board of the Legal Ombudsman, and is charged with overseeing the running of the scheme which opened in October 2010.

The scheme rules set out the legal framework under which the Legal Ombudsman operates.<sup>1</sup> 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 2007 Act, which only Parliament can change;
- provisions set by the Lord Chancellor, by statutory instrument under the 2007 Act<sup>2</sup>;
- requirements set by the Legal Services Board, under the 2007 Act; and
- rules set by the Office of Legal Complaints, under the 2007 Act.

Rules set by the OLC have to be approved by the Legal Services Board (and, for some specific aspects, by orders of the Lord Chancellor). The case fee structure required by section 136 of the Act is included in Chapter 6; the case fee approach requires the Lord Chancellor's consent under section 155 of the Act.

When the OLC consulted on the first scheme rules, it made a commitment to review the rules within 18 months of the opening of the Ombudsman scheme, so that it could re-investigate the provisions made with the benefit of operational experience. Now, as at the time of the first consultation, the OLC is keen to create a service that embodies best practice, abiding by the Act as well as capturing its spirit. It is important too that the scheme is independent, fair, open, effective and shrewd, reflecting the Legal Ombudsman values.

A review now seems appropriate in light of the rapidly changing legal sector and the day-to-day experience of the Ombudsman in putting the

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<sup>1</sup> [www.legalombudsman.org.uk/aboutus/scheme\\_rules.html](http://www.legalombudsman.org.uk/aboutus/scheme_rules.html)

<sup>2</sup> [www.legislation.gov.uk/ukxi/2010/2091/made](http://www.legislation.gov.uk/ukxi/2010/2091/made)

rules into practice. In the view of the OLC, the scheme rules need to take into account changes in the legal marketplace, government policy and the future provision of redress (for instance as indicated by the recent EU proposals on access to alternative dispute resolution) and to respond to some of the broader structural changes that are likely to occur. The OLC's wish is for the rules to remain relevant in coming years. It is partly in anticipation of these changes that we are proposing some revisions to the rules in this consultation.

The revisions proposed in this paper and a discussion draft of the scheme rules vary in scale; some involve the redrafting of language in order to clarify the meaning of specific sections, others propose to fine tune the existing arrangements, while some of our proposals are for entirely new additions.

We have included our preferred option in the draft rules for most of the changes, however, where the revisions are more complex we have included options in the draft rule in Annex A. This may change, depending on the contributions and evidence we hear during this consultation. More than anything, we are keen for an open and constructive debate so that we can feel confident that the rules will be fit for purpose for the future operation of the Legal Ombudsman.

## Changes in the legal and regulatory environment

As already mentioned, the changes that have been proposed in this consultation document are based on more than a year's experience of operation and aim to iron out operational niggles as well as to ensure our scheme is fit for purpose in light of changes within our sector. The main issues are:

- an overlap with the Financial Ombudsman Service, with some complaints about financial advice given by lawyers falling within the jurisdiction of both Ombudsman services;
- significant developments in the legal market, including increasing bundling of legal, financial and property services – for example, the broad range of providers of estate-administration services;
- the advent of alternative business structures (ABS) means that some law firms will in future be subsidiaries of non-legal conglomerates – for example, financial services conglomerates or brands or

businesses offering packages for buying and selling houses on the high street;

- challenges to the historical sector-based approach to ombudsmen (with differing powers) – with increasing overlaps and potentially different outcomes for the parties depending on which Ombudsman is used;
- proposals for a European Directive requiring the provision of alternative dispute resolution across the whole consumer sector will also place an emphasis on creating a more harmonised landscape;
- our experience of live cases has identified a few areas where substantive change should be considered and others where (without changing the substance) the explanation of the rules could be made clearer; and
- suggestions from consumer bodies and lawyers, though many of these repeat issues that they raised in the course of our previous rules consultation.

This consultation does not propose any extension to the businesses covered by our jurisdiction, but we have borne in mind the desirability of maximum consistency of process if:

- the Lord Chancellor should decide to extend our compulsory jurisdiction to claims-management companies (CMCs) under section 161 of the 2007 Act; and/or
- we were to launch a voluntary jurisdiction with the consent of the Lord Chancellor under section 164 of the 2007 Act.

## Principles to guide the consultation

In order to provide a framework for this review, the OLC has developed some principles to guide this consultation. These are intended to provide a framework to consider how the rules could and should develop. These are:

- revisiting areas of the rules which have proved problematic in view of the experience of operating the scheme in practice;

- making sure that the revised scheme rules are consistent with work towards a possible voluntary jurisdiction, as well as taking into account the likely transfer of CMCs to the Legal Ombudsman. The rules should be compatible across these different areas to assist operational efficiency and minimise confusion to the industry and consumers;
- responding to changes in the market/regulatory environment. The increasing blurring of the boundaries between legal and financial complaints in particular means that having two different and competing sets of scheme rules is problematic. We will look to harmonise our rules with other schemes (such as the Financial Ombudsman Service) where possible and appropriate to do so;
- using evidence to inform changes – there may be some areas that we cannot move to without evidence, and others where there may be good policy reasons to do so, or stronger evidence to support a change.

These principles are articulated in addition to those that it is usual to consider when thinking about an Ombudsman scheme. We are also guided by the Ombudsman Association's 'Principles of good complaint handling' and by good practice in other Ombudsman schemes (as section 116 of the Act also requires us to be).

**Q1: Do you agree with these principles? Are they the right ones to guide this review of the Legal Ombudsman's scheme rules?**

## Format of this consultation paper

This discussion paper moves through the scheme rules in the order of the existing chapters. We have included questions where we have made significant changes to the rules. However, if you would like to comment on any of the other changes, we would welcome your views. We have included draft rules in Annex A with the intention that they are considered alongside this consultation paper.

Some of the issues identified would require a statutory instrument from the Lord Chancellor. In the light of responses to this consultation, we will

consider whether to make a recommendation to the Lord Chancellor under section 130 of the 2007 Act.<sup>3</sup>

In what follows:

- ‘section’ means a section in the Legal Services Act 2007;
- ‘the 2010 order’ means the Legal Services Act 2007 (Legal Complaints) (Parties) Order 2010;
- ‘chapter’ means a chapter in the ‘scheme rules’; and
- ‘paragraph’ means a paragraph in the ‘scheme rules’.

We are keen to work collaboratively with a range of people and organisations to inform this review of our scheme rules. Our aim is to improve the rules – and therefore the operation of our scheme – to make sure they reflect our desire to continue to be accessible, clear about our role, proportionate and effective. Where it is possible, we have included evidence that we have generated from our last 18 months of operation to inform this debate. But we do not operate in isolation and want to hear views on the proposals we have made – and other areas that we may have missed.

#### Impact assessment

We have conducted an initial equality impact assessment to inform the scheme rules review. A full impact assessment will be required when we have developed further proposals about the shape of any revised scheme rules.

In general, the initial assessment told us that as we review the rules we will need to be mindful of disproportionate impacts on certain areas of the profession (especially via the case fee mechanic) and for consumers. At this stage, there is no evidence to indicate such impact from the topics for debate in this paper, but we will revisit this depending on the outcome of the OLC discussion and the pre-consultation and consultation periods.

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<sup>3</sup> Section 130 (6) of the Act allows for the Office for Legal Complaints, the Board, or the Consumer Panel to make recommendations under section 130.

### Consultation process

This consultation will run for twelve weeks from 26 March until 18 June 2012. We look forward to hearing your views on this review of the scheme rules.

We now take each chapter in turn to outline and discuss proposed revisions to the scheme rules.

## Chapter 1: Introduction and definitions

**This chapter provides an introduction and sets out definitions (which are underlined wherever they appear in the ‘scheme rules’).**

We propose to amend chapter 1 in order to reflect the introduction of alternative business structures, and changes in the identities and names of authorised regulators. This involves changes to paragraphs 1.1, 1.7 and 1.8 – as shown in Annex A.

**Q2: Do you have any views on these proposed changes to the scheme rules?**

**Q3: Are there any additional changes to Chapter 1 that in your view are necessary? If so, please explain your reasons and provide evidence to support your view.**

## Chapter 2: Who can complain about what?

**Chapter 2 places clear restrictions on the types of individuals and organisations who can access redress through our scheme and what they can complain about.**

### **Background:**

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

Under section 128(3), the Legal Ombudsman can consider complaints from:

- individuals; and
- others prescribed by the Lord Chancellor.

The Lord Chancellor has prescribed, in the 2010 Order:

- micro-enterprises (a business or enterprise with fewer than 10 employees and with turnover or assets not exceeding €2 million)<sup>4</sup>;
- a charity or a members' club, association or organisation with an annual income net of tax of less than £1 million;
- a trustee of a trust with an asset value of less than £1 million; and
- a personal representative or beneficiary of the estate of a person with a complaint who died before referring it to the Legal Ombudsman.

## **Charities and trusts**

### **Why have we decided to consult on this and how does this fit with our principles?**

The OLC has been 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 themselves. It has been argued that the current limits may be too restrictive and that the threshold should be increased, to allow more charitable organisations and trusts into our jurisdiction.

Consumer groups have also asked us to re-consider our approach in relation to the limit on trusts outlined in 2.1(d) of the scheme rules. They have argued that the environment in which we now operate has changed significantly since our current rules were drafted; the economy is less buoyant and inflation is higher. In addition, they also advise that as the broader market for trusts has changed considerably and property owners can – for instance in places such as London – hold considerable wealth, there is cause to increase the current limit.

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<sup>4</sup> Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC.



When we originally consulted on the scheme rules, we took the view, in line with other Ombudsman schemes, that larger charitable organisations and trusts were sufficiently well placed to pursue redress through the courts. The OLC is mindful that the Legal Ombudsman provides a service that is free to complainants and is funded entirely by practitioners. For instance, research by the Legal Services Consumer Panel in 2011 found that the vast majority of charities already fall within our jurisdiction.<sup>5</sup>

We have seen little evidence to support changing our rules concerning the income/asset limit on charities and we have not identified any cases of injustice arising from the current limits. In addition, our current limits align with those of the Financial Ombudsman Service, so any change would be a move away from harmonisation with other schemes. We would need to be provided with strong evidence of detriment to either consumers or the legal services providers if we were to pursue a change in this rule.

**Q4: How appropriate do you think the current £1 million income/asset limit for charities and trusts is? Why do you think this? Can you provide any evidence to support your view?**

#### **Other proposed amendments**

We propose to change the structure of 2.1 to make the meaning clearer. Currently, 2.1(g) and (h) are separate provisions under rule 2.1. We have redrafted these to make it clear that their purpose is to qualify the application of the current (e) and (f) as seen in annex A.

#### **Prospective customers**

##### **Why have we decided to consult on this and how does this fit in with our principles?**

Under section 128(4), the types of people and bodies who are eligible to complain must also have a relevant relationship with the legal practitioner. Broadly, this covers circumstances where the complainant:

- is a client/customer of the legal practitioner;
- is a lay client/customer of the legal practitioner (for example the lay client of a barrister, instructed through a solicitor);

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<sup>5</sup>[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/MVA\\_SmallCharities\\_ResearchReport.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/MVA_SmallCharities_ResearchReport.pdf)

- is a beneficiary of an estate or trust where the legal practitioner is the personal representative or trustee; or
- has some other connection with the legal practitioner prescribed by the Lord Chancellor.

The Lord Chancellor has not yet prescribed any other connection under section 128(4), but we have considered the position of both prospective clients/customers and third parties. We are minded to recommend to the Lord Chancellor that the Legal Ombudsman should be able to consider complaints from prospective clients/customers and we propose an addition to the list of complainants in paragraph 2.1.

Such a change would enable the Legal Ombudsman to cover, for example, cases where a service was refused for unlawfully discriminatory reasons or where someone has suffered from persistent and unsolicited cold-calling. We are conscious that there is no requirement in legal services regulation for a 'cooling off' period.

There is some evidence to suggest that these practices do occur within some parts of the legal services market; sources such as Citizens Advice indicate that these sorts of customer service approaches can bring about serious consumer detriment, especially when a consumer does not have the information or resources to hand to challenge inappropriate behaviours from a service provider. This would also be relevant if the Lord Chancellor were to decide to bring CMCs within the Legal Ombudsman's jurisdiction under section 161.

We are mindful that the scheme rules should be compatible with the likely transfer of CMCs to the Legal Ombudsman; CMCs may apply to become ABSs, which may mean a blurring of lines between these two sectors. There is evidence of CMCs cold-calling by phone and by email in relation to PPI claims. ABS developments mean that we are aware that the Legal Ombudsman may start receiving complaints of a different nature to those we currently receive.

This amendment would also harmonise the Legal Ombudsman with other Ombudsman services including the Financial Ombudsman Service, which is already able to accept complaints from prospective customers.

We propose to ask the Lord Chancellor to add prospective clients/customers to those eligible to complain. If he makes the relevant order, this would be reflected by amending paragraph 2.8.

**Q5: Do you agree with our proposal to bring our service in line with other Ombudsman schemes and accept complaints from prospective customers? Why do you think this? Please include evidence.**

### **Third party complaints**

#### **Why have we decided to consult on this and how does this fit in with our principles?**

We would like to consult on a further addition under rule 2.1. Third party complaints are complaints against lawyers by people other than those who have engaged them. In certain circumstances, the Scottish Legal Complaints Commission may accept complaints from third parties and we are aware that there are consumers who would benefit from a broader approach than our current one. For example, third party complaints from consumers who receive the benefit of a legal service (for instance, a packaged remortgage service – where, technically, the lawyer is acting only for the lender). A broader conception of who can complain would increase access to redress for third party complainants who are owed an indirect duty of care by a lawyer. Other Ombudsman services take a similar approach to this. For example, the Ombudsman Service: Surveying can look at complaints from prospective homeowners in relation to valuations surveys even though these are undertaken for the lender.

We see there being four possible options to this possible aspect of the rules, and would like your views on these. The options we have identified are:

1. leave the provisions in the rules as they are now;
2. write the rules to specify circumstances where third party complaints can be looked at by the Legal Ombudsman (we would appreciate suggestions – and evidence to support those suggestions – about who could be included in a list of this sort);
3. write the rules to specify that where there is a duty of care to the person complaints can be looked at by the Legal Ombudsman (this is not a preferred option); or
4. write the rules to specify that all third parties can be looked at by the Legal Ombudsman (again, this is not a preferred option).

In order to make a change we would need to be provided with strong evidence about proposed categories of complainants to include and evidence as to why there is a need for this revision to the rules. We are concerned that there are several problems with a broad approach to third-party complaints:

- a lawyer acting for A may be duty-bound to act to the detriment of B (divorce cases may be a clear example of when this could arise);
- a risk of re-litigating cases in the guise of complaints against lawyers acting for the other party; and
- problems of investigating a complaint by B when the lawyer owes a duty of confidentiality to A.

We have some evidence to support a change to the second option, and a 'list' approach may help to negate some of the negatives of third party complaints by being clear about who may come to the Ombudsman and in what circumstances. Conversely, the fourth option is too wide and raises the risks outlined above, and the drafting of the third option could be misunderstood – as the boundary of duty of care is not easily understood by consumers.

There are instances where a consumer may stand to benefit from a legal service but the contractual relationship is tripartite between them, a lawyer, and for instance a bank. As we reported in our Annual Report for 2010/2011 we are also seeing circumstances where legal services are provided by a sub-contractor, and there may be circumstances in those relationships where access to redress should be required. We are seeking views on whether to ask the Lord Chancellor to add specified classes of third parties to those eligible to complain and would welcome evidence and suggestions about whether there are specific categories that should be looked at and included in this aspect of the rules.

**Q6: 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? Why? Please provide evidence to support your view.**

### **Successor firms**

**Why have we decided to consult on this and how does this fit in with our principles?**

Section 132 of the Act sets out protections for consumers when firms merge, divide or close and then reopen under new arrangements. Section 132(1) states that:

*“The ability of a person to make a complaint about an act or omission of a partnership or other unincorporated body is not affected by any change in the membership of the partnership or body”*

Section 132(2) states that:

*“Scheme rules must make provision 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 practices and regulators over what constitutes a successor firm. Take this case study:

Firm A operated for less than a year in 2009/10. In 2010, the firm was replaced by another company with the same solicitors and partners, the same premises and many of the same customers. Under the criteria within the scheme rules, the Legal Ombudsman considered this firm to be a successor to firm A and we ordered redress for the complainants who had received poor service.

However, the case was complicated as the firm had reopened under a new regulator and it denied its status as a successor practice. Neither of the regulators involved could tell us whether they were prepared to treat the firm as a successor of firm A and there was confusion over whether the money could be claimed through the insurers of either firm.

In this case, the Legal Ombudsman decided to assist the complainants to enforce our decisions, as we also wanted clarity around the issue of successor firms and how to interpret the rules. We achieved this, as once legal proceedings began the firm revised its opinion and agreed it had responsibility for the complaints under its previous name.

The case above was then resolved and the complainants received redress for the poor service they had received.

This was a case where it was right for liability to pass to the successor firm. But we can envisage that there may be circumstances in which it would not be right, for instance where a single firm is broken up and divides, and both 'new' firms should not be identified as a successor. To give the Ombudsman flexibility in determining which firms can be considered as successor firms, we propose 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.'*

**Q7: Are there any additional changes to Chapter 2 that in your view are necessary? If so, please explain your reasons and provide evidence to support your view.**

## Chapter 3: What authorised persons must do

**Chapter 3 gives information on how authorised persons must deal with complaints.**

### **Background:**

We have not proposed any revisions to this chapter. There may be some future requirement for this chapter to change if the Legal Services Board were to review its requirements about first tier complaints under section 112 of the Act. A key area may be if there is a need to align regulatory requirements across different sectors once multi-disciplinary partnerships are licensed by Approved Regulators. If any change such as this were to occur, we would seek to work with the LSB to update this chapter in these rules, as the Act allows.

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

**Chapter 4 lays out the rules regarding complaining to us, including time limits.**

**Background:**

The current rules set out two time limits. One runs from the date of the authorised person's final response (if it contains certain information). The other runs from the date of the relevant act/omission or from when the complainant knew there was cause for complaint.

Under paragraph 4.4, if the authorised person has provided information about the Legal Ombudsman in their final response to the complaint and told the complainant that they must refer their complaint to the Legal Ombudsman within six months, then a failure to refer the complaint to the Ombudsman within six months will mean that a complaint cannot be dealt with unless there are exceptional reasons.

Under paragraph 4.5, ordinarily, a complainant must refer a complaint to the Legal Ombudsman within:

*“a) one year from the act/omission; or*

*b) one year from when the complainant should reasonably have known there was cause for complaint without taking advice from a third party;*

*whichever is later.”*

Paragraph 4.6 explains how we assess when a complainant should have reasonably have known there was cause for a complaint. And paragraph 4.7 states that in exceptional circumstances an Ombudsman may extend any of these time limits as much as they consider to be fair.

**Why have we decided to consult on this and how does this fit in with our principles?**

There are strategic and operational reasons for suggesting a review of the rules in relation to when someone can come to the Legal Ombudsman.

Strategically, the time limits do not harmonise with either the courts or other Ombudsman schemes. This lack of harmonisation will become increasingly problematic when ABS firms come into being as it is likely that some will be covered by both the Financial Ombudsman Service and the Legal Ombudsman.

One of the principles behind this review is to harmonise our rules with other schemes, and it may be timely to look again at whether a six-year limit is appropriate given the likely join-up of financial and legal complaints with the advent of ABS and the approach of legal insurers and the courts. With the potential for more complaints, it may be that a one-year limit may mean people seek to resolve their complaints in the courts, or some complaints against ABSs through the Financial Ombudsman Service, more often.

We do not expect that we will experience difficulty in dealing with 'older' cases. The Legal Ombudsman can already accept 'older' complaints, depending on the date of awareness (for instance, when the poor service was only uncovered when someone comes to sell their house years later) and currently deals with these 'older' cases successfully. Take these two case studies:

In 2002, Ms X's solicitor breached her confidentiality and shared personal information about her with a third party. She only became aware of this in July 2010. She came to the Legal Ombudsman as she wanted an explanation and an apology from the firm (rather than any financial compensation) but had not been able to resolve this with the firm directly. The solicitor who had been involved in the breach had left the firm in 2004. Following an investigation by the Legal Ombudsman, the firm and Ms X came to an informal agreement and Ms X received an apology from the firm along with £50 for the distress and inconvenience this caused her.

Ms W instructed a firm in 2005 to assist in the purchase of a house. In 2010, she chased the firm to provide her with share certificates for the property and lease. At this time it became apparent to Ms W that the lease on the property had not been extended as she had previously instructed. Ms W lodged a formal complaint and requested the deeds to her property – she was concerned that her lease might not be in order and that she hadn't seen the documents. The firm eventually sent her some copies of documents but she was not convinced that these were the correct ones. Our investigator recommended that the firm should pay to have another firm extend the lease, as this hadn't happened correctly. The Ombudsman agreed and Ms W accepted this decision.

In cases like these, the Legal Ombudsman was able to conduct investigations to resolve the complaint irrespective of the fact that the events that caused the complaint occurred some years ago (and considerably more than one year before).



Operationally, we have to spend considerable time (at the expense of the profession) resolving time limit issues in individual cases. At times, the current rules can be difficult for parties to understand.

In particular, because of the current one-year time limit, we receive many requests to exercise the Ombudsman's discretion to extend time limits. The current test given in the rules is one of 'exceptional' circumstances. This can lead to extensive representations by both parties, and the combination of the one-year time limit with this strict test can result in some complainants being excluded when their complaint seems to have some merit.

The 'exceptional' circumstances test is put under pressure because of the short one-year time limit for complaining. It would be more appropriate working with a longer time limit. The other alternative is to look again at the wording of the test and perhaps re-cast it as a test of what is reasonable. This latter option would broaden the test, but may not be as clear and simple to understand, as the 'wider' discretion may create a level of uncertainty for both lawyers and consumers.

Additionally, from cases coming to the Ombudsman we are aware that some people feel that they are unable to complain about the service of their lawyer if their retainer is ongoing – either for fear of affecting a legal case the lawyer is handling or because they already have their hands full with the legal case itself.

That would not be an issue if the time limit were longer. But, if the time limit stays at one year, it is arguable that it should also run from the end of the relevant retainer. Where a service is provided over a lengthy period, it is helpful to both parties if we can judge the standard of service overall – rather than being forced, by a short time limit, to look at part only of the service in isolation.

One approach to respond to these issues, in line with the Financial Ombudsman Service, is to extend the time limit so that complaints can be accepted up to six years from the event or three years from the knowledge of the event – in which event it would not be necessary to alter the 'exceptional circumstances' provision or to run the time limit from the end of the retainer.

But, if the time limit remains at one year, it would be necessary to extend the Ombudsman's discretion to extend time limits and to run the time limit from the end of the retainer – though we think this would create more uncertainties than our preferred option.

We will also take the opportunity to look again at how the rules work when someone dies with an outstanding complaint (see current paragraph 2.1); while the general thrust of these provisions seems

correct, again we have seen cases where the current wording about when the time starts (or resets if someone has died) has been confusing for complainants and we would like to clarify this as part of the review to make it clear how these time frames work.

We have developed five alternatives to deal with these issues:

Alternative A: We propose to clarify the drafting without making any change of substance. This is simply to make the rules easier to understand.

Alternative B: We propose to amend paragraph 4.6 in alternative A in respect of complaints by a personal representative or beneficiary of the estate of a person who, before he/she died, had not referred the complaint. This is to prevent the time limit starting again on death.

Alternative C: We are seeking views on amending paragraph 4.5 in alternative A to extend the time limits. If the basic time limits were extended, it would not be necessary to proceed with alternatives D and E.

Alternative D [this would not apply if alternative C were adopted]: If the time limit remains at one year, we are also seeking views on amending paragraph 4.5 in alternative A to add a further one-year time limit running from the end of the lawyer's retainer.

Alternative E [this would not apply if alternative C were adopted]: If the time limit remains at one year, we are also seeking views on amending paragraph 4.7 in alternative A to extend the Ombudsman's discretion.

Our current view is that alternative C (a longer time limit that is only extended in exceptional circumstances) provides an outcome that is likely to be clearer for all concerned than alternatives D and E.

**Q8: 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.**

## Chapter 5: How the Legal Ombudsman will deal with complaints

### Chapter 5 lays out how we deal with complaints

We propose to clarify the drafting of paragraph 5.19 and 5.20, without making any change of substance.

### Financial limits – why have we decided to consult on this and how does it fit with the principles?

Paragraph 5.43 limits the total amount of financial compensation to £30,000. There is no presumption in the way the scheme works that there should be financial compensation; remission of fees (without limit), apologies, returning key documents or re-doing work to rectify a situation are common and important alternatives to an order for financial redress.

The majority of compensation awards made by the Legal Ombudsman are under £1,000. But we have made a number of compensation awards exceeding £20,000 – and on occasions we have found the current £30,000 limit insufficient. Take this case as an example:

The lawyer had failed to obtain title to part of a property (and the necessary title could not now be obtained) and the appropriate measure of compensation was the reduction in the value of the property – but the award was limited to £30,000. The Ombudsman made clear that the maximum limit prevented a remedy that reflected the true share of losses the complainant suffered.

Cases such as this one indicate that there may be limited circumstances in which orders above £30,000 may be required. The Legal Ombudsman has ordered a remedy of above £20,000 in a handful of cases only. And in some specific cases, as indicated above, the Ombudsman has felt constrained by the £30K limit, where the impact of the poor service has needed a greater response.

If the Ombudsman scheme is intended as an alternative to the courts, it is necessary for the value of the orders to make it a viable alternative and we are conscious that there may be times when complainants may be reluctant to use the Ombudsman because of the limit and as they would need to limit the amount they may receive. For instance, in cases where

there may also be an option to seek redress through the courts through a claim for negligence, some consumers choose to access our free service though the value of their complaint may be potentially higher.

The current limit does not sit in harmony with the trends of the wider justice sector or justice policy. An increase in our limit would harmonise with a general trend within the justice sector: the Government has raised the level below which non-personal-injury claims cannot be heard in the High Court from £25,000 to £100,000; the outdated value of property above which equity cases need to be referred up to the High Court will be raised from £30,000 to £350,000; and the small claims court limit will increase to £10,000 from the current limit of £5,000, with a possibility that it will increase further at some point in the future. An increase from £30,000 to £50,000 would be a modest increase in light of these developments.

If a consumer cannot access redress through an Ombudsman, the courts remain the alternative. With the current emphasis on modernising and increasing efficiency in the court process, it seems right to consider whether or not an increase in our limit would assist the overall administration of justice.

One of the principles guiding this review is harmonisation with other Ombudsman schemes. The Financial Ombudsman Service has recently increased its upper limit to £150,000. The harmonisation principle, together with the increasing overlaps between cases within our jurisdiction and those eligible for FOS, indicates that there may be some need to consider here how these two jurisdictions join together. There is, however, no evidence to support a move to the £150,000 level for the Legal Ombudsman.

Having considered these arguments, we propose to increase our limit to £50,000 .

**Q9: What do you think our financial limit should be for compensation? Please provide evidence to support your view.**

## Chapter 6: Case fees payable by authorised persons

### Chapter 6 explains our rules relating to case fees

#### Background:

The Legal Ombudsman is funded by a combination of annual levies and case fees. The levies are set by the LSB and collected by the LSB from authorised regulators. Case fees are set by the OLC (subject to the approval of the LSB and the Lord Chancellor).

The case fee provisions in section 136 of the Act set some constraints. The OLC *must* make rules requiring respondents to pay a case fee, but those rules *must* provide for case fees to be waived (or returned) if the outcome is in favour of the respondent *and* the Ombudsman is satisfied the respondent took all reasonable steps to resolve the complaint under its complaints procedure. The rules *may* provide for case fees to be waived in other circumstances.

When the current case-fee rules were made, it was expected that case fees would provide about 5% of the Legal Ombudsman's budget. But our experience has been that case fees have amounted to only about 1% of the budget – for two reasons.

The first reason, which reflects well on the profession, is that the proportion of cases in which case fees have been waived – the outcome is in favour of the respondent *and* the Ombudsman is satisfied the respondent took all reasonable steps to resolve the complaint under its complaints procedure – has been higher than expected. Additionally, our experience is that very few firms or lawyers exceed the 'free' case allowance.

The second reason is that many of the cases where case fees have been charged relate to 'failing' firms, which go out of business without paying the case fees. As a result, we do not expect to be able to collect around 18% of case fees charged to date. Any increase in the case would be likely to be reflected in even larger bad debts. Any shortfall has to fall on the levy paid by all regulators, rather than the regulator for the relevant sector.

We suggest that for the case fee there are some specific guiding principles:

- that we need to consider how the levy and case fee interact with one another to ensure that we adopt a fair approach;
- that the case fee should be administratively simple to operate and administer; and
- that the case fee should not encourage poor behaviour by firms and not discourage good behaviour by firms.

### **Why have we decided to consult on this and how does it fit with the principles?**

When we set the case fee in 2010, we acknowledged that it had been based on set of assumptions as the scheme was not operational. We are now at the stage where we can use the data and experience that we have gathered to start formulating a clear view on how we would like our case fees to work. In addition to that, we note that we have had the following experience from this initial period of operation:

- the small proportion of funding recovered by case fees reflects good complaint-handling by most firms;
- that there is no evidence from the scheme that the case fee has an impact on the behaviour of firms. The current level of waivers rewards 'good' behaviour by firms and also reduces the impact on small firms and any equality issues;
- that the current structure works from an administrative point of view, but that we could look to refine the drafting of the structure to make it clearer how the fees work in practice; and
- that, given current issues around businesses that go 'bust', if we were to go to a higher level of fees, we would need the regulators or profession to assist to make sure there were no collection issues.

One option could be to work with the LSB to explore possible new approaches to see if it is possible to collect unpaid case fees through the levy. This would remove any cross-subsidy of 'bust' firms by other sectors.

Such an approach would require consultation and more detailed work as it would be for the LSB to decide whether it set criteria (after input from

its Consumer Panel) or left each regulator to decide how it wanted to split the total cost amongst 'its' firms – dividing the levy across all firms or charging some case-related element (of an amount it decides) to relevant firms.

In addition to examining if there is a more effective collection mechanism, there are two options that we are consulting on in relation to the case fee structure. Our preferred option is Option 1, to retain the current system as it is administratively simple and, on the whole, supports the effective resolution of cases in the Legal Ombudsman. We are, however, keen to hear views on these and other potential options.

### **Option 1 – Retain the current system**

We could do nothing and continue with the current structure. Despite the low level of income from the case fee, there is little evidence to suggest that the existing structure is anything but fair. Additionally, there is nothing to suggest in the evidence that the current approach does not encourage good complaints handling to a sufficient standard before complaints come to the Ombudsman, given the interaction with the waiver as a way of rewarding 'good' behaviour.

In this option we would retain the 'free' cases. To assist with administration of the case fee, and to ensure clarity, we would also seek to review the drafting to make clear that the 'free' cases will be counted when they are accepted (rather than when the case is closed). We have experienced some operational confusion about this to date and would like to use this opportunity to update the rules.

### **Option 2 – To remove or reduce the number of 'free' cases allowed per annum**

This option would increase the simplicity of the scheme. Over 55% of legal services providers (lawyers and law firms) that have complaints with the Ombudsman generate one or two cases per year. In 2010, we were concerned that there could be a risk of disproportionate impact on certain areas of the profession without the 'free cases'. However, the way the waiver operates indicates that this effectively captures any impact on those firms operating in contentious areas of the law, such as immigration, criminal, family, or mental health, and who are likely to generate more complaints than those operating in other, less contentious areas of law.

Changing this approach may also mean a small increase in the amount collected via the case fee.

**Q10: Please express your preferences in relation to options 1 and 2? Please explain your reasons.**

**Q11: Do you have 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? Please explain your reasons why or why not.**

## How to respond

If you would like to send through your views on this review of the Legal Ombudsman scheme rules, our contact details are below. If possible, please send your responses electronically (in Microsoft Word format) but hard copy responses by post or fax are also welcome.

Our formal consultation on the scheme rules will close on Friday 15 June 2012.

Email: [consultations@legalOmbudsman.org.uk](mailto:consultations@legalOmbudsman.org.uk)  
Post: Janet Edwards

Legal Ombudsman  
Corporate Services  
PO Box 6803  
Wolverhampton  
WV1 9WF

As we indicated above, we are also keen to discuss the issues we have raised in this paper in other ways. We would welcome opportunities to meet people and organisations who are interested in the scheme rules at face to face meetings. We will hold workshops to discuss the key issues included in this paper.

We want to be open, accessible and clear in how we develop and discuss our approach. We will publish all responses received during the formal consultation period. When you send us your submission, unless you tell us you do not want your views published, we will assume you are happy for us to do so.



## Timeframes

Date	Milestone	Activity
26 March 2012	Launch consultation	Consultation paper published on website
April and May 2012	Consultation workshops and face to face meetings	Roundtable events to discuss key points raised in the review
18 June 2012	Consultation closes	Responses published on website as they are received
July and August 2012	OLC meeting	OLC to consider feedback and agree approach to rules; approve response document to be published
September 2012	LSB meeting	LSB consent to rules
October to December 2012	Lord Chancellor approval	MoJ seeks Lord Chancellor approval and develop any secondary legislation required

## Summary of questions

Q1: Do you agree with these principles? Are they the right ones to guide this review of the Legal Ombudsman's scheme rules?

Q2: Do you have any views on these proposed changes to the scheme rules?

Q3: Are there any additional changes to Chapter 1 that in your view are necessary? If so, please explain your reasons and provide evidence to support your view.

Q4: How appropriate do you think the current £1 million income/asset limit for charities and trusts is? Why do you think this? Can you provide any evidence to support your view?

Q5: Do you agree with our proposal to bring our service in line with other Ombudsman schemes and accept complaints from prospective customers? Why do you think this? Please include evidence.

Q6: 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? Why? Please provide evidence to support your view.

Q7: Are there any additional changes to Chapter 2 that in your view are necessary? If so, please explain your reasons and provide evidence to support your view.

Q8: 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.

Q9: What do you think our financial limit should be for compensation? Please provide evidence to support your view.

Q10: Please express your preferences in relation to options 1 and 2. Please explain your reasons.

Q11: Do you have 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? Please explain your reasons why or why not.

# Draft scheme rules consultation paper

## Annex A: Draft rules

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### Chapter 1: Introduction and definitions

We propose to amend paragraph 1.1. This involves adding the text shown below in **bold** –

- 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 [date rule changes come into force].**

We propose to amend paragraph 1.7. This involves adding 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<sup>6</sup> at the time of the relevant act/omission or covered under section 129 of the Act<sup>7</sup>, including:
    - **alternative business structures (licensed under part 5 of the Act);**
    - barristers;
    - **costs lawyers** ~~law costs draftsmen~~;
    - legal executives;
    - licensed conveyancers;
    - notaries;
    - patent attorneys;
    - probate practitioners;
    - registered European lawyers;

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<sup>6</sup> Sections 12 and 129.

<sup>7</sup> This section covers the equivalent practitioners before the commencement of the Act.

- 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.<sup>8</sup>

*We propose to amend paragraph 1.8. This involves adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

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)<sup>7</sup>; **and**
- **the Legal Services Board (but only for any alternative business structure it licenses directly).**

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## Chapter 2: Who can complain about what

*We propose to clarify the drafting of paragraph 2.1, without making any change of substance. This involves deleting the existing text and substituting the following –*

2.1 A complainant must be one of the following:<sup>9</sup>

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<sup>8</sup> [OLC rule] Sections 133(8) and 147(7).

- 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;<sup>10</sup>
- 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.

*We propose to ask the Lord Chancellor to add prospective clients/customers to those eligible to complain. If he makes the relevant order, this would be reflected by amending paragraph 2.8. This would involve adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

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

- a) **provided** to the complainant;<sup>11</sup> or
- b) **provided** to another authorised person who procured them on behalf of the complainant;<sup>12</sup> or
- c) **provided** to (or as) a personal representative/trustee where the complainant is a beneficiary of the state/trust<sup>13</sup>; **or**

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> Section 128(4)(a).

<sup>12</sup> Section 128(4)(b).

- d) **offered, or refused to provide, to the complainant.**<sup>14</sup>

*We are seeking views on whether to ask the Lord Chancellor to add specified classes of third parties to those eligible to complain. If he were to make such an order, this would be reflected by further amending paragraph 2.8. This would involve adding the text shown below in **bold** –*

2.9 The complaint must relate to services which the authorised person:

- a) provided to the complainant;<sup>15</sup> or
- b) provided to another authorised person who procured them on behalf of the complainant;<sup>16</sup> or
- c) provided to (or as) a personal representative/trustee where the complainant is a beneficiary of the state/trust<sup>17</sup>; or
- d) offered, or refused to provide, to the complainant; **or**<sup>18</sup>
- e) **provided to someone other than the complainant where [*specified cases*].**<sup>19</sup>

*We propose to amend paragraph 2.10. This involves adding 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;<sup>20</sup> and
- b) complaints already outstanding against A become complaints against B;<sup>21</sup>

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

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<sup>13</sup> Section 128(4)(c).

<sup>14</sup> Requires an order by the Lord Chancellor under section 128(4)(d).

<sup>15</sup> Section 128(4)(a).

<sup>16</sup> Section 128(4)(b).

<sup>17</sup> Section 128(4)(c).

<sup>18</sup> Requires an order by the Lord Chancellor under section 128(4)(d).

<sup>19</sup> Requires an order by the Lord Chancellor under section 128(4)(d).

<sup>20</sup> [OLC rule] Section 132(2).

<sup>21</sup> [OLC rule] Section 132(3).

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

*We propose to insert a new subheading before paragraph 2.10, in the form of the text shown below in **bold** –*

### **Time limit from authorised person’s final response**

*We propose to clarify the drafting of paragraph 4.4, without making any change of substance. This involves deleting the existing text and substituting the following –*

- 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.

*We are seeking views on alternative approaches to paragraphs 4.5 to 4.8:*

- *We propose alternatives A and B in any event.*
- *We are seeking views on alternatives C to E.*
- *If alternative C were adopted, alternatives D and E would not be adopted.*

*Alternative A: We propose to clarify the drafting, without making any change of substance. This involves adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

- 4.5 Ordinarily, a complainant must also refer a complaint to the Legal Ombudsman **no later than**:
- a) one year from the act/omission; or

- b) one year from when the complainant should reasonably have known there was cause for complaint ~~without taking advice from a third party.~~<sup>22</sup>

4.6 **In relation to 4.5(b)**, when the complainant should reasonably have known there was a cause for complaint will be assessed on the basis of the complainant's own knowledge, disregarding what the complainant might have been told if he/she had sought advice.

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.<sup>23</sup>

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.

*Alternative B: We propose to amend paragraph 4.6 in alternative A in respect of complaints by a personal representative or beneficiary of the estate of a person who, before he/she died, had not referred the complaint. This involves adding the text shown below in **bold** –*

4.6 In relation to 4.5(b):

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

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<sup>22</sup> [OLC rule]

<sup>23</sup> [OLC rule] Section 133(2)(b).



*Alternative C: We are seeking views on amending paragraph 4.5 in alternative A to extend the time limits. This would involve adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

4.5

4.5 Ordinarily, a complainant must also refer a complaint to the Legal Ombudsman no later than:

- a) **six years** ~~one year~~ from the act/omission; or
- b) **three years** ~~one year~~ from when the complainant should reasonably have known there was cause for complaint.

*Alternative D [this would not apply if alternative C were adopted]: We are also seeking views on amending paragraph 4.5 in alternative A to add a further time limit running from the end of the lawyer's retainer. This would involve adding the text shown below in **bold** –*

4.5 Ordinarily, a complainant must also refer a complaint to the Legal Ombudsman no later than:

- a) one year from the act/omission; or
- b) one year from when the complainant should reasonably have known there was cause for complaint; **or**
- c) **one year from the end of the retainer between the complainant and the authorised person for the matter in respect of which the act/omission occurred.**

*Alternative E [this would not apply if alternative C were adopted]: We are also seeking views on amending paragraph 4.7 in alternative A to extend the Ombudsman's discretion, by adding the words shown below in **bold** –*

4.7 If an Ombudsman considers that **it is fair and reasonable in all the circumstances of the case** ~~there are exceptional circumstances~~, he/she may extend any of these time limits to the extent that he/she considers fair.<sup>24</sup>

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<sup>24</sup> [OLC rule] Section 133(2)(b).

## Chapter 5: How the Legal Ombudsman will deal with complaints

*We propose to clarify the drafting of paragraph 5.19 and 5.20, without making any change of substance. This involves adding the text shown below in **bold** and deleting 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’).<sup>25</sup>
- 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~~.<sup>26</sup>

*We propose to ask the Lord Chancellor to increase the maximum award from £30,000 to £50,000. If he makes the relevant order, this would be reflected by amending paragraph 5.43 and 5.44. This would involve adding the text shown below in **bold** and deleting 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:<sup>27</sup>
- 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.

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<sup>25</sup> [OLC rule]

<sup>26</sup> [OLC rule]

<sup>27</sup> Section 138(1) and (2). The Lord Chancellor can increase the limit under section 139.

- 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.<sup>28</sup>

## Chapter 6: Case fees payable by authorised persons

*Case fees are not payable if the legal practitioner ‘wins’ and the Ombudsman is satisfied that the legal practitioner had not taken all reasonable steps to try to resolve the complaint. In any event, the first two cases are free. We are seeking views on whether to delete the provision for two free cases. This would involve adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

- 6.2 ~~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.~~<sup>29</sup>
- 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.<sup>30</sup>

*If the two free cases are retained, we propose to amend paragraphs 6.2 and 6.3. This would involve adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

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<sup>28</sup> [OLC rule]

<sup>29</sup> [OLC rule]

<sup>30</sup> [OLC rule]

- 6.2 No case fee is payable for the first two potentially chargeable complaints **accepted for investigation** ~~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.<sup>31</sup>
- 6.3 A case fee is payable by the business/partnership or individual authorised person for every **other** ~~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.<sup>32</sup>

*We are seeking views on a more fundamental change, as a result of which each authorised regulator would have the individual option of spreading the whole cost of the Legal Ombudsman across its members through the yearly levy, or recovering part (in an amount of its choosing) from members with cases that would currently attract a case fee. This might, for example, involve something along the lines of adding the text shown below in **bold** and deleting the text shown below in ~~strikeout~~ –*

- 6.4 a) **If the authorised person is regulated by an Approved Regulator that pays a levy through the Legal Services Board, the Legal Ombudsman will notify the Approved Regulator of the number of cases for that authorised person that would have been chargeable during the Legal Ombudsman's financial year, but will waive the case fees.**
- b) **In all other cases** the case fee is £400 for all chargeable complaints.<sup>33</sup>

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<sup>31</sup> [OLC rule]

<sup>32</sup> [OLC rule]

<sup>33</sup> [OLC rule]