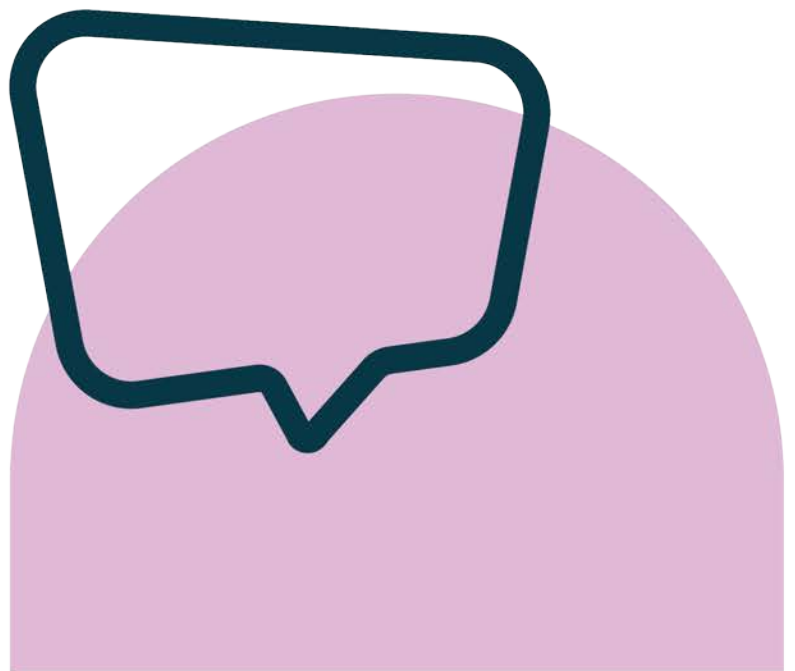


Legal Ombudsman's Response to the Civil Justice Council's Consultation on Reform of the Solicitors Act 1974, Part III

July 2026



Introduction

1. The Legal Ombudsman (LeO) welcomes the opportunity to respond to the Civil Justice Council (CJC)'s consultation on this important issue.
2. LeO has two core roles. It resolves complaints about providers of legal services that have not been resolved to customers' satisfaction – as quickly and informally as possible. LeO covers the majority of legal services provided in England and Wales. The rules and limits about what complaints LeO can help with are set out on our [website](#).
3. The second vital part of LeO's work is sharing learning and insight from the complaints it sees. This promotes better complaint handling, prevents future complaints, and helps drive higher standards in legal services.

Summary of response

4. LeO is supportive of the Civil Justice Council's work to explore how demand and pressure on the courts can be diverted and addressed more appropriately through less formal mechanisms, and welcomes the opportunity to contribute to this discussion.
5. As a primary legislated ombudsman scheme for the legal sector, we understand the attraction in aligning the service complaint and cost assessment functions, both for the parties involved in these disputes and in the interests of procedural efficiency. Issues relating to costs are frequently intertwined with complaints about the quality of service, and as a result we already deal with such matters as part of our core role. Whilst LeO does not currently carry out comprehensive cost assessments, our casework regularly involves assessing whether costs are fair and reasonable in the context of the information provided about likely costs and the service received.
6. However, whilst we recognise the intent behind the proposal, and would welcome further detailed discussion on it, we cannot at this stage commit to a firm position on whether it would be appropriate for us to undertake this role. The consultation lacks sufficient detail to enable a comprehensive assessment of how such responsibilities would be structured, delivered, funded and resourced in practice. There would also be an important timing question to consider: LeO is currently experiencing an unprecedented increase in demand for its help, placing acute pressure on our operations, and plans to undertake a significant transformation programme in response. These both have bearing on the feasibility of adding additional responsibilities at the present moment in time.
7. A final area where it would be necessary to have further information and insight relates to the work involved in assessing solicitor/client bills. This is not defined in the consultation, nor

is the volume of assessments that would fall within the proposed remit. We attempted to ascertain the likely volumes of assessments based on current applications which fall under the £50,000 threshold. However, our understanding is that this information is not currently recorded in a way which is reportable. This is another barrier preventing us from being able to take a clear position on LeO's suitability for the task.

Funding considerations

8. A significant consideration for transferring lower-value costs assessments is how they will be funded. We have concerns about the lack of detail within the proposal about who will pay for LeO to undertake the work required. LeO's current funding mechanism presents significant challenges for the proposed extension of our jurisdiction, particularly given that the Solicitors Act does not currently extend to the regulated legal sector as a whole.
9. The current model of costs assessment through the court system sees the client paying the application fee. However, although not a formal provision within the Legal Services Act 2007, the explanatory notes make clear that *"if the complaint is not resolved satisfactorily inhouse the consumer is able to bring complaints to the ombudsman scheme free of charge"*¹. Similarly, our membership of the Ombudsman Association requires *"Those complaining to the Ombudsman should be entitled to do so free of charge"*².
10. How we are funded more generally also presents some complexities. As an organisation primarily funded through a levy on the legal profession, the levy is applied across the regulated legal sector. Were the funding of assessments to be generated by a contribution across the sector, rather than by those directly involved in those assessments, we anticipate this would prompt considerable opposition from individuals and businesses that are the subject of few assessments, or excluded on the basis of legislation. This also links to the question of the assessment function being limited to solicitor/client disputes, whereas our function of resolving service complaints extends much more widely.
11. Our business model for the handling of service complaints also includes charging a case fee on applicable cases, payable by the service provider. However, were this to be extended to a cost assessment function, it would presumably only lead to a charge in some of the assessments carried out, and the criteria for that aren't defined.

Capacity and resource

12. LeO has experienced a significant increase in demand for its help³ and we currently face significant operational challenges in both resolving the volume of complaints coming to us

¹ Legal Services Act 2007, *Explanatory Notes*, para. 300. Available at: <https://www.legislation.gov.uk/ukpga/2007/29/notes>

² <https://www.ombudsmanassociation.org/about-us/join-ombudsman-association>, OA Terms and Rules 3(c)(iv)

³ <https://www.legalombudsman.org.uk/information-centre/news/office-for-legal-complaints-publishes-202526-annual-report-and-accounts/> <https://www.legalombudsman.org.uk/media/0fxnv1l1/olc-business-plan-and-budget-2026-27.pdf> LeO received 14,259 complaints in 2025-26, a 37% increase on the previous year. Our latest forecast is that LeO will receive 17,675 new customer complaints in 2026-27. This represents an increase of 174% compared to 2019-20.

and in reducing the waiting times for those already in our system. Extending LeO's jurisdiction without materially impacting core operations would require significant investment to recruit appropriate knowledge and experience, as well as upskilling existing staff. Whilst LeO has sufficient knowledge of the relevant principles and law to carry out the service complaint function, which includes consideration of cost and cost information complaints, undertaking a full costs assessment would require specialist knowledge, training or qualification. That gap would need to be clearly understood and addressed before we could consider taking on this work.

13. As it stands, whilst there are some limited circumstances in which we will consider the value of work undertaken by a solicitor, where it is apparent to us that the court assessment function is a better forum for the dispute to be resolved, an ombudsman can dismiss the complaint and refer the consumer to the assessment function⁴.
14. It is not clear from the consultation whether the proposals are suggesting costs assessments are integrated into the current ombudsman model, or would effectively sit as a separate function behind a LeO 'front door'. Whilst we are open to discussing the practicalities of transferring lower-level costs assessments into LeO's jurisdiction in the future, doing so would require sufficient time to develop the necessary operating procedures, recruitment, training and external communication strategies, before any go-live date. As the consultation offers no detail on the number of applications we would anticipate receiving each year, nor what work would be involved in undertaking each assessment, we are not in a position to give a realistic estimate of the time and resources needed.

Opportunities for further discussion

15. We would welcome a detailed discussion with the CJC on the proposals to better understand where LeO could appropriately support transfer of assessments to within its legislative remit, particularly given the scale of the potential change. We would also welcome being part of relevant wider discussions, including the possibility of the assessment function extending beyond solicitors' bills and the potential alignment between the scope of the current Solicitors Act 1974 and the current Legal Services Act 2007.
16. We do not anticipate that any changes to the Solicitors Act Part III will be implemented in the short term, which provides an opportunity to explore the practicalities of the proposals in greater depth. However, as the proposals currently stand, they do not provide sufficient clarity for us to make an informed commitment.
17. We have provided further detail in relation to the consultation questions in the answers below.

⁴ Scheme Rule 5.7g) provides, "An ombudsman may (but does not have to) dismiss or discontinue all or part of a complaint if, in their opinion, 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."

Consultation questions

- Q1. Do consultees agree that any revised code for the regulation of solicitor and own-client costs should have the objectives identified in paragraph 4.2 above?**
- a. Should the revised code contain any other objectives that aren't identified above?**
 - b. If consultees disagree, why? What alternate objectives should be relied on?**
18. We consider the objective of a fit-for-purpose statutory code supplemented by regulator-led professional conduct rules to be perfectly reasonable.
19. We have commented above on the practicalities of the second objective of fee-related complaints on “more modest bills” being handled by LeO.
- Q2. We propose that solicitors' charges should be subject to an overarching principle that they be 'fair and reasonable', judged on an objective basis, which should apply both to the amounts actually charged and to contractual terms, but not to the manner in which the agreement was reached. Do consultees agree with this recommendation?**
20. The objective test proposed seems to reflect a desire to align a number of different approaches. It is not clear to us that this has been done to good effect.
21. LeO's fair and reasonable test is part of our Scheme Rule 5.36:
- “An ombudsman will determine a complaint by reference to what is, in their opinion, fair and reasonable in all the circumstances of the case.”*
22. As such, the decision retains a degree of subjectivity, with the circumstances of the case being an obligatory consideration. It is common for similar allegations to lead to different outcomes and remedies, perhaps because the effect on the consumer of the failings, the context of those failings or the action taken by the service provider to mitigate harm warrant it. The authority of the ombudsman to make a free and confident decision in that field is important for the aim of delivering a fair outcome to all parties.
23. The proposal foresees an objective test, *“but taking account of the characteristics of the parties and nature of the matter”*. It is not clear the extent to which this sits with our version of the *fair and reasonable* test.
24. The removal of consideration of informed consent is a point of particular concern to us. Our experience is that the principle of informed consent is better understood and is used more widely in consumer disputes than it has been in the past. Although there remains significant work to be done, service providers are putting more emphasis on good cost information at

the start of a retainer. Further, technological advances, such as in case management systems, are enabling better updates and client understanding of the charges for which they are responsible.

25. Informed consent has been a cornerstone of LeO's approach to handling service complaints involving costs and cost information for some time. Our external costs guidance, *An Ombudsman's View of Good Costs Service*⁵, has as one of its core principles that a *client should never be surprised by the bill they receive from their lawyer*. To remove this principle seems to us to miss both its foundational benefits to understanding the service relationship and the opportunity for the courts to stress the importance of consumers not just agreeing to the price but understanding what it means.
26. We recognise that costs assessment and service complaints are different things, but the questions of what the parties understood going into the agreement and in the time that followed are not just material to the question of a fair price but, in our view, fundamental, and we strongly encourage the CJC to reflect on the message that the removal of informed consent sends.
27. Further, there is an apparent inconsistency in the reasoning. On the one hand, the proposal seeks to remove informed consent from the active considerations, which pushes the analysis to the end of the retainer (and away from what the parties took into the agreement). On the other hand, the proposal is sold as it being economically efficient and conceptually attractive for LeO to take on the assessment function, because we have the service complaint function already. But, if the two approaches are different and sending different messages, the tessellation is not natural, and the level of efficiency is questionable.

Q3. We propose that the approach taken in reg. 3 of the 2009 Order – subject to some updating – would be a sensible approach to producing guidance on the meaning of 'fair and reasonable'. Do consultees agree? Consultees should consider whether:

- a. there is anything presently contained in reg. 3 of the 2009 Order which should be excluded when producing guidance on the meaning of 'fair and reasonable.'**
- b. there is anything not presently contained in reg. 3 of the 2009 Order that should be included.**

28. We do not have a strong view on the approach, as we have little knowledge of its application in costs assessments. However, we would welcome the chance to explore the approach with you in more detail.

Q4. Do consultees agree that the distinction between contentious and non-contentious business should be removed? Do consultees perceive any disadvantage in doing so?

⁵ <https://www.legalombudsman.org.uk/media/ttkhya1z/an-ombudsman-s-view-of-good-costs-service-v3.pdf>

29. We expect that the majority of consumers would have no understanding of the difference between contentious and non-contentious business. Since the removal of the remuneration certificate process in 2009, there will have been little difference for most consumers between the two, in any event, with a single process for having either sort of bill assessed.
30. However, we understand that the rules governing contentious and non-contentious business are different and recognise that significant court time has been spent on the distinction. In this context, we see the attraction of removing something that causes procedural debate but which offers little to consumers.
31. We are aware that there are business models which operate on a charging structure which relies on the distinction between contentious and non-contentious business. An example is where a firm charges on a damages-based agreement for the non-contentious business and a standard conditional fee agreement for the contentious business. The Civil Procedure Rules cap on costs only applies to the latter and the result of this is a consumer that settles their claim before the issue of proceedings may pay their lawyer more than the consumer that fights past that point.
32. An environment where it is possible for a lawyer to charge more for less work seems to us to be something which makes the removal of the contentious/non-contentious distinction appealing. We acknowledge that there is no requirement for fixed or percentage-calculated costs to reflect the work actually done, and that it is possible for either side in a fixed fee arrangement to make a bad bargain, but the concept of consumers being disincentivised to settle their legal disputes goes against the desirable direction of travel.
33. Our view is that the removal of the distinction between contentious and non-contentious costs is a modernising step which will make legal costs clearer for consumers. We support it.
- Q5. As part of our wider provisional recommendation for a graduated dispute escalation procedure, we propose a route for smaller bills, as set out above. In summary, clients must exhaust internal complaints processes and LeO's complaints procedure before petitioning the Court, initially with an application for permission to proceed which would need to show good reason why further recourse was justified.**

Do consultees agree with this proposal?

The Working Group are particularly seeking views on the proposal that clients must show good reason before being given permission to proceed by way of Court proceedings.

34. We refer to our comments above about LeO's knowledge and resources, and about the funding mechanism for undertaking the responsibility.
35. To the question about clients needing to show good reason for permission for court proceedings to be granted, it's important to understand whether the initial decision by (to use

your example) LeO would be subject to judicial review. A decision by an ombudsman on a service complaint is challengeable in this way, so there would be a facility for either party to question the rationality or reasonableness of the decision reached.

36. If this would exist under the proposed new structure, there is the potential for court time to be used in this way. There is also the practical challenge of lawyers waiting to be paid for work done, and we know that business liquidity can be a material concern for some lawyers.

Q6. Do consultees agree with our recommendation for a graduated dispute escalation procedure, including ADR, for those cases falling outside LeO's jurisdiction, as a precondition to accessing the courts in disputes about solicitors' costs?

37. We don't have a strong view on this. All we would stress is the importance of a simple and accessible process for all parties.

Q7. Do consultees agree with our recommendation that the jurisdiction of LeO in relation to costs be clarified and expanded, in the manner suggested?

38. We refer to our comments above on this subject. We would welcome the chance to discuss it further with you.

Q8. Do consultees consider the proposed cap of £50,000 to be appropriate? If consultees disagree, would they suggest a higher or a lower figure? Why?

39. We don't have a strong view on this. We would welcome the chance to discuss it further with you.

Q9. Do consultees agree that the concept of the 'statute' or 'statutory' bill should be abolished, and that the content and format of bills should be set by conduct rules and rules of court?

40. Our experience is that the format and content of bills is not universally understood across the profession. The distinction between disbursements and professional costs, the application of VAT and the notification of client rights is not always well demonstrated in the complaints we see. On rare occasions, we see bills which still notify clients of their right to a remuneration certificate.

41. We do recognise that interim statute bills offer lawyers a mechanism for recovering money on ongoing cases to help with operational liquidity. The problem is that the client might not want to challenge the bill at that point, with there being a perceived practical risk that it will damage the course of the legal case. The client's right to challenge a bill must not just exist in theory but in practice.

42. In our view, it is reasonable for a lawyer's business practice to include the right to ask for money on account before work is completed. It is also reasonable to ask for payment of

interim bills before continuing. If these are able to survive the removal of statute or statutory bills, we would support it.

Q10. Do consultees agree that requirements as the signature and delivery of bills should likewise be addressed by conduct rules, reflecting up-to-date practice?

43. We don't have a strong view on this point, but we are willing to be included in the discussion about it, if it would be of assistance.

Q11. Do consultees agree that there should be a single time limit for initiating proceedings of one year from receipt, regardless of whether the bill is paid, subject to a power to extend the time limit where it is fair and reasonable to do so? Consultees in particular are asked to consider whether the proposal of a single time limit regardless of payment of the bill raises any concerns.

44. We agree that a time limit is necessary. However, we have some concerns about the current proposal.
45. A consumer who raises a cost challenge to LeO would have received a bill and, we expect, been told of the possibility of enforcement. The consumer would then come to LeO and exhaust our process. They would then have the balance of a year – should a balance exist – to approach court for permission. During this time, the firm would not have been paid for its services. This could be a substantial problem for firms that rely on money coming in.
46. Under the old remuneration certificate process, applicants could be asked to pay a contribution towards the bill (half of the professional costs, all the VAT and all the disbursements), before the bill was assessed. This was removed when all costs disputes were referred to court in 2009.
47. Whilst it is not clear to us whether this is either a workable or desirable suggestion, we consider it should be discussed, particularly as the current proposal seems to leave open the possibility that multiple clients – acting in good faith or otherwise – could put substantial pressure on service providers by withholding payment and negotiating with leverage. Our position as an impartial body means that we would have concerns about a process which could tip the balance in favour of one party.

Q12. Do consultees agree that the matters described above at paragraphs 4.29-4.34 above do not require legislative provision, and where necessary can be addressed via conduct rules and/or rules of court?

48. Following the last point in the answer above, one area of concern for us in this part of the proposal is the removal of the legislative framework for staying proceedings for solicitors recovering a bill until the bill is assessed. We are commonly asked by lawyers about whether and when they are able to pursue recovery of outstanding client debts and the proposal risks creating a situation where a client may face concurrent legal action, while they are pursuing

both a service complaint and costs assessment. This might be an unintended consequence of the proposal.

49. That aside, we don't have a strong view on these paragraphs, but we are willing to be included in the discussion about them, if it would be of assistance.

Q13. Aside from the provisions in the existing legislation outlined above in paragraphs 4.29-4.34, are there any other provisions in the current Part III that consultees feel should be reviewed or removed?

50. We don't have anything specific to raise here, but we would welcome the chance to be in wider discussions on the subject.

Q14. Our recommendation is that the proposed changes can be introduced via limited primary legislation containing an appropriate enabling power. Other matters can be addressed by changes to the LeO Scheme Rules, changes to conduct rules, and changes to rules of Court. Do consultees agree?

51. We refer to our comments above, including about the practical obstacles involved. We agree in principle that a combination of primary legislation, Scheme Rules and conduct rules would be needed. The primary legislation necessary might not be limited to a revised Solicitors Act, however, with the function of complaint handling for legal service providers falling under the Legal Services Act 2007.

Q15. In principle, would consultees support the concept of 'fair and reasonable' charging being extended to other legal services professionals? Please explain your answer, giving examples if possible.

52. We understand that the CJC's proposals have come from a position of a desire to review all the Solicitors Act, then reducing that to a focus on Part III. The case for extension beyond solicitor/client disputes seems to us to be much stronger than the case for it being limited to solicitor/client disputes. We are concerned that the proposed approach is both practically and philosophically narrow.
53. LeO's core function is to determine complaints made by consumers about legal service providers. Although the majority of complaints we receive relate to services provided by solicitors (88% of all accepted cases in 2025/26), to limit the function of bill assessments to one part of the work LeO does would create significant challenges.
54. Any proposal for central funding arrangements would need to delineate between the two processes, recognising the narrower jurisdiction. The process of handling mixed complaints – where there is both a challenge of the bill and a service complaint – would be starkly different for solicitor complaints and non-solicitor complaints. Given we regularly see complaints about more than one service provider in a retainer (such as a barrister and the instructing solicitor firm), this would be of considerable frustration to consumers.

55. Moreover, as the consultation notes in paragraph 3.23, *“The world has moved on since 1974”*. Consumers instruct barristers directly for some services. The Council for Licenced Conveyancers reports⁶ 10-15% of house moves are handled by its members. Probate services can be handled by ICAEW-regulated practices. Consumer choice in legal services is no longer limited to solicitors.
56. Our concern is that the work done to reform Part III and the assessment of bills will not serve its ultimate aims if it doesn't reflect its subject market. The proposed reforms remain introspective, when they need to look beyond the scope of the Solicitors Act. We strongly encourage the CJC to reflect on whether reform should be widened now, rather than the current proposal, which seems only to be taking an interim step.

Closing remarks

57. Thank you for the opportunity to respond to this consultation. We hope that our response is helpful in informing the Civil Justice Council's thinking and future discussions about the costs assessment landscape. As set out above, questions relating to scope, funding, delivery and resourcing remain key considerations in determining how these proposals could work in practice. We would therefore welcome the opportunity to discuss the proposals in more detail.
58. If you have any questions about our response, or would like to arrange a meeting to discuss further, please contact consultations@legalombudsman.org.uk.

⁶ https://www.clc-uk.org/wp-content/uploads/clcSiteMedia/NEW-Fact-Sheet-1_1.pdf