

To:	Legal Services Board	
Date of Meeting:	26 November 2014	Item: Paper (14) 59

Title:	OLC scheme rules – claims management complaints changes	
Workstream(s):		
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Status:	Official	

Summary:
<p>The Ministry of Justice (MoJ) has indicated that the Office for Legal Complaints' (OLC) jurisdiction is likely to be extended to include complaints about claims management companies (CMCs) from 28 January 2015, pending the commencement of s.161 of the Legal Services Act 2007 (the Act)</p> <p>In anticipation of this, the OLC is seeking the Board's consent to the necessary amendments to its scheme rules to take account of the extended jurisdiction.</p> <p>The OLC is required to seek the Board's consent to its scheme rules by virtue of s.155 of the Act.</p> <p>The amendments, which are technical in nature, have not been the subject of consultation by the OLC.</p>

Recommendation(s):
The Board is invited to consent to the proposed revisions to the OLC scheme rules.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Reputational:	N/A
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:		X	Due to time constraints it has not been possible to liaise with the Board
Consumer Panel:		X	
Others:			

Freedom of Information Act 2000 (Fol)
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Para ref	Fol exemption and summary	Expires
N/A		

LEGAL SERVICES BOARD

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OLC scheme rules – claims management complaints changes

Background / context

1. The OLC is required to establish and administer an ombudsman scheme which must then operate in accordance with scheme rules. The scheme rules put in place the framework describing how the Legal Ombudsman (LeO) will resolve disputes. The Act, at s133, is quite prescriptive in describing the matters that must be addressed by the scheme rules. These include who can complain to the OLC, what sorts of complaints the OLC will and will not look at, and the procedures for how the scheme will operate in practice. They also include rules about the case fee which those who are subject to a complaint to the Legal Ombudsman may be obliged to pay.
2. Before the OLC can make scheme rules, the Act at s155, states that the OLC must obtain:
 - a. the consent of the LSB; and
 - b. in the case of rules relating to ‘case fees’, the consent of the Lord Chancellor.
3. The Board consented to the original scheme rules in December 2009 and to a suite of amendments in September and December 2012.

Claims management jurisdiction

4. The OLC Board has now submitted a request for LSB consent to amendments reflecting the impending ‘switch-on’ of powers enabling the Legal Ombudsman to consider complaints from consumers of CMCs (Annex A). This is allowed for in the Legal Services Act 2007 and was declared as a policy intention by this administration in August 2012. Implementation was delayed due to complications around the funding mechanism as a consequence of the Claims Management Regulator being part of Government.
5. The amendments before the Board today are restricted to technical amendments to give effect to the extension of jurisdiction to complaints about CMCs and are shown in ~~strike-out~~ and **bold** in Annex B. No changes to the substance of the scheme rules are proposed nor is there any intention to apply different scheme rules to CMCs: the same rules of procedure, case fees, time limits etc will all apply to CMC complaints as to the prevailing legal jurisdiction.

Retrospective complaints

6. There remains one matter to be resolved by legislation which will necessitate the insertion of a date into the revised scheme rules. In so far as it is a matter of fact and for Parliament, the Board’s attention is drawn to it but no view is sought.

This concerns the time limit for retrospective complaints. As presently drafted, the Act would only allow LeO to consider complaints from consumers about matters that happened on or after the date s.161 is switched on ie 28 January 2015. There is common consensus that the intent of the Parliament was to allow for retrospective complaints about CMCs (as is the case for the main 'legal' jurisdiction of LeO) but that the Act's drafting is defective in this respect. The MoJ is therefore looking for a legislative solution to allow for retrospective complaints and, once found and in place, the relevant date will be made clear on the face of the scheme rules (at 1.1 and in section 4 as necessary).

Funding

7. Funding of the Legal Ombudsman's activities in relation to the CMC jurisdiction will be by way of grant-in-aid from MoJ to the OLC. This is recouped by MoJ through fees collected by the CMR and which are paid by the regulated claims management industry. These fees were the subject of consultation by the MoJ in May/June 2014 and will be set through a statutory instrument.
8. Attached at Annex C, the Board will find an impact assessment (for information only) which informed the MoJ's consultation on the Lord Chancellor's fee framework for CMCs. (Note: this is not to be confused with the case fee which forms part of the scheme rules). This also provides some additional background to support the commencement of the claims management jurisdiction.
9. In so far as the OLC will be able to reduce its overheads (and call on the levy) as consequence of taking on the CMC jurisdiction, respective Executives have agreed an initial methodology for calculating this (which will be reviewed in September 2015). This is attached at Annex D.

Matters relating to the Claims Management Regulator

10. The CMR is consulting on proposals for amendments to its complaint handling rules in anticipation of the switching on of s.161. These are designed to ensure that regulated CMCs cooperate with the Legal Ombudsman where necessary and put in place signposting rules. The LSB has discussed these rules with the CMR, who were keen that they were in line with LSB signposting requirements for approved regulators, but the LSb has no role in approving rules made by the CMR.

Proposal

11. The Board is invited to consent to the proposed revisions to the OLC scheme rules.

Table of annexes

Annex A – OLC submission cover note

Annex B – proposed scheme rules

Annex C – impact assessment

Annex D – proposed methodology for apportioning costs