

September 2012

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Scheme rules and case  
fee structure review  
cover paper

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**For the attention of the Legal Services Board**

The attached papers are submitted to the Legal Services Board, by the Office for Legal Complaints, for formal approval of revision of our scheme rules. For background please see introduction of the attached commentary paper (p1).

We believe that the submission meets your key criteria and we have addressed these in detail below.

In making our proposals for scheme rule changes we have followed a rigorous consultation process and have carefully considered the responses we received. Our proposals include changes to the rules governing:

- Prospective customers
- Successor firms
- The time period within which complaints can be referred to the Legal Ombudsman
- The financial limit for compensation
- Case fees payable by authorised persons

We would like to take the opportunity to thank executives of the LSB and the LSCP for their help and support in formulating the changes.

The Legal Services Board is asked to consent to the Scheme Rule changes as specified in this submission.

***Acceptance criteria one: an explanation of how the proposals have evolved in the light of the consultation process, covering in particular, the extent to which any input from the Consumer Panel has been taken into account***

## **Consultation process**

In March 2012, with the benefit of eighteen months operational experience of the Legal Ombudsman, the Office for Legal Complaints (OLC) reviewed the scheme rules and case fee structure. When the rules were first formulated, the OLC made a commitment to revisit them after this timeframe, and a review seemed timely in light of changes in the legal sector, the experience the Legal Ombudsman has gained to date, and potential changes to our jurisdiction. The OLC also wanted to ensure that the rules continued to promote and protect the interests of consumers in line with the regulatory objectives.

A formal consultation ran from 26 March until the 18 June 2012. The consultation document included draft changes to the rules and case fee structure and a consultation document explaining the reasoning behind the proposals and asking stakeholders for their comments. We also held three consultation meetings during the consultation period where we discussed the proposals with stakeholders. These meetings, as well as the written feedback we received, were instrumental in the development of the proposals.

The Legal Services Consumer Panel put together one of the 18 written responses we received from the consultation and sent representatives to two of the consultation meetings, they also fed into earlier discussions around Scheme Rules. The respondees were from a healthy mix of consumer groups, legal professionals, professional bodies and approved regulators. One of the consultation events was dedicated to consulting representatives from professional indemnity insurers.

The LSB asked in particular the extent to which any input from the Consumer Panel has been taken into account. The Consumer Panel is a very important partner organisation for the OLC. However, giving additional weight to the Consumer Panel as they are part of the family of bodies set up by the Legal Services Act 2007 does not seem to fit with

the nature of our consultation process, which was to listen to everyone who took the time and trouble to respond to the consultation. We are very happy though to assure the LSB that we gave due weight to all responses, including that of the Consumer Panel.

More detail on how we arrived at each of the proposals is given within the body of the commentary text. We originally consulted on the suitability of the £1 million income/asset limit for charities and trusts and whether third party complaints should be included in our scheme. The OLC have decided not to recommend any changes to the rules in these areas, at this time. This is explained in more detail in section 3 of the commentary (p3).

***Acceptance criteria two: an explanation of how the scheme rules relate to best practice in the Ombudsman field, and, as far as possible, contribute to achievement of the Regulatory Objectives***

When considering whether the proposals should be adopted we have taken into account how they fit with the regulatory objectives described in Section 1 of the Legal Services Act 2007 and the Ombudsman Association (OA) principles for good complaints handling<sup>1</sup>. Section 116 of the Act asks that the OLC have regard to good practice in other Ombudsman schemes and are mindful of the regulatory objectives. More detail on this is supplied in section 2 of the commentary (p1).

***A finalised Impact Assessment on the rules particularly as regards case fees that meets MoJ requirements***

A full impact assessment has been completed for the changes to the scheme rules. This highlights two areas where there will be an impact on the business. Firstly the removal of the free cases means that there will be a significant increase in the income from case fees which will lead to a corresponding decrease (estimated at £1.4mn) in the amount collected by the levy. In addition we expect that the increase in the time limits (to six years and three years) will lead to a 10% increase in the number of complaints that the Legal Ombudsman investigates (this is based on an analysis of the cases that have fallen outside our time limits over the first

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<sup>1</sup> <http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

18 months). This is expected to lead to a decrease in our unit cost of approximately £100 (from £2,000 to £1,900).

We have considered the extent to which the changes will impact on the profession and overall we do not think expect that there will be any significant negative impacts. Firstly we do not think that the changes will directly impact on indemnity insurance premiums: firms are already required to have run-off cover in place for 6 years and while our financial limits are increasing we still expect that high levels of financial compensation will be the minority of cases. Finally in practice we have not found any evidence to support the initial concerns that small firms or those operating in contentious areas are receiving disproportionately more complaints. At the same time we are waiving the case fees in a much higher percentage of cases than expected, and therefore if firms continue to follow a good first tier complaints policy they will not be charged a fee.

In addition it should be highlighted that there is a benefit to consumers who will have greater access to redress for as a result of the changes in the time limits. There is also the potential that the removal of the two free cases will further encourage firms to adopt a good complaints handling procedure which meets the needs of consumers.

It is not possible to demonstrate that we have fully met the MOJ criteria at this stage as they require your approval before they accept and submit our rules for the laying of orders. What we can say is that we are fulfilling their request to complete the three specific impact assessments (on case fees, financial limits and prospective consumers) needed for this process and are in negotiations as to any other process stages they feel this project needs. Adam Sampson and Elizabeth France will provide a verbal update of how we have met MOJ requirements at your Board meeting.