

Annex 3

Scheme rules

1 Introduction and definitions

Contents

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

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

1.1

- a) These scheme rules are about complaints made from 6 October 2010 to authorised persons including legal practitioners and others, authorised in England and Wales.
- b) They explain which complaints are covered by the Legal Ombudsman and how it will deal with them.
- c) This version includes amendments that apply to complaints referred to the Legal Ombudsman from 1 January 2013 (chapters 1 to 5) and from 1 April 2013 (chapter 6).**

1.2 Parliament, in the Act:

- created the Legal Services Board (to oversee Approved Regulators) and the Office for Legal Complaints (to establish the Legal Ombudsman);
- gave the Lord Chancellor power to make orders, including orders modifying who would be able to bring a complaint to the Legal Ombudsman;
- gave the Legal Services Board power to set requirements for the rules of Approved Regulators about how authorised persons handle complaints¹ and cooperate with an ombudsman²; and
- gave the Office for Legal Complaints power to make rules affecting which complaints can be handled by the Legal Ombudsman and how those complaints will be handled.

1.3 These scheme rules include:

- a summary of relevant provisions in the Act, as modified by an order made by the Lord Chancellor (though it is the Act and the order themselves that count);
- [a summary of requirements on complaint-handling made by the Legal Services Board under the powers given to it by the Act]; and

- rules made by the Office for Legal Complaints under the powers given to it by the Act.

The endnotes identify the section of the Act that is being summarised, or under which an order, requirement or rule has been made; and which are the rules made by the Office of Legal Complaints for the Legal Ombudsman.

1.4 This book also includes some general guidance. There are six chapters –

- 1: Introduction and definitions:
 - contents of this book;
 - meaning of words that are underlined.
- 2: Who can complain about what:
 - who can complain;
 - what they can complain about.
- 3: What authorised persons must do:
 - dealing with complaints themselves;
 - cooperating with the Legal Ombudsman.
- 4: When complaints can be referred to the Legal Ombudsman:
 - after complaining to the authorised person;
 - time limit from act/omission;
 - ombudsman extending time limits.
- 5: how the Legal Ombudsman deals with complaints:
 - first contact;
 - grounds for dismissal;
 - referring a complaint to court;
 - referring to another complaints scheme;
 - related complaints;
 - informal resolution and investigation;
 - evidence;
 - procedural time limits;
 - hearings;
 - determinations and awards by an ombudsman;
 - acceptance/rejection of determinations;
 - publication;
 - enforcement.
- 6: case fees payable by authorised persons.

Meaning of words that are underlined

1.5 The Act means the Legal Services Act 2007.

1.6 Complaint means an oral or written expression of dissatisfaction which:

- a) alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment; and
- b) is covered by chapter two (who can complain about what).³

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

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

1.7 Authorised person means:

- a) someone authorised, in England and Wales, to carry out a reserved legal activity⁴ at the time of the relevant act/omission or covered under section 129 of the Act⁵, including:
- **alternative business structures (licensed under part 5 of the Act);**
 - barristers;
 - ~~costs lawyers law costs draftsmen~~;
 - **chartered** legal executives;
 - licensed conveyancers;
 - notaries;
 - patent attorneys;
 - probate practitioners;
 - registered European lawyers;
 - solicitors;
 - trade mark attorneys; and
- b) (under section 131 of the Act) includes:
- a business that is responsible for an act/omission of an employee; and
 - a partnership that is responsible for an act/omission of a partner.⁶

- 1.8 Approved Regulator means a regulator approved under schedule 4 of the Act, including:
- **the Association of Chartered Certified Accountants (for reserved probate activities)**
 - the Association of ~~Costs Lawyers Law Costs Draftsmen~~, **through the Costs Lawyer Standards Board**;
 - the Bar Council, **through the Bar Standards Board** (for barristers);
 - the Chartered Institute of Patent Attorneys, **through the Intellectual Property Regulation Board**;
 - the Council for Licensed Conveyancers;
 - **the Institute of Chartered Accountants in Scotland (for reserved probate activities)**
 - the **Chartered** Institute of Legal Executives;
 - the Institute of Trade Mark Attorneys, **through the Intellectual Property Regulation Board**;
 - the Law Society (~~for solicitors~~), **through the Solicitors Regulation Authority**;
 - the Master of the Faculties (for notaries)⁷; and
 - **the Legal Services Board (but only for any alternative business structure it licenses directly).**

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

- 1.10 Ombudsman means:

- a) any ombudsman from the Legal Ombudsman;⁷ and
- b) any Legal Ombudsman staff member to whom an ombudsman has delegated the relevant functions (but an ombudsman cannot delegate the functions of determining a complaint or of dismissing or discontinuing it for any of the reasons under paragraph 5.7).⁸

- 1.11 Party includes:
- a) a complainant (covered by chapter two);
 - b) an authorised person (covered by chapter two) against whom the complaint is made;
 - c) an authorised person (covered by chapter five) whom an ombudsman treats as a joint respondent to a complaint.⁹
- 1.12 Public body means any government department, local authority or any other body constituted for the purposes of the public services, local government or the administration of justice.¹⁰
- 1.13 Reserved legal activity (as defined in schedule 2 of the Act) means:
- a) exercising a right of audience;
 - b) conducting litigation;
 - c) reserved instrument activities;
 - d) probate activities;
 - e) notarial activities; or
 - f) administration of oaths.

2 Who can complain about what

Who can complain

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

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

- 2.1 A complainant must be one of the following:¹
- 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;²
 - c) a charity that had an annual income net of tax of less than £1 million when it referred the complaint to the authorised person;
 - d) a club/association/organisation, the affairs of which are managed by its members/a committee/a committee of its members, that had an annual income net of tax of less than £1 million when it referred the complaint to the authorised person;
 - e) a trustee of a trust that had an asset value of less than £1 million when it referred the complaint to the authorised person; or
 - f) a personal representative or beneficiary of the estate of a person who, before he/she died, had not referred the complaint to the Legal Ombudsman.

For (e) and (f) the condition is that the services to which the complaint relates were provided by the respondent to a person –

- a) who has subsequently died; and
 - b) who had not by his or her death referred the complaint to the ombudsman scheme.
- 2.2 If a complainant who has referred a complaint to the Legal Ombudsman dies or is otherwise unable to act, the complaint can be continued by:¹¹
- a) anyone authorised by law
(for example:
 - the executor of a complainant who has died; or
 - someone with a lasting power of attorney from a complainant who is incapable); or
 - b) the residuary beneficiaries of the estate of a complainant who has died.¹²

- 2.3 A complainant must not have been, at the time of the act/omission to which the complaint relates:

¹ 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.

² 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.

- a) a public body (or acting for a public body) in relation to the services complained about; or
- b) an authorised person who procured the services complained about on behalf of someone else.^{13 14}

2.4 For example, where the complaint is about a barrister who was instructed by a solicitor on behalf of a consumer, the consumer can complain to the ombudsman but the solicitor cannot.

2.5 A complainant can authorise someone else in writing (including an authorised person) to act for the complainant in pursuing a complaint, but the Legal Ombudsman remains free to contact the complainant direct where it considers that appropriate.¹⁵

What they can complain about

2.6 The complaint must relate to an act/omission by someone who was an authorised person at that time¹⁶ but:

- a) an act/omission by an employee is usually treated also as an act/omission by their employer, whether or not the employer knew or approved;¹⁷ and
- b) an act/omission by a partner is usually treated also as an act/omission by the partnership, unless the complainant knew (at the time of the act/omission) that the partner had no authority to act for the partnership.¹⁸

2.7 The act/omission does not have to:

- a) relate to a reserved legal activity¹⁹; nor
- b) be after the Act came into force²⁰ (but see the time limits in chapter four).

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

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

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

- a) **provided** to the complainant; or
- b) **provided** to another authorised person who procured them on behalf of the complainant; or
- c) **provided** to (or as) a personal representative/trustee where the complainant is a beneficiary of the estate/trust.²¹; **or**
- d) **offered, or refused to provide, to the complainant.**²²

2.9 A complaint is not affected by any change in the membership of a partnership or other unincorporated body.²³

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

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

2.10 Where authorised person A ceases to exist and B succeeds to the whole (or substantially the whole) of A's business:

- a) acts/omissions by A become acts/omissions of B,²⁴ and
- b) complaints already outstanding against A become complaints against B.²⁵

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

3 What authorised persons must do

Dealing with complaints themselves

3.1 Authorised persons including legal practitioners and others must comply with their Approved Regulator's rules on handling complaints, including any requirements specified by the Legal Services Board.²⁶

3.2 The Legal Services Board has required that:

- a) authorised persons tell all clients in writing at the time of engagement, or existing clients at the next appropriate opportunity that they can complain, how and to whom this can be done;
- b) this must include that they can complain to the Legal Ombudsman at the end of the authorised person's complaints process, the timeframe for doing so and full details of how to contact the Legal Ombudsman; and
- c) authorised persons tell all clients in writing at the end of the authorised person's complaints process that they can complain to the Legal Ombudsman, the timeframe for doing so and full details of how to contact the Legal Ombudsman.

3.3 The Legal Services Board expects that regulation of complaint-handling procedures by Approved Regulators will:

- a) give consumers confidence that:
 - effective safeguards will be provided; and
 - complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary;
- b) provide processes that are:
 - convenient and easy to use (in particular for those that are vulnerable or have disabilities);
 - transparent, clear, well-publicised, free and allow complaints to be made by any reasonable means;
 - prompt and fair, with decisions based on sufficient investigation of the circumstances, and (where appropriate) offer a suitable remedy.

Cooperating with the Legal Ombudsman

3.4 Authorised persons must comply with their Approved Regulator's rules on cooperating with an ombudsman, including any requirements specified by the Legal Services Board.²⁷

4 When complaints can be referred to the Legal Ombudsman

After complaining to the authorised person

- 4.1 Ordinarily, a complainant cannot use the Legal Ombudsman unless the complainant has first used the authorised person's complaints procedure (referred to in chapter three).²⁸

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

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

Time limit from authorised person's final response

- 4.2 But a complainant can use the Legal Ombudsman if:²⁹
- a) the complaint has not been resolved to the complainant's satisfaction within eight weeks of being made to the authorised person; or
 - b) an ombudsman considers that there are exceptional reasons to consider the complaint sooner, or without it having been made first to the authorised person; or
 - c) where an ombudsman considers that in-house resolution is not possible due to irretrievable breakdown in the relationship between an authorised person and the person making the complaint.
- 4.3 For example, an ombudsman may decide that the Legal Ombudsman should consider the complaint where the authorised person has refused to consider it, or where delay would harm the complainant.

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

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

- 4.4 a) This time limit applies only if the authorised person's written response to a complaint included prominently:
- an explanation that the Legal Ombudsman was available if the complainant remained dissatisfied;
 - full contact details for the Legal Ombudsman; and
 - a warning that the complaint must be referred to the Legal Ombudsman within six months of the date of the written response;
- b) If (but only if) the conditions in (a) are satisfied, a complainant must ordinarily refer the complaint to the Legal Ombudsman within six months of the date of that written response.

Time limit from act/omission

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

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

4.5 Ordinarily:

- a) the act or omission must have been after 5 October 2010; and
- b) **the a** complainant must ~~also~~ refer **the a** complaint to the Legal Ombudsman **no later than:**
 - **six years** ~~one-year~~ from the act/omission; or
 - **three years** ~~one-year~~ from when the complainant should reasonably have known there was cause for complaint ~~without taking advice from a third party.~~³⁰

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

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

4.6 In relation to 4.5(b):

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

Ombudsman extending time limits

4.7 If an ombudsman considers that there are exceptional circumstances, he/she may extend any of these time limits to the extent that he/she considers fair.³¹

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

Add the text shown below in bold –

4.8 For example an Ombudsman:

- a) might extend a time limit if the complainant was prevented from meeting the time limit as a result of serious illness; **and**

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

5.7 An ombudsman may (but does not have to) dismiss or discontinue all or part of a complaint if, in his/her opinion: ... (d) the complainant has previously complained about the same issue to the Legal Ombudsman or a predecessor complaints scheme (unless the ombudsman considers that material new evidence, likely to affect the outcome, only became available to the complainant afterwards); or ...

b) is likely to extend a time limit where the time limit had not expired when the complainant raised the complaint with the authorised person.

5 How the Legal Ombudsman will deal with complaints³²

- 5.1 The Legal Ombudsman may require a complainant to complete its complaint form.³³
- 5.2 In the case of a partnership (or former partnership), it is sufficient for the Legal Ombudsman to communicate with any partner (or former partner).³⁴

First contact

- 5.3 Unless:
- a) the authorised person has already had eight weeks to consider the complaint; or
 - b) the authorised person has already issued a written response to the complaint; or
 - c) an ombudsman considers that there are exceptional reasons;
- the Legal Ombudsman will:
- a) refer the complaint to the authorised person;
 - b) notify the complainant; and
 - c) explain why to both of them.³⁵
- 5.4 If the authorised person claims that all or part of the complaint:
- a) is not covered by the Legal Ombudsman under chapter two; or
 - b) is out-of-time under chapter four; or
 - c) should be dismissed under paragraph 5.7 ;
- an ombudsman will give all parties an opportunity to make representations before deciding.³⁶
- 5.5 Otherwise, if an ombudsman considers that all or part of the complaint:
- a) may not be covered by the Legal Ombudsman under chapter two; or
 - b) may be out-of-time under chapter four; or
 - c) should be dismissed under paragraph 5.7 ;
- the ombudsman will give the complainant an opportunity to make representations before deciding.³⁷
- 5.6 The ombudsman will then give the complainant and the authorised person his/her decision and the reasons for it.³⁸

Grounds for dismissing or discontinuing a complaint³⁹

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

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

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

- a) it does not have any reasonable prospect of success, or is frivolous or vexatious; or
- b) the complainant has not suffered (and is unlikely to suffer) financial loss, distress, inconvenience or other detriment; or
- c) the authorised person has already offered fair and reasonable redress in relation to the circumstances alleged by the complainant and the offer is still open for acceptance; or
- d) the complainant has previously complained about the same issue to the Legal Ombudsman or a predecessor complaints scheme (unless the ombudsman considers that material new evidence, likely to affect the outcome, only became available to the complainant afterwards); or
- e) a comparable independent complaints (or costs-assessment) scheme or a court has already dealt with the same issue; or
- f) a comparable independent complaints (or costs-assessment) scheme or a court is dealing with the same issue, unless those proceedings are first stayed (by the agreement of all parties or by a court order) so that the Legal Ombudsman can deal with the issue; or
- g) it would be more suitable for the issue to be dealt with by a court, by arbitration or by another complaints (or costs-assessment) scheme;⁴⁰ or
- h) the issue concerns an authorised person's decision when exercising a discretion under a will or trust; or
- i) the issue concerns an authorised person's failure to consult a beneficiary before exercising a discretion under a will or trust, where there is no legal obligation to consult;
- j) the issue involves someone else who has not complained and the ombudsman considers that it would not be appropriate to deal with the issue without their consent; or
- k) it is not practicable to investigate the issue fairly because of the time which has elapsed since the act/omission; or
- l) the issue concerns an act/omission outside England and Wales and the circumstances do not have a sufficient connection with England and Wales;⁴¹
- m) the complaint is about an authorised practitioner's refusal to provide a service and the complainant has not produced evidence that the refusal was for other than legitimate or reasonable reasons; or**
- n) there are other compelling reasons why it is inappropriate for the issue to be dealt with by the Legal Ombudsman.

Referring a complaint to court

- 5.8 Exceptionally (at the instance of an ombudsman) where the ombudsman considers that:
- a) resolution of a particular legal question is necessary in order to resolve a dispute; but
 - b) it is not more suitable for the whole dispute to be dealt with by a court;
- the ombudsman may (but does not have to) refer that legal question to court.⁴²
- 5.9 Exceptionally, (at the instance of an authorised person) where:

- a) the authorised person requests, and also undertakes to pay the complainant's legal costs and disbursements on terms the ombudsman considers appropriate; and
- b) an ombudsman considers that the whole dispute would be more suitably dealt with by a court as a test case between the complainant and the authorised person;

the ombudsman may (but does not have to) dismiss the complaint, so that a court may consider it as a test case.⁴³

- 5.10 By way of example only, in relation to a test case (at the instance of an authorised person) the ombudsman might require an undertaking in favour of the complainant that, if the complainant or the authorised person starts court proceedings against the other in respect of the complaint in any court in England and Wales within six months of the complaint being dismissed, the authorised person will:
- a) pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis);
 - b) pay these in connection with the proceedings at first instance and also any subsequent appeal made by the authorised person; and
 - c) make interim payments on account if and to the extent that it appears reasonable to do so.
- 5.11 Factors the ombudsman may take into account in considering whether to refer a legal question to court, or to dismiss a complaint so that it may be the subject of a test case in court, include (but are not limited to):
- a) any representations made by the authorised person or the complainant;
 - b) the stage already reached in consideration of the dispute.
 - c) how far the legal question is central to the outcome of the dispute;
 - d) how important or novel the legal question is in the context of the dispute;
 - e) the remedies that a court could impose;
 - f) the amount at stake; and
 - g) the significance for the authorised person (or similar authorised persons) or their clients.⁴⁴

Referring to another complaints scheme

5.12 An ombudsman may refer a complaint to another complaints scheme if:

- a) he/she considers it appropriate; and
- b) the complainant agrees.⁴⁵

5.13 If an ombudsman refers a complaint to another complaints scheme, the ombudsman will give the complainant and the authorised person reasons for the referral.⁴⁶

Arrangements for assistance

- 5.14 The Legal Ombudsman may make such arrangements as it considers appropriate (which may include paying fees) for Approved Regulators or others to provide assistance to an ombudsman in the investigation or consideration of a complaint.⁴⁷

Related complaints

- 5.15 The Legal Ombudsman may:
- tell a complainant that a related complaint could have been brought against some other authorised person;⁴⁸ or
 - treat someone else who was an authorised person at the time of the act/omission as a joint respondent to the complaint.⁴⁹
- 5.16 Where two or more complaints against different authorised persons relate to connected circumstances:
- the Legal Ombudsman may investigate them together, but an ombudsman will make separate determinations;⁵⁰ and
 - the determinations may require the authorised persons to contribute towards the overall redress in the proportions the ombudsman considers appropriate.⁵¹

Informal resolution

- 5.17 The Legal Ombudsman will try to resolve complaints at the earliest possible stage, by whatever means it considers appropriate – including informal resolution.⁵²
- 5.18 If a complaint is settled, abandoned or withdrawn, an ombudsman will tell both the complainant and the authorised person.⁵³

Investigation

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

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

- 5.19 If the Legal Ombudsman considers that an investigation is necessary, it will:
- ensure both parties have been given an opportunity of making representations;
 - send the parties a **recommendation report** ~~provisional decision~~ (which the Act calls an ‘assessment’), with a time limit for response; and
 - if any party indicates disagreement within that time limit, arrange for an ombudsman to issue a final decision (which the Act calls a ‘determination’).⁵⁴
- 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~~.⁵⁵

Evidence

- 5.21 An apology will not of itself be treated as an admission of liability.⁵⁶

- 5.22 An ombudsman cannot require anyone to produce any information or document which that person could not be compelled to produce in High Court civil proceedings, and the following provisions are subject to this.⁵⁷
- 5.23 An ombudsman may give directions on:
- a) the issues on which evidence is required; and
 - b) the way in which evidence should be given.⁵⁸
- 5.24 An ombudsman may:
- a) take into account evidence from Approved Regulators or the Legal Services Board;
 - b) take into account evidence from other third parties;
 - c) treat any finding of fact in disciplinary proceedings against the authorised person as conclusive;
 - d) include/exclude evidence that would be inadmissible/admissible in court;
 - e) accept information in confidence where he/she considers that is both necessary and fair;⁵⁹
 - f) make a determination on the basis of what has been supplied;
 - g) draw inferences from any party's failure to provide information requested; and
 - h) dismiss a complaint if the complainant fails to provide information requested.⁶⁰
- 5.25 An ombudsman may require a party to attend to give evidence and produce documents at a time and place specified by the ombudsman.⁶¹
- 5.26 An ombudsman may require a party to produce any information or document that the ombudsman considers necessary for the determination of a complaint.⁶²
- 5.27 An ombudsman may:
- a) specify the time within which this must be done;
 - b) specify the manner or form in which the information is to be provided; and
 - c) require the person producing the document to explain it.⁶³
- 5.28 If the document is not produced, an ombudsman may require the relevant party to say, to the best of his/her knowledge and belief, where the document is.⁶⁴
- 5.29 If an authorised person fails to comply with a requirement to produce information or a document, the ombudsman:
- a) will tell the relevant Approved Regulator;
 - b) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - c) may report any failure by that Approved Regulator to the Legal Services Board.⁶⁵
- 5.30 Subject to this, if any party fails to comply with a requirement to produce information or a document, the ombudsman may enforce the requirement through the High Court.⁶⁶

Procedural time limits

- 5.31 An ombudsman may fix (and may extend) a time limit for any stage of the investigation, consideration and determination of a complaint.⁶⁷
- 5.32 If any party fails to comply with such a time limit, the ombudsman may:
- a) proceed with the investigation, consideration and determination;
 - b) draw inferences from the failure;
 - c) where the failure is by the complainant, dismiss the complaint; or
 - d) where the failure is by the authorised person, include compensation for any inconvenience caused to the complainant in any award.⁶⁸

Hearings

- 5.33 An ombudsman will only hold a hearing where he/she considers that the complaint cannot be fairly determined without one. In deciding whether (and how) to hold a hearing, the ombudsman will take account of article 6 in the European Convention on Human Rights.⁶⁹
- 5.34 A party who wishes to request a hearing must do so in writing, setting out:
- a) the issues he/she wishes to raise; and
 - b) (if appropriate) any reasons why the hearing should be in private;
- so the ombudsman may consider whether:
- a) the issues are material;
 - b) a hearing should take place; and
 - c) any hearing should be in public or private.⁷⁰
- 5.35 A hearing may be held by any means the ombudsman considers appropriate in the circumstances, including (for example) by phone.⁷¹

Determinations and awards by an ombudsman

- 5.36 An ombudsman will determine a complaint by reference to what is, in his/her opinion, fair and reasonable in all the circumstances of the case.⁷²
- 5.37 In determining what is fair and reasonable, the ombudsman will take into account (but is not bound by):
- a) what decision a court might make;
 - b) the relevant Approved Regulator's rules of conduct at the time of the act/omission; and
 - c) what the ombudsman considers to have been good practice at the time of the act/omission.⁷³
- 5.38 The ombudsman's determination may contain one or more of the following directions to the authorised person in favour of the complainant:⁷⁴
- a) to apologise;
 - b) to pay compensation of a specified amount for loss suffered;

- c) to pay interest on that compensation from a specified time;⁷⁵
- d) to pay compensation of a specified amount for inconvenience/distress caused;
- e) to ensure (and pay for) putting right any specified error, omission or other deficiency;
- f) to take (and pay for) any specified action in the interests of the complainant;
- g) to pay a specified amount for costs the complainant incurred in pursuing the complaint;^{76 77}
- h) to limit fees to a specified amount.

5.39 As a complainant does not usually need assistance to pursue a complaint with the Legal Ombudsman, awards of costs are likely to be rare.

5.40 If the determination contains a direction to limit fees to a specified amount, it may also require the authorised person to ensure that:⁷⁸

- a) all or part of any amount paid is refunded;
- b) interest is paid on that refund from a specified time;⁷⁹
- c) all or part of the fees are remitted;
- d) the right to recover the fees is waived, wholly or to a specified extent; or
- e) any combination of these.

5.41 An ombudsman will set (and may extend) a time limit for the authorised person to comply with a determination (and may set different time limits for the authorised person to comply with different parts of a determination).⁸⁰

5.42 Any interest payable under the determination will be at the rate:

- a) specified in the determination; or
- b) (if not specified) at the rate payable on High Court judgment debts.⁸¹

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

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

5.43 There is a limit of **£50,000** ~~£30,000~~ on the total value that can be awarded by the determination of a complaint in respect of:⁸²

- a) compensation for loss suffered;
- b) compensation for inconvenience/distress caused;
- c) the reasonable cost of putting right any error, omission or other deficiency; and
- d) the reasonable cost of any specified action in the interests of the complainant.

5.44 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.⁸³

5.45 That limit does not apply to:

- a) an apology;

- b) interest on specified compensation for loss suffered;⁸⁴
- c) a specified amount for costs the complainant incurred in pursuing the complaint;
- d) limiting fees to a specified amount; or
- e) interest on fees to be refunded.

Acceptance/rejection of determinations

- 5.46 The determination will:⁸⁵
- a) be in writing, signed by the ombudsman;
 - b) give reasons for the determination; and
 - c) require the complainant to notify the ombudsman, before a specified time, whether the complainant accepts or rejects the determination.
- 5.47 The ombudsman may require any acceptance or rejection to be in writing, but will have regard to any reason why the complainant may be unable to use writing.⁸⁶
- 5.48 The ombudsman will send copies of the determination to the parties and the relevant Approved Regulator.⁸⁷
- 5.49 If the complainant tells the ombudsman that he/she accepts the determination, it is binding on the parties and final.⁸⁸
- 5.50 Once a determination becomes binding and final, neither party may start or continue legal proceedings in respect of the subject matter of the complaint.
- 5.51 If the complainant does not tell the ombudsman (before the specified time) that he/she accepts the determination, it is treated as rejected unless:
- a) the complainant tells the ombudsman (after the specified time) that he/she accepts the determination; and
 - b) the complainant has not previously told the ombudsman that he/she rejects the determination; and
 - c) the ombudsman is satisfied that there are sufficient reasons why the complainant did not respond in time.⁸⁹
- 5.52 If the complainant did not respond before the specified time, the ombudsman will notify the parties and the relevant Approved Regulator of the outcome, describing the provisions concerning late acceptance that are set out above.⁹⁰
- 5.53 If the complainant accepts or rejects the determination, the ombudsman will notify the parties and the relevant Approved Regulator of the outcome.⁹¹
- 5.54 If a determination is rejected (or treated as rejected) by the complainant, it has no effect on the legal rights of any party.

Publication

- 5.55 The Legal Ombudsman may publish a report of its investigation, consideration and determination of a complaint. The report will not name (or otherwise identify) the complainant, unless the complainant agrees.⁹²

Enforcement

- 5.56 A binding and final determination can be enforced through the High Court or a county court by the complainant.⁹³
- 5.57 A binding and final determination can also be enforced through the High Court or a county court by an ombudsman, if:
- a) the complainant agrees; and
 - b) the ombudsman considers it appropriate in all the circumstances.⁹⁴
- 5.58 A court which makes an enforcement order must tell the Legal Ombudsman, and then an ombudsman:
- a) will tell the relevant Approved Regulator;
 - b) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - c) may report any failure by that Approved Regulator to the Legal Services Board.⁹⁵

Misconduct

- 5.59 If (at any stage after the Legal Ombudsman receives a complaint) an ombudsman considers that the complaint discloses any alleged misconduct about which the relevant Approved Regulator should consider action against the authorised person, the ombudsman:
- a) will tell the relevant Approved Regulator;
 - b) will tell the complainant that the Approved Regulator has been told;
 - c) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - d) may report any failure by that Approved Regulator to the Legal Services Board.⁹⁶
- 5.60 If an ombudsman considers that an authorised person has failed to cooperate with the Legal Ombudsman, the ombudsman:
- a) will tell the relevant Approved Regulator;
 - b) may require that Approved Regulator to tell the ombudsman what action it will take; and
 - c) may report any failure by that Approved Regulator to the Legal Services Board.⁹⁷
- 5.61 An ombudsman, the Legal Ombudsman and members of its staff will disclose to a Approved Regulator any information that it requests in order to investigate alleged misconduct or to fulfil its regulatory functions, so far as an ombudsman considers that the information:
- a) is reasonably required by the Approved Regulator; and
 - b) has regard to any right of privacy of any complainant or third party involved (including rights of confidentiality or rights under the Data Protection Act 1998 or the Human Rights Act 1998).⁹⁸

6 Case fees payable by authorised persons

6.1 A complaint is potentially chargeable unless:

- a) it is out of jurisdiction; or
- b) it is dismissed or discontinued under paragraph 5.7.⁹⁹

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

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

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

- a) ~~a business/partnership that is responsible for any act/omission of any employee/partner; or~~
- b) ~~any individual authorised person for whom no business/partnership is responsible.~~¹⁰⁰

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.¹⁰¹

6.4 The case fee is £400 for all chargeable complaints.¹⁰²

6.5 The remaining costs of running the Legal Ombudsman are covered by a levy on Approved Regulators by the Legal Services Board.¹⁰³

6.6 There is no charge to complainants.

End notes

- ¹ Section 112.
- ² Section 145.
- ³ To distinguish complaints about service from those which relate solely to professional misconduct.
- ⁴ Sections 12 and 129.
- ⁵ This section covers the equivalent practitioners before the commencement of the Act.
- ⁶ [OLC rule] Sections 133(8) and 147(7).
- ⁷ Section 122(5).
- ⁸ Section 134.
- ⁹ [OLC rule]. Where it is apparent that another legal practitioner was also involved. Section 133(3)(c).
- ¹⁰ Section 128(7).
- ¹¹ [OLC rule] Section 132(4).
- ¹² To save their having to take out a grant of representation if one is not otherwise required.
- ¹³ Section 128(5).
- ¹⁴ The Lord Chancellor can **exclude** others under section 130.
- ¹⁵ [OLC rule] Section 133(1).
- ¹⁶ Section 128(1) part.
- ¹⁷ Section 131(1).
- ¹⁸ Section 131(2) and (3).
- ¹⁹ Section 128(1) part.
- ²⁰ Section 125(2).
- ²¹ Section 128(4).
- ²² The Lord Chancellor can **include** others under section 130.
- ²³ Section 132(1).
- ²⁴ [OLC rule] Section 132(2).
- ²⁵ [OLC rule] Section 132(3).
- ²⁶ Section 112(2)
- ²⁷ Section 145.
- ²⁸ Section 126(1).
- ²⁹ [OLC rule] Section 126(3).
- ³⁰ [OLC rule].
- ³¹ [OLC rule] Section 133(2)(b).
- ³² Section 133(1).
- ³³ [OLC rule] This gives the Ombudsman service the right to require a complaint form, but does not oblige it to do so.
- ³⁴ [OLC rule] To make it clear that the Ombudsman service does not have to communicate with each partner individually.
- ³⁵ [OLC rule] Section 135.
- ³⁶ [OLC rule] Section 135.
- ³⁷ [OLC rule] Section 135.
- ³⁸ Section 135.
- ³⁹ [OLC rule] Section 133(3)(a).
- ⁴⁰ Where a complaint is about professional negligence or judgement, the OLC will consider (on a case-by-case basis) whether the issue is one that the OLC can deal with or whether the issue would be better dealt with in court.
- ⁴¹ [OLC rule] For example, a French client wishes to complain about advice on French law given in France by a French lawyer who is also qualified in England and Wales.

42 [OLC rule].

43 Paragraph 5.9 only applies if the legal practitioner so requests. The idea is that, in suitable cases, the legal practitioner can go to court, provided the complainant's legal costs are met. In other circumstances, an Ombudsman cannot force a legal practitioner to pay the complainant's costs of going to court.

44 [OLC rule].

45 [OLC rule] Section 133(3)(b).

46 [OLC rule] Section 135.

47 Schedule 15, paragraph 18.

48 Where it is apparent that the complaint was made against the wrong legal practitioner.

49 [OLC rule] Where it is apparent that another legal practitioner was also involved. Section 133(3)(c).

50 There need to be separate determinations because of the £30,000 limit.

51 [OLC rule].

52 [OLC rule].

53 Section 135.

54 [OLC rule].

55 [OLC rule].

56 [OLC rule] To ensure legal practitioners are not discouraged from saying 'sorry'.

57 Sections 133(5) and 147(6).

58 [OLC rule].

59 Including, but not limited to, information which is "restricted information" under section 151.

60 [OLC rule].

61 [OLC rule] Section 133(3)(e).

62 Section 147(1) and (3).

63 Section 147(2) and (4).

64 Section 147(5).

65 Section 148.

66 Section 149.

67 [OLC rule].

68 [OLC rule].

69 [OLC rule].

70 [OLC rule].

71 [OLC rule]. The OLC has not exercised the power in section 133(3)(g) enabling it to make a rule about the OLC awarding expenses in connection with attending a hearing.

72 Section 137(1)

73 [OLC rule] Section 133(3)(f).

74 Section 137(2).

75 Section 137(4)(b).

76 [(g) is OLC rule] Section 133(3)(h).

77 The OLC has not exercised the power under section 133(3)(i) to make a rule requiring any party who has behaved unreasonably to pay costs to the Ombudsman service.

78 Section 137(2)(b)(ii).

79 Section 137(4)(b).

80 [OLC rule].

81 [OLC rule] Section 137(4).

82 Section 138(1) and (2). The Lord Chancellor can increase the limit under section 139.

83 [OLC rule].

84 Section 138(3).

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- ⁸⁵ Section 140(1) and (2).
⁸⁶ [OLC rule].
⁸⁷ Section 140(3).
⁸⁸ Section 140(4).
⁸⁹ [(c) is OLC rule] Section 140(5) and (6).
⁹⁰ Section 140(7) and (8).
⁹¹ Section 140(7).
⁹² Section 150.
⁹³ Section 141.
⁹⁴ [OLC rule] Section 141(5).
⁹⁵ Section 142.
⁹⁶ Section 143.
⁹⁷ Section 146.
⁹⁸ [OLC rule] Section 144(1).
⁹⁹ [OLC rule].
¹⁰⁰ [OLC rule].
¹⁰¹ [OLC rule].
¹⁰² [OLC rule].
¹⁰³ Sections 173 and 174.