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## Impact Assessment

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### Section A: Overview

**Name of the function, policy or strategy to be assessed:** Scheme rules and case fee structure review

**Person completing the assessment:** Alexandra Moore

**Date of assessment:** 9/8/2012

#### 1. Aims, objectives and purpose of the function, policy or strategy

The Legal Ombudsman has recently completed an external consultation for its Scheme Rules. Following this the board of the Office for Legal Complaints has decided to recommend the following key changes to be made to the rules.

##### Chapter 2.

- To allow complaints from prospective customers.
- To give the ombudsman discretion to consider whether complaints against successor firms are justified.

The aim is:

- To promote the regulatory objectives of improving access to justice and protecting and promoting the interests of consumers. The proposed amendment will allow those who have been discriminated against and unreasonably refused a service by a authorised person to obtain redress for the lack of service. It will also allow those who are persistently offered unwanted services by a authorised person to obtain redress.
- To harmonise the Legal Ombudsman with other ombudsman schemes in preparation for Alternative Business Structures (ABS).

- To prepare for the introduction of Complaints Management Companies (CMC's) to LeO's jurisdiction.

#### Chapter 4.

- To extend the time limit within which consumers can complain to LeO to 6 years from the act or omission or 3 years since the date of awareness.  
(To implement this no complaints will be accepted about events that took place before 6 October 2010, or where the complainant's date of knowledge is before 6 October 2010.)

#### Chapter 5.

- To increase the financial limit for compensation from £30,000 to £50,000.

The aim is:

- To harmonise the Legal Ombudsman with other ombudsman schemes in preparation for Alternative Business Structures (ABS).
- To ensure the Legal Ombudsman continues to be a viable alternative to the courts for resolving (appropriate) complaints about the service from authorised persons.

#### Chapter 6.

- To remove the two free cases allowance.

The aim is:

- To use the case fee structure to encourage good in-house complaints handling at the first tier.
- To minimise unnecessary operational and administrative complexity.

## **2. Policy objectives and intended effect**

- To review the rules after 18 months of operation and identify changes which would support the business process.
- To honour the undertaking given to the profession that we would review the case fee structure once we had an opportunity to assess how it was working.
- To review the rules in the light of changes in the wider profession (such as the introduction of Alternative Business Structures (ABS) for firms) to the Legal Ombudsman's jurisdiction.
- To ensure the rules continue to promote the regulatory objective of protecting and promoting the interests of consumers.

### 3. Governance

Until September the management of the project lies with the Policy team (Senior manager – Sam Berrisford, Project team – Laura Smith, Laura Wigan, Alex Moore). This will be until approval is obtained from the LSB and MoJ.

From September the management of the project will move over to the Operations team (Senior manager – Liz Shepherd, Project Team – Jag Sahota).

Sign-off of overall policy decisions will be through the OLC Board and the Executive Management Team.  
Sign-off for operational matters will be through the Knowledge Board or through the Review and Coordination Board.

### 4. Assumptions and Risks?

Assumptions:

- That the new scheme rules (with the exception of the case fee changes) will come on line from 1 January 2013. The case fee changes will commence on 1 April 2013 to fall into line with the financial year.

Risks:

- Delays in approval from the Ministry of Justice (MOJ) will affect the amount of notice we can give to the profession and may impact on the overall implementation date for Scheme Rules. [We are working closely with the MOJ to ensure the work progresses to timetable.]
- Consumers and/or the profession do not understand the scheme rule changes and potential impact on complaints. [A clear communications plan is being put in place, including for the transition period between approval and actual implementation date].

## Section B: External Impact

#### 4. Key Identified Stakeholder groups

- Consumers
- Profession

#### 5. Analysis

Key Stakeholders	Reason for Impact	Cost / Benefit
Consumers	Prospective customers	Currently consumers who have unreasonably been refused a service or who have persistently been offered an unwanted service have no right of redress to the Legal Ombudsman. They can make a complaint to the regulator, but this does not entitle them to redress. This amendment will allow consumers to obtain redress.
	Time limits	The current 12 month time limit is a relatively short period in which to bring a complaint. Some consumers do not wish to bring a complaint until the end of their retainer, which may result in some or all of the complaint being outside the 12 month time limit. An extended time limit will be in line with the courts and other ombudsman schemes.
	Financial limits	Although most cases have resulted in awards much lower than the existing £30,000 limit, there have been a few occasions when higher awards would have been appropriate. It is in the interests of consumers to have the ability to access a higher level of redress, without having to take a case through the courts.
Profession	Prospective customers	<p>A concern was raised during the consultation that adding prospective customers to the list of parties who can complain would create extra obligations on authorised persons. The proposed amendment to paragraph 5.7 will allow the Legal Ombudsman to dismiss complaints where a service has been refused for legitimate business reasons.</p> <p>Prospective customers will still need to make a first tier complaint before the Legal Ombudsman can investigate. Given that no service will have been provided we recognise that firms will have minimal evidence for responding to a first tier complaint. Our communications will make it clear what type of response we expect from firms and the level of evidence that complainants will have to provide.</p>

		<p>It is not anticipated that this change will lead to a significant number of new complaints for authorised persons. At the moment just 0.26% of Legal Ombudsman cases include an element of discrimination.</p>
	Time limits	<p>During the consultation concerns were raised about the extended time limits, for example how they would be implemented. To deal with this concern the full six and three year time limit will be implemented gradually with no complaints being accepted about acts/omissions that took place or where the date of awareness is before 6 October 2010.</p> <p>Some concerns were raised about data retention and the impact on firms having to keep files for up to six years. In practice however the Legal Ombudsman already investigates complaints about cases that are older than 12 months because the current time limits apply to the date of awareness. In cases where there is a lack of evidence the Legal Ombudsman has the power to dismiss cases. In addition authorised persons are required to have a data retention policy, and six years is a standard limit across many professions.</p> <p>A further concern was raised by one respondent that the increased time limit would impact on the cost of indemnity insurance, which may impact on small and BME firms in particular. We do not expect an increase in indemnity insurance as solicitors are already required to have the run-off cover in place for six years. In addition none of the insurers have raised the issue of increased premiums because of this change.</p>
	Financial limits	<p>Only a minority of cases have led to financial compensation of £20,000 or more. For example between April and July 2012 it was less than 0.5% of ombudsman decision cases.</p> <p>While authorised persons, or their insurers, will be liable for awards that are made, it is</p>

		<p>unlikely that there will be a significant number of cases attracting awards at the higher end of the spectrum. Because of this we do not expect that insurance premiums will increase.</p>
	<p>Case Fees</p>	<p>Initially free cases were introduced because of a concern that legal providers operating in contentious areas of law could be disproportionately penalised by the case fee. At the time there was limited evidence on which to rely in setting the fee structure and in practice we have not found any evidence to support the concern about disproportional impact.</p> <p>There will be an impact on firms as we expect to increase the number of case fee invoices we send out from 750 to 4,200. However this will potentially be offset to a certain degree by the reduction in the overall levy.</p> <p>In addition we have found that we are waiving the case fees in a much higher percentage of cases than we expected. If a firm has followed a reasonable procedure with the first tier complaints process they will not incur a case fee. There may be an adverse impact on authorised persons who do not deal with complaints reasonably. However, the change to the rules should continue to encourage better complaints handling at first tier level. Authorised persons with a good complaints policy should not be impacted.</p>

## Section C: Internal Impact

### 6. Key Identified areas of the business process

- Finance
- Operations
- Compliance

### 7. Analysis

Business Process	Reason for Impact	Cost / Benefit
Finance	Case fee	<p>The amendments to the case fee structure will incur costs for the Legal Ombudsman. The expectation is that the amendment will increase the amounts paid directly by respondents from 2% of budgeted costs to 11% of budgeted costs; an increase of £1.4m per annum. This is as a result of an increase from around 750 invoiced cases per year, to 4,200 per year (forecast is based on actual 2011-2012 volumes). This will reduce the costs borne by regulators by a corresponding amount of £1.4m (whose costs are in turn met by the legal profession including firms who deal effectively with their complaints internally).</p> <p>This costs of introducing the change are expected to be £60,000. LeO expects to incur one-off costs for updating its finance system of about £20,000 and the ongoing administrative costs (for invoicing and collecting cases fees) are expected to increase by £40,000.</p>
Operations	Time limits	<p>It is expected that the increase in time limits will have a substantial impact in this area of the business. Based on an analysis of cases which have not been investigated over the last 18 months because they were outside of the current time limits, we are forecasting a 10% increase in case volumes. In turn this will lead to a reduction in our unit cost of approximately £100-£120 (from £2,000 to £1,900).</p> <p>The increase in case levels will mainly be absorbed by current staffing levels.</p>

		In addition we also expect that this change will significantly reduce the number of requests we receive to use our discretion to extend the current 12 month time limit.
	Financial limits	As indicated above only a minority of cases attract awards around our current top limit of £20 - £30,000. We do not expect any significant increase in cases or impact on unit costs and staffing levels.
Compliance	Time limits	We are reviewing the impact of the time limits on our IT systems and data retention policy. At the moment our data retention policy is to keep cases on our case management system for two years before deleting them. The increase in time limits will mean that the data retention policy will have to be extended, and over time this will require further capacity for data storage.
Impact on KPI's	Unit cost	<p>We expect the unit cost to decrease by approximately £100, from £2,000 to £1,900 (in July 2012 the average rolling unit cost for the last 12 months was £2,055). This will primarily come from the expected 10% increase in cases accepted due to the extended time limits. The 10% increase is based on an analysis of cases we were unable to investigate over the last 18 months because they were outside of our time limits.</p> <p>Both the inclusion of prospective customers and the increase in financial limits are also expected to contribute to the decrease in the unit cost, although their contribution is not expected to be as significant as the change in time limits. No other complaint handling bodies collect data on prospective customers; however we do know that currently 0.26% of cases investigated since October 2010 contained an element of discrimination. We also know that at the moment 0.5% of cases receive compensation of more than £20,000 (this is based on Ombudsman's decision between April and July 2012). However it should also be noted that it is difficult to predict the number of cases we will deal with in this area as consumers who value their cases at around £30,000 or more will not have approached the Legal Ombudsman in the past.</p> <p>The change in the case fee structure is not expected to lead to an increase in cases or</p>



		impact on the unit cost. Potentially the removal of the two free cases could further encourage firms to deal with complaints at the first tier, which will could in time lead to a decrease in the number of resolvable cases which are brought to the Legal Ombudsman. This is in line with the overall policy intention.
	Timeliness and Quality	The expected increase in cases will be absorbed within the current staffing levels, and therefore we do not expect there to be any negative impact on either the timeliness or quality of the work. In 2011/2012 we met our target of resolving 50% of cases within three months and 80% within six months. We do not expect this to change.

**Section D: Equality Impact**

**5a. Is the aim of the function, policy or strategy, along with any of its intended outcomes, designed to: eliminate discrimination, promote equality of opportunity and/or promote good relations between different groups?**

Yes  No  Please explain below

The change to allow prospective clients to use the Legal Ombudsman will allow those who have been refused a legal service for discriminatory reasons to access redress.

**5b. From the available evidence, what level of impact (H = High, M = Medium and L = Low), if any, is the delivery of this function, policy or strategy going to have on the different equality groups set out below.**

Stakeholder	Positive impact			Negative impact			No impact	Reason and evidence supporting your assessment for each of the equality groups
	H	M	L	H	M	L		
<b>Consumers</b>			√					The change to allow prospective customers to be able complain to LeO will mean that people who are discriminated against on the basis of a protected characteristic and refused a service will be able to seek redress. We have considered the impact of this across all equality groups: gender, ethnicity and race, disability, age, pregnancy and maternity, transgender and gender reassignment, religion or belief, and sexual orientation.

**Authorised persons**

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We are aware that the free cases were initially introduced because of a concern that small firms may be disproportionately affected, and that Black and Minority Ethnic firms are often classed as small firms. Research by the Law Society in 2010<sup>1</sup> suggested that BME solicitors are more likely to work in personal injury, immigration and family specialities. These areas are regarded as 'high risk' and are particularly susceptible to attracting complaints. Because of this, the removal of the free cases may disproportionately affect these firms.

However any possible negative impact on ethnic minorities stemming from abolishing free cases can be mitigated by the firms themselves as we only charge a case fee if the firm failed to deal with the complaint adequately at the first tier.

<sup>1</sup> Law Society (November 2010) Ethnic Diversity in Law Firms: Understanding the Barriers - [http://www.lawsociety.org.uk/secure/file/189202/e:/teamsite-deployed/documents//templatedata/Publications/Research%20Publications/Documents/BME%20solicitors\\_final.pdf](http://www.lawsociety.org.uk/secure/file/189202/e:/teamsite-deployed/documents//templatedata/Publications/Research%20Publications/Documents/BME%20solicitors_final.pdf)