

To:	Legal Services Board	
Date of Meeting:	12 September 2012	Item: Paper (12) 60

Title:	OLC Scheme Rules	
Workstream(s):	Regulator Performance and Oversight	
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Status:	Restricted	

Summary:
<p>The Office for Legal Complaint has completed a review of the Scheme Rules for the Legal Ombudsman. As required by the Legal Services Act 2007, the LSB's consent is required before the revised Rules can be adopted. In addition, some rules will also require an Order to be made by the Lord Chancellor before they can be implemented. . The rules have been the subject of a statutory consultation by the OLC and were approved for submission to the LSB by the OLC at its meeting in September.</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:		✓	Due to time constraints it has not been possible to liaise with the Board
Consumer Panel:	✓		The consumer panel responded to the OLC consultation. The consultation response document is attached at Annex 5
Others:	Who / why?		
Freedom of Information Act 2000 (Fol)			
Para ref	Fol exemption and summary		Expires
N/A	N/A		N/A

LEGAL SERVICES BOARD

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Proposed amendments to OLC Scheme Rules

Executive Summary

Background / context

1. The OLC is required to establish and administer their ombudsman scheme 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 that needs to be paid by lawyers who use the Legal Ombudsman scheme.
2. Before the OLC can make scheme rules, the Act at s155, states that the OLC must obtain:
 - i. the consent of the LSB; and
 - ii. in the case of rules relating to 'case fees', the consent of the Lord Chancellor.
3. Changes to the definition of the people who can use the Scheme to allow for complaints from prospective clients must be made by the Lord Chancellor through an order under s130 of the Act
4. Changes to the award limit must also be made by the Lord Chancellor through an order under s139 of the Act.

Original Scheme Rules

5. The Board consented to the original scheme rules in December 2009. In line with the Board's general approach to considering matters relating to the OLC, the Board based their decision to consent on the assurances of the OLC Board that due process was followed in making the submission to the Board and on the meeting of specific acceptance criteria, rather than a substantive re-analysing of the matters already decided by the OLC.

OLC Process to revise rules

6. With the benefit of 18 months operational experience and in light of changes in the legal services market the OLC has now reviewed its scheme rules.

7. In March 2012, a three month statutory consultation was launched to review the scheme rules, this closed in June 2012. 18 written responses were received and three consultation events were held which were attended by more than 22 stakeholders.
8. The OLC agreed in principle in July 2012 the recommendations put to it by LeO and this was confirmed at their Board meeting in September 2012.

Summary of proposed changes

9. In addition to a number of technical / minor drafting amendments, there are also five substantial changes presented to the LSB for consent. These are:
 - i. Increasing the time limit for complaints to be accepted by LeO from three years to six
 - ii. Accepting complaints from prospective clients
 - iii. Increasing the limit for compensation to be increased to £50,000
 - iv. The removal for two free case fees
 - v. Clarifying the ombudsman position regarding the treatment of successor firms.

Acceptance Criteria

10. The acceptance criteria agreed between the LSB and OLC for LSB consent to the scheme rules were:
 - 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.
 - 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.
 - A finalised Impact Assessment on the rules including the impact on LeO that the changes are likely to bring eg complaint numbers, and KPIs and which confirms that the OLC Board has satisfied itself that there is eg no disproportionate impact on any particular sector.
 - Confirmation that the proposals meet the MoJ's criteria to allow the Lord Chancellor to make the necessary Orders.

11. Attached at Annex 2 is a commentary from the OLC explaining how the first two acceptance criteria have been met. At Annex 4, the Board will find the final version of the scheme rules post-consultation.
12. The attached papers describe how the OLC has demonstrated that it has met the acceptance criteria:
 - Annex 1: Cover note
 - Annex 2: Commentary paper to accompany the Scheme Rules
 - Annex 3: Impact Assessment in relation to the changes to the Scheme Rules
 - Annex 4: Revised Scheme Rules
 - Annex 5: Legal Services Consumer Panel formal response to LeO Scheme Rules consultation

Observations

13. The commentary (Annex 2) to accompany the Scheme Rules and the original consultation document illustrate how the proposals on the scheme rules have evolved during the process.
14. A proposal to change the rules to accept complaints from third parties was rejected in this review due to lack of agreement about whether this would be a useful change and who should be included in the list. However LeO intend to develop a list of types of third party complaints which could be proposed for consideration in the next review of the Scheme Rules.
15. The Board will note that the Consumer Panel's formal submission to the OLC on the scheme rules (at Annex 5) was supportive of the proposed changes, including making third party complaints eligible except for specific types of cases. They advised that the basis for defining third party complaints should be the definition in the Legal Services Act 2007.
16. OLC commentary paper (Annex 2) explains how the scheme rules took into account best ombudsman practice and address the regulatory objectives.
17. The impact assessment (Annex 3) covers the changes that have been made to the scheme rules and the impact that they will have both on LeO and on any particulate sector including the impact on case numbers, unit cost and KPIs – as well as whether the increase in financial limits will have any impact on small firms in particular and insurance premiums. There remain a number of detailed issues in debate between OLC and MoJ. These are mainly definitional issues in relation to properly capturing what is meant by prospective complaints, rather than ones which impact on core issues of

performance of concern to the LSB. Hence, while further work is needed in this area, the Executive's view is that there is no reason to delay a decision on whether to consent.

18. We understand that Elizabeth France plans to write to the Chairman immediately following the OLC Board meeting on 10 September to confirm their decision and provide any further necessary detail. Subject to anything emerging from that process, the Executive assesses that sufficient information has been provided by the OLC to provide assurance on the rigour of both process and policy analysis.

Timing

19. Following approval, OLC will present the rules to MoJ and aim to have Lord Chancellor consent for the case fees by October 2012 and any orders laid in Parliament in November 2012.
20. The OLC is aiming to implement the new rules from January 2013 and the new case fee structure from April 2013.

Proposal

21. The Board is invited to consent to the making by the OLC of scheme rules for the Legal Ombudsman scheme.

05.09.2012