

Legal Ombudsman
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Dr Helen Phillips
By email

11th May 2022

Dear Helen

Scheme Rules Review

I've previously updated LSB colleagues on the OLC Board's plans about its review of LeO's Scheme Rules – namely, using its April Board meeting not for decision-making or approval but in order to ensure that the OLC Board has the opportunity to be fully briefed on consultation feedback, to understand the equality impact assessment work, and to discuss fully whether the Board has received the levels of assurance it is looking for.

Following the OLC Board meeting the LeO team is working on the final submission to the LSB Board which will come back to the OLC May Board meeting for decision.

Whilst April's Board meeting had a single item agenda I am still keen to make the most of this opportunity to provide the LSB Board with a voluntary assurance letter, recognising that the thoroughness of the iterative process adopted by the OLC Board is an important part of the assurance that your Board will be seeking in July.

In this VA letter I have adopted a different focus and format, looking at:

1. The nature and integrity of the consultation process.
2. The assurance mechanisms being established.
3. Particular Rules where the Board focused its attention:
 - a. Rule 4 – Time Limits
 - b. Rule 2.11 – Declining to accept a complaint for investigation
 - c. Rule 5 – With a particular focus on 5.7 (b) and the de minimis/ proportionality test and 5.19 and access to an Ombudsman's final decision

Nonetheless, in keeping with previous formats, for each section I have set out the assurance received to date by the OLC Board along with the additional assurance being sought through further actions. This approach particularly matters for this review as it has been essential for the Board to hear, question and understand the argument for and against changes. This way we can ensure we are acutely aware of possible implications for consumer rights and access and that in May we make the right decision based on a meaningful weighing up and balancing of all the evidence.

The nature and integrity of the consultation process

Assurances received:

1. In the run up to the formal consultation period LeO engaged in an extensive programme of pre-consultation meetings with external stakeholders to appraise them of the proposed key

changes. This included representatives from the Law Society, Bar Council, Legal Services Consumer Panel and Association of Consumer Support Organisations.

2. The proposed changes were also discussed fully by the Challenge and Advisory Group as well as being discussed in detail with the subgroup of OLC Board throughout January 2022.
3. LeO has also engaged with staff through team meetings as well as through the Budget and Business Plan briefing sessions and a dedicated Q&A session on the Scheme Rules review.
4. Following engagement with the LSB's public panel, the consultation was run for a period of eight weeks, as distinct to four weeks.
5. 24 detailed responses were received during the formal consultation period: Eight from regulators, four from members of the legal sector, two from consumer bodies, two from general consumers and eight staff responses.
6. The Board has reviewed in detail a full and considered analysis of the consultation responses, seeking assurance on whether the points have been addressed within the final proposed changes to the Scheme Rules.

Additional assurances being sought:

1. The OLC Chair and LeO Chief Ombudsman will continue to keep stakeholders fully informed of the responses received, enabling individual organisations to 'benchmark' their comments against those made by others.
2. In keeping with a point raised by the LSB Executive, namely that an item will be postponed to a stage 2 consultation and lack of clarity around the parameters and timescale for stage 2, the OLC Board is seeking additional assurance that any deferment is not at the expense of ambition. This is along with clarification of time frames.

The assurance mechanisms being established

Assurances received:

1. LeO exists to provide a service. The focus of the review is not on reducing levels of demand but in dealing with cases more effectively, on resolving cases more quickly whilst above all supporting customer rights.
2. Many of the areas where changes have been proposed rely on the application of Ombudsman discretion, either in terms of whether a case should be dismissed, whether the matter should be passed for an Ombudsman's decision or whether a complaint should be accepted despite being out of time. Guidance and/or indicative criteria will be required to ensure the consistent application of discretion in these circumstances, and the Board was assured that this is planned as part of the implementation phase.
3. It is critical that LeO is able to provide the OLC Board and stakeholders with assurance that the proposed changes are not having a disproportionate impact on any group(s) of customers (be they service providers or complainants), ensuring that the changes do not in any way adversely impact vulnerable customers. ED&I data will be collected at the start of the process enabling LeO to monitor the impact of the Scheme Rule changes and the OLC Board to maintain a clear oversight of vulnerable customers who may require reasonable adjustments. This will include deciding whether there is a reason to accept a late case, or why a case should not be dismissed, or why an Ombudsman's decision is required.
4. It is also critically important for the OLC Board to be assured that the quality of LeO's casework is not being diminished and that the new rules and processes are being applied fairly and consistently; work is already ongoing to develop an interim quality framework that will support tracking the effects of the proportionality initiatives and steps will be taken to ensure that LeO's existing quality reviews cover BAU casework alongside cases impacted by the new Rules and processes.

Additional assurances being sought:

1. LeO will continue to work with the OLC Board, seeking views on the key principles that should guide the development of criteria and internal LeO process and guidance
2. Views will also be sought from the Board on the appropriate format, level and type of information needed to provide the level of assurance required to agree tolerance levels for exception reporting.
3. There will inevitably be a period of dual running with cases progressing under the current Scheme Rules and others under the new Rules. Communication and engagement during this time will be of critical importance and LeO will need to ensure all current and prospective customers and stakeholders fully understand the changes to the Rules and how those changes might impact on them or their complaints. LeO will ensure that there is a clear transition plan for when the change will come into effect and will ensure that it is not applied retrospectively to any complaint already brought to LeO.
4. Where possible, LeO has conducted Equality Impact Assessments (EQIAs) for each of the key proposed changes. The EQIAs have identified that some of the changes have the potential to have a disproportionate impact of some groups of customers. LeO is committed to tracking and monitoring all the proposed changes to ensure that the OLC Board is fully sighted on the customer impacts and the continual assessment of mitigation measures.

Particular Rules where the Board focused its attention

Assurances received:

1. In focusing on particular change areas in more detail a diverse range of views were expressed and responded to, ensuring Board members could be satisfied that any points of divergence were fully aired and fully explored.
2. **Rule 4 – Time Limits**
 - a. This change is driven by LeO's experience that the early resolution of complaints is best supported by cases being brought to LeO at the earliest possible opportunity; older cases are more challenging to investigate due to difficulties of gathering evidence, faded recollection of events, closed firms, fee earners having moved firms or even retired since the events being complained about.
 - b. The Board explored options around differing time limits, fully assessing the evidence of likely impact on consumer protections and rights.
 - c. The Board was assured that the EQIAs are part of an ongoing assessment process and come heavily caveated, that the data is based on limited sample sizes and that care should be exercised in drawing conclusions, and that consistent monitoring is now needed and planned.
 - d. Although LeO is proposing that the time limits be reduced this would all be subject to the exercise of ombudsman discretion to extend the time limits, ensuring fair access to those who need the service or have reason for any delay in bringing their complaint to LeO.
3. **Rule 2.11 - Declining to accept a complaint for investigation**
 - a. This proposed revision is designed to enable LeO to make a decision as soon as a complaint is received as to whether it is something that it can or should investigate.
 - b. LeO has already introduced the Proportionality initiatives which enable an Ombudsman to review new cases as soon as they enter the PAP and to make a decision whether there are reasons why an investigation should not be carried out. This initiative, if appropriately resourced, would enable LeO to consider new cases the day after they are presented to LeO.
 - c. LeO believe that the proportionality initiatives already deliver much of what was proposed by way of the introduction of Rule 2.11 and that this is already actively being pursued.

4. Rule 5 – Particularly the de minimis/ proportionality test and access to an Ombudsman decision

- a. The amendment to Rule 5.7(b) proposes that an ombudsman could dismiss a complaint if they were satisfied that the customer had not suffered “significant” loss, distress, inconvenience or detriment.
- b. The OLC Board recognised the clear consensus around the need for guidance and criteria to underpin this test.
- c. The Board considered the framing and use of the word ‘significant’, suggesting possible alternatives, whilst recognising that a number of responses identified that what is considered significant to one person is a very subjective issue and one that it might be challenging to maintain consistency on. The Board particularly noted the LSCP consideration that this proposal ran the risk of sending the wrong message to providers, damaging confidence in the complaint process and weakening the culture of complaint handling in the legal service sector.
- d. The act of not passing something for an Ombudsman decision is a significant change to LeO’s existing process and something that could have significant impacts on complainants and service providers alike. The Board was assured by LeO’s articulation that there will be cases where the escalation to an Ombudsman is required even where there are no substantive disagreements with an investigator’s findings. These cases would still be passed for decision so as to ensure that the customer’s need for a legal binding outcome is protected; the decision not to pass the case to an Ombudsman will mean that it is resolved by way of the investigator’s findings and if those findings recommend a remedy is payable LeO would expect the service provider to honour that recommendation and the customer could request the case be passed to an Ombudsman for a decision which could then be enforced through the Courts either by LeO or the customer themselves.

Additional assurances being sought:

1. Particularly recognising the feedback in relation to Rule 5.7, the Board carefully weighed up the balance between the significance of the change with the potential to offer substantial improvements to the level of service offered by LeO. With that in mind, the Board considered the merits of either qualifying the provision with a time limiting sunset clause or committing to review the impacts of this provision on LeO’s customers, services, and processes in the Stage 2 consultation. Either option would provide the opportunity to reflect on the provision, with the benefit of additional data and insight, during the stage 2 consultation and, at that point, take a view as to the long-term status of this proposed rule.
2. Careful consideration will be given to the use of language in advance of the final submission to the OLC Board in May.

Ultimately, the OLC Board’s focus must be on improving the overall customer experience of LeO. I am confident that we are adopting a thorough and comprehensive process of examining whether encouraging customers to bring complaints to LeO whilst fresh will facilitate quicker investigations and therefore earlier resolutions; whether the application of discretion can ensure that those customers who have a reason why they have not been able to bring their complaint within the time limits will still have the chance to have their complaints heard; and whether through improved oversight of reasonable adjustments and vulnerability, LeO will be better placed to identify cases where discretion should be exercised.

As ever, I hope this letter is well received. Sharing the level of OLC Board assurance requested and received is an important part of the assurance that, subject to the Board's decision in May, will be provided to the LSB Board in turn for your July meeting.

Best wishes

A handwritten signature in blue ink, appearing to read 'Elisabeth Davies'.

Elisabeth Davies
Chair, Office for Legal Complaints