

OLC Scheme Rules Review

Introduction

This paper addresses the Legal Services Board (LSB) acceptance criteria in relation to the Office for Legal Complaints' (OLC) review of the Legal Ombudsman (LeO) Scheme Rules.

The LSB have laid down three acceptance criteria which are set out and addressed below.

This paper and supporting documentation explain the rationale behind OLC's proposed revisions to the Legal Ombudsman's Scheme Rules and how the acceptance criteria have been met.

About this submission

As part of its strategy for 2020-23, the Legal Ombudsman committed to improving the standard of service it provided to its customers and to taking steps to ensure that it remained relevant and able to adapt to an evolving legal sector.

The way in which the Legal Ombudsman delivers the scheme is set out by its Scheme Rules which in turn reflect a number of the key provisions set in the Legal Services Act. These Scheme Rules were last subject to a significant comprehensive review in 2012 and, although they were reviewed to address the transition of complaints about claims management companies to the Financial Ombudsman Service in 2019, the Rules have, for the most part, remained untouched for the last ten years.

In that time, the environment in which the Legal Ombudsman operates has evolved as has the way in which the Legal Ombudsman carries out its core function of investigating complaints about poor service provided by the legal profession to its clients.

Over recent years the Legal Ombudsman has faced significant challenges in terms of delivering a consistent, sustainable and acceptable level of performance. The Legal Ombudsman has introduced a number of initiatives aimed at reducing both wait times and the overall customer journey whilst improving performance and protecting the interests of consumers and service providers alike.

In its 2021/22 Business Plan the Legal Ombudsman committed to carrying out a review of the Scheme Rules by the end of the financial year with a view to ensuring that the Scheme Rules actively supported the above performance improvement initiatives. However, during 2021/22 it became apparent that the scale of the challenge facing the Legal Ombudsman in its quest to deliver sustainable performance necessitated radical intervention. As a result, the scope of the proposed Scheme

Rules review was extended and the time frame within which the review was to be conducted was brought forward. With the significant support of key stakeholders and the LSB, LeO committed to carrying out a wholesale review of the Scheme Rules and a consultation on the proposed changes before the end of 2012/22.

About the review

In line with that commitment a comprehensive review of the Scheme Rules was carried out and was completed by the end of 2021.

The review identified a significant number of areas where changes were needed to ensure that the Scheme Rules supported LeO's focus on resolving complaints quickly and with minimal formality, reducing wait times and improving the overall customer journey. The review identified that significant improvements could be gained by amending LeO's time limits, reducing the reliance on Ombudsman decisions as a way to close cases and making better use of the Scheme Rules so as to ensure that LeO's focus was on investigating complaints where there was clear public interest or evidence of a significant impact / detriment that required redress. It was also apparent that due to the time that had passed since the last substantive review of the Scheme Rules a number of the provisions needed to be updated or even deleted to ensure that they were still relevant. Further, it was acknowledged that, subject to the work required to develop and implement these changes, there were improvements that could be introduced relatively quickly and could actively support LeO's future performance improvement trajectories.

To this end the review identified a number of areas where wider ranging strategic change was warranted. In particular, the review identified that the effective delivery of the scheme would be better supported if, like in a number of other Ombudsman schemes, the Chief Ombudsman were able to delegate their decision-making authority to the wider organisation rather than just the cohort of existing Ombudsman. It was also identified that in times of unanticipated high demand, the Legal Ombudsman lacked the agility to be able to hire external staff to support the delivery of the scheme on a short-term basis. Alongside this, the review also identified that because the provisions which created these constraints were contained within the Legal Services Act (the Act) they were not things that could be changed without the need to amend that primary legislation. LeO also reflected on historic activity where the efficacy of its case fee regime had been discussed noting that increased flexibility around the payment or waiver of a £400 case fee could be used to incentivise the early pragmatic resolution of cases. However, the Act again stipulates that any changes to the case fee regime would need to specific authority of the Lord Chancellor which, whilst not an obstacle to pursuing that avenue, does mean that LeO's ability to make quick changes in that area are currently minimal.

About the consultation

LeO delivered a consultation in February 2022 which sought views from key stakeholders on the shorter-term proposals whilst also seeking to gauge stakeholder appetite for LeO to engage in wider ranging, longer term strategic and policy changes. The consultation, which ran over a period of eight weeks, concluded in April 2022 and drew significant support both for the short term operational and longer-term strategic changes.

After a period of considered reflection and assessment the OLC and LeO now present, for the consent of the LSB, a number of changes which they confidently believe will help reduce customer wait times, help customers get the right outcome to their complaint at the earliest possible appropriate opportunity in the short term and will support the long term future of the Scheme.

We are confident that the changes, if approved, will help support performance and service improvement. It is not possible at this stage to quantify with confidence how significant those changes will be. For that reason, the impacts of these changes have not been factored into LeO's performance improvement trajectories.

This submission and these acceptance criteria provide more detail on the work that has gone on before, during and after LeO's consultation on the proposed changes. They are intended to provide the LSB with assurance and confidence that LeO and the OLC have delivered a fair, reasonable and considered consultation which has engaged with a wide range of customers and key stakeholders. We are confident that we have openly identified the short-, medium- and long-term risks inherent in the proposed changes and that we have identified ways of mitigating those risks alongside a commitment to reporting on them to LeO Executive, the OLC Board and wider external stakeholders. We hope that this will provide LSB with suitable assurance that the revised Scheme Rules will support LeO's objectives without adversely impacting the rights or disproportionately impacting the access to justice of any LeO's customers.

Criteria 1

How have the proposals evolved in light of the consultation process covering in particular the extent to which any input from the consumer panel has been taken into account?

Early engagement

Engagement with stakeholders pre consultation:

Stakeholder	Pre consultation feedback
Legal Services Consumer Panel	Supportive of changes and proposals particularly in relation to delegation
	Supported the principle of timely redress rather than waiting in the PAP
	Emphasised the importance of monitoring of outcomes, impacts and quality – continual assessment of impact of changes if adopted
	Some concern that reduced time limits might preclude some customers from complaining – detailed discussion around the exercise of discretion to mitigate risk
	LeO must ensure that it does not lose ability to drive standards and improvement as a result of changes
Law Society	Extremely positive – saw proposals as offering level of radical change that they were seeking
	Keen to increase scope for dismissals earlier in the process
	Supportive of proposed changes to ombudsman decision process
	Felt that tiered case fee arrangements might be problematic and increase challenges
	Proposed adoption of polluter pays principle
Bar Council	Agreed with ideas of reducing time limits, promoting early resolution and expanding the scope for ombudsman to dismiss complaints
	Agreed with ideas of reducing time limits, promoting early resolution and expanding the scope for ombudsman to dismiss complaints
	Suggested adoption of a polluter pays principle
	Proposed that complainants should prove they have exhausted complaints process
	Suggested that a tiered case fee system might be counterproductive and result in significant increase in case fee challenges

Association of Consumer Support Organisations	Liked the increased grounds for dismissal
	Supported changes to case fees if helped drive early resolution

Engagement with LSB Public Panel:

LeO were keen to ensure that its external engagement was not just with the approved regulators or with legal sector representative bodies and, as noted above, engaged with the Association of Consumer Support Organisations (the ACSO) and Legal Services Consumer Panel (the LSCP) to gain an insight into the consumer perspective. LeO also took steps to try to use the expertise and services of the LSB Public Panel for a further insight into the consumer perspective. Unfortunately, their initial assessment was that engagement with a general sample of consumers would be of little value as they would have limited understanding of LeO, let alone of how the scheme works and what the implications of the proposed changes might be. Their advice was that the best approach to gain useful insight would be to undertake deliberative (informed dialogue) research. However, they explained that research of that kind takes a considerable amount of time to design and develop and, in reality, would take at least three months from inception through to report delivery (and potentially much longer if the issues involved were particularly complex) and therefore would not be practicable within LeO's timescales. Their clear view was that doing something simpler in a shorter timeframe was unlikely to provide consumer feedback that was of any value.

LSB Public Panel also provided helpful insight generally into the length of the proposed consultation, advising that, in their opinion given the extent and scope of the consultation the original intention of running a truncated consultation period might not be considered adequate or meet the Gunning principles for consultation. As a result, it was decided that the consultation would be extended to a period of eight weeks so as to ensure that we provided stakeholders with an adequate opportunity to reflect and respond to our consultation.

Engagement with Challenge and Advisory Group:

In response to the challenges faced by LeO during 2021/22, a challenge and advisory group was convened with representatives from a broad range of external stakeholders (Solicitors Regulation Authority, Council for Licensed Conveyancers, LSCP, ACSO, Law Society Regulatory Processes Committee and Bar Council). The group have been engaged with and provided valuable insight into the scope of the proposed review of the Scheme Rules prior to the consultation.

Engagement with staff:

A number of the ideas encapsulated in the Scheme Rules review came from suggestions from LeO staff. In order to maintain their input and engagement LeO has held a number of meetings, briefings and Q&A sessions where the scope and proposed content of the Scheme Rules review were all discussed.

Those sessions provided valuable assurance that the changes being proposed were supported by the organisation as a whole and drew attention to practical considerations around the challenges of implementing the changes, if approved.

Engagement with OLC Board and sub group:

LeO has also engaged heavily with all of the OLC Board as well as with a sub-group dedicated to ensuring and supporting the progress of the review. This sub group particularly has provided balanced and critical challenge to the proposals that were considered at the outset of the consultation and that are now being put forward for approval.

The OLC has particularly sought to understand the impact of the proposed changes on LeO customers and to have ongoing insight into those impacts, ensuring that no group or groups of LeO customers are disproportionately adversely affected by the changes.

Consultation responses

LeO received 24 responses to the consultation - eight from key regulator stakeholders, four responses from members of the legal sector, two from consumer bodies, two from general consumers and eight staff responses.

The responses have again reinforced LeO's confidence that the direction of travel is the right one. There is a genuine appetite for LeO developing a more proportionate process which can deal with complaints as efficiently as possible with minimal wait times pre investigation and with outcomes being reached at the first available and appropriate opportunity.

A summary of the responses to the consultation is attached at Appendix 1

Appendix 4 addresses each of the proposed changes to the Scheme Rules, summarises the key stakeholder responses and how those responses have shaped LeO's proposals.

The responses also highlighted a number of overriding themes which can be summarised as follows:

The need for clear criteria to underpin the application of Ombudsman discretion:

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, on the face of it, being out of time. The responses to the consultation were clear around the need for accessible criteria which would provide assurance that discretion was being exercised consistently.

LeO will be developing guidance to underpin all of these new grounds and will embark on a comprehensive process of training and support in advance of new Rules being implemented to ensure that the guidance is understood and applied consistently. Although some guidance already exists around the application of Ombudsman discretion in relation to the current Scheme Rules, that guidance will need to be updated to reflect the approved changes.

Given both the need to focus resource on operational delivery over recent months, and the uncertainty around whether the Scheme Rules changes will be approved, it has not been possible to start work on updating LeO's guidance suite. However, to provide a level of assurance around the work that has already been done in this area a set of indicative criteria have been developed to show what might be considered by an Ombudsman when looking to exercise discretion in relation to Rules 4, 5.7 and 5.19. These indicative criteria are set out in Appendix 3

Monitoring of the impacts of the changes, if implemented:

It is critical that LeO is able to provide suitable levels of assurance that the changes, if approved and implemented, are not having a disproportionate impact on any group(s) of our customers (be they service providers or complainants).

Equality Impact Assessment have already been carried out for the key proposed changes and they are contained at Appendix 3. As the Rules could not be trialled or piloted the impact assessments have been based on some high-level assumptions, albeit based on small sample sizes. The Impact Assessments have identified that some groups of LeO customers could be adversely impacted by some of the proposed changes and it is clear that we will want to monitor whether those possible impacts, or other unanticipated impacts, materialise when the Rules go live.

To ensure that we are able to monitor the potential impacts of all the proposed changes we will be changing the stage at which we collect EDI data from our customers. Moving this to the earliest stage of our process will enable us to track the impacts of the proposed revised time limits and of work done on cases whilst in the Pre-Assessment Pool (PAP).

We will also be reviewing the data we capture in our case management system so that we can have full oversight of all cases that are impacted in any way by the Scheme Rules changes. This increased level of granularity of reporting will enable us to fully understand the impacts of the changes on our customers, our business process and the profile of our casework. Work has already started within LeO to scope out the new data requirements so that we are able to record and extract data as soon as the Scheme Rules are implemented.

We will continue to monitor the impacts of these proposed changes at LeO Executive and OLC Board level to ensure that any adverse impacts are identified and acted upon at the earliest opportunity.

Monitoring the quality and consistency of LeO casework:

It is also important that LeO is able to provide assurance that not only are the new Rules are being applied fairly and consistently but also that the Rules are not in any way leading to a diminution in the quality of service being provided to LeO's customers.

The existence of LeO's Quality and Feedback Model is currently able provide assurance that processes and guidance are being followed and consistently applied and the existing quality assurance framework (and customer satisfaction surveys) provides assurance that all customers receive a good standard of customer service and that the outcomes reached through our casework are fair and reasonable. This level of assurance will need to be replicated for cases impacted by the new scheme Rules.

Work is already ongoing to develop an interim quality framework (pending a full-scale comprehensive framework review) that will enable us to provide assurance around the quality of casework both for cases impacted by the new Scheme Rules and for those being impacted by the front end initiatives rolled out by LeO in 2021/22. This framework will enable us to benchmark quality under the new Rules against existing/historic quality levels.

Many of the new Rules will impact on how the ombudsmen exercise their discretion and we will develop a system of moderation and review to ensure that we are satisfied that the ombudsmen are exercising their discretion consistently and appropriately. The existing suite of Ombudsman quality reviews will also be reviewed to ensure that we are able to assess their exercise of discretion once the new Rules have gone live.

We will report at LeO Executive and OLC Board level on any adverse impacts on quality so that steps can be taken to intervene if and where required.

Protection of vulnerable customers:

LeO is aware that any of its customers can find themselves in a position of vulnerability during the investigation into a complaint. This can apply as much to service providers as it can to complainants, and it is important to ensure that the proposed new Scheme Rules do not disproportionately impact customers in those situations.

LeO already has a suite of guidance, training and tools in place to help us identify and support vulnerable customers. We have a group of vulnerable customer champions in place across the business who are trained to provide support to vulnerable customers. Where permitted to do so, we actively record details of a customer's vulnerability and any adjustments that are needed on our case management system so that all staff who are dealing with that customer can do so being mindful of their vulnerability.

By collecting EDI data at the outset of a case we will have clearer oversight of those customers with the need for reasonable adjustments so that we can be sure that we are catering for them from the outset and being mindful of them when deciding whether

there is a reason to allow a late case in or why a case should not be dismissed or why an Ombudsman's decision is required.

Significant work is currently ongoing to roll out reasonable adjustment training and tools across the business which will enable us to better identify and support vulnerability. We are already developing a process to cater for customers who request or need their cases to be prioritised.

We will ensure that vulnerability is at the heart of all of our considerations. The reporting that will be developed, above, will enable us to track and monitor whether customers with reasonable adjustments, identified vulnerabilities or protected characteristics are being in any way adversely impacted by the changes.

We will report on this to the LeO Executive, flag any risks that this presents to the OLC Board and, as required, will take steps to adjust our criteria to mitigate those risks.

Communication and engagement:

It is clear from the consultation responses that we need to ensure that all our current and prospective customers and stakeholders fully understand the changes to our Rules and how those changes might impact on them or their complaints.

We will commit to ensuring that the information that is available on our website clearly explains the implications of our changes. We will ensure that all our templates, factsheets and guidance notes are updated and easily accessible to all our customers.

We will engage with the regulators to ensure that they are fully sighted on the changes to our Scheme Rules when they will come into effect and what the implications of those changes will be. We will work with them to ensure that their members are also fully sighted and that their signposting information and complaints handling processes are up to date.

We will also ensure that there is a clear and well signposted transition period before any of the changes are introduced to ensure that any adverse impacts on any customer are minimised.

In addition, we will take steps to signpost customers that we cannot assist to other organisations if possible and will ensure that customers are aware of the options and alternatives that are available to them under our investigative process

We also understand the critical importance of ensuring that LeO staff are fully sighted, engaged and trained on the proposed changes. As noted above we have already engaged with staff on the proposed changes and will continue that engagement as we progress towards implementation.

Specific changes post consultation

There are three Rules that were proposed in the consultation that will not now be put forward for approval and implementation as part of the Stage 1 Scheme Rules review.

Rule 2.11 was proposed as a means whereby LeO could decide not to accept a complaint for investigation if certain criteria were met. However, it has become apparent that much of what was intended to be achieved by Rule 2.11 can actually be achieved through the PAP proportionality initiatives and without the need for changes to the Scheme Rules. As a result, the decision has been taken not to pursue this option. This has also meant that a proposed amendment to Rule 5.5 (b) is no longer required and this proposed change has been withdrawn.

LeO has also identified potential issues with the proposed extension of Rule 5.7(c) to cover revised offers made once a LeO investigation has been started and, as a result, this change will not be implemented in this round of changes to the Scheme Rules.

Further, in relation to the revision to LeO's time limits it became evident that the threshold for the application of discretion to extend a time limit (set out in Rule 4.7) was unduly restrictive (being available in exceptional circumstances only). Therefore, it is LeO's intention to amend Rule 4.7 to allow discretion to be exercised if it is "fair and reasonable in all the circumstances". This change will provide greater protection to those customers who, for reasons beyond their control, have not been able to bring a complaint to LeO within the reduce timescales.

The LSCP and consumer perspective

LeO received responses to the consultation from the LSCP, ACSO and a small number of consumers.

Feedback from both the ACSO and the LSCP was broadly supportive. They acknowledged that there is considerable merit in reviewing the time limits provision but argued that any decision to review this provision should be made only after proper research and analysis of the impact on consumers and of customer preferences. LSCP clearly considered that the change from the current system to a one-year time limit was a very significant change and expressed concern about the impact on the already significant number of silent sufferers

We have reflected on the comments and concerns around time limits. Firstly, we have positioned our proposal to align our Rules with those seen in the majority of other Ombudsman schemes across the country. It is clear that a one-year time limit, whilst not a universal norm, is widely applied and that any perceived limitation on access to justice is addressed by reference to a discretion to extend the time limits.

The application of Ombudsman discretion here is intended to enable LeO to ensure that those customers who would have been inside our time limits were it not for some uncontrollable factor would be able to still bring their complaint to this office. This is a widely used mechanism which provides for the scope for the time limit to be extended.

Attached at Appendix 3 are a set of indicative criteria that would underpin the exercise of this discretion. The current Scheme Rules contain a provision for the exercise of discretion but only in “exceptional circumstances” – it is LeO’s intention to widen these criteria to allow the exercise of discretion where an Ombudsman considers it fair and reasonable to do so in the circumstances.

The LSCP also focussed on the proposed change to Rule 5.7(b) which relates to the application of a significance test to the impact on a customer. The LSCP felt that this change ran the risk of sending the wrong message to providers and damaging confidence in the complaints process – their other concern with this being the risk of subjectivity on the part of the decision maker.

We have reflected at LeO Executive and OLC Board level on the application of this provision and have considered whether it might be more appropriate to apply an “insignificance” test or to achieve this overall objective by reference to the proportionality criteria set out in Rule 5.7(p) or to consider this to be a compelling reason for dismissal under the existing Rule 5.7(n). We believe however that from a transparency perspective it is better to have an explicit rule to rely upon which specifically explains the reason for dismissal and we believe that using significance as the test as opposed to insignificance provides LeO with greater flexibility and agility to deal with changing circumstances such as cost of living increases for example. Therefore, after much reflection, LeO remains committed to introducing a significance test in Rule 5.7(b)

Having reflected on the feedback through the consultation Leo remains committed to pursuing the adoption of all of the proposed changes with the exception of Rule 2.11 which will not be pursued and Rule 5.7(c) which requires further work in relation to potential case fee implications and as a rest will be incorporated into the proposed Stage 2 of the consultation.

Criteria 2

How do the scheme rules relate to best practice in the Ombudsman field and as far as possible contribute to the achievement of the regulatory objectives?

The Legal Services Act 2007 (the Act) created the Office for Legal Complaints (OLC) and tasked it with establishing an Ombudsman scheme. S.116 of the Act stipulates that the OLC must act in a way which is compatible with the regulatory objectives and must have regard to any principles which represent the best practice of those who administer Ombudsman schemes. It has therefore been critical that those two key criteria were constantly reflected upon as part of this review of the Scheme Rules.

Regulatory Objectives

The regulatory objectives are set out in S.1 of the Act. The table below reflects on how the proposed changes to the Scheme Rules help LeO continue to support those objectives.

Objective	Scheme Rules Impact
Protecting and promoting public interest	It is important that LeO is in a position to deliver a high-quality complaint resolution service. One which deals with complaints in a timely, effective and proportionate manner. This review has identified and reflected on areas where the existing Scheme Rules have the potential to hinder the provision of a timely, effective and proportionate service and LeO is confident that the changes proposed will help address those obstacles. We are also mindful that significant delays at the start of an investigative process can dissuade customers from accessing the service or cause them to decide to disengage. The Scheme Rules, alongside other existing efficiency initiatives will enable LeO to access new complaints more quickly and deal with them in a timely manner. The ability to deal with more cases, more efficiently will also improve LeO's ability to identify and act on cases where there is evidence of significant detriment or on an individual case or pattern of behaviour which is in the public interest.
Supporting the constitutional principle of the rule of law	Enhanced confidence in a functioning and effective redress system which deals with complaints in a timely manner will provide a safety net for legal service users. An increased confidence that issues of poor service will be investigated and addressed will promote confidence in the legal system and the standard of representation that a customer receives from a member of the legal profession.

Improving access to justice	It is acknowledged that the Scheme, as currently operated, contains provisions that can actually inadvertently hinder customers' access to justice and redress. The proposed revisions to the Scheme Rules will enable LeO to access cases more quickly and provide outcomes to complaints sooner thereby enabling complaints to be addressed earlier. The ability to actively address complaints quickly and with minimal formality is an improvement that will benefit both consumers and providers of legal services. We further believe that the revised Scheme Rules and the flexibility/agility they will provide will enable LeO to tailor its service to the needs of its customers rather than being constrained by a rigidly defined process. This will enable us to ensure that customers who have historically struggled to access justice / redress will have greater and easier access in future.
Protecting and promoting the interests of consumers	The revised Scheme Rules and the efficiencies they offer will enable LeO to investigate more cases and do so more quickly. This will provide LeO with greater access to insight and intelligence around systemic issues. This intelligence can be used to drive improvements in the sector which will in turn protect and improve the position of consumers of legal services. An effective redress service which deals with complaints quickly and efficiently will also inevitably drive an improvement in standards and quality of service across the profession.
Promoting competition in the provision of services (provided by authorised persons)	Customer choice is driven in no small part by recommendation and review. Through a combination of its insight and impact work and the external reporting of Ombudsman decision data, LeO already provides customers with increased insight into the levels of service provided by the legal profession. However, the value of that data is enhanced if the issues identified and reported on are current. Existing backlogs mean that Ombudsman decision data relates to complaints that were raised and considered at first tier many months previously – the changes proposed in the Scheme Rules review will enable cases to be raised sooner and will facilitate quicker and more timely investigations all of which will improve the value and impact of the reported data. Any potential reduction in the amount of decision data as more cases are dismissed or resolved earlier will be offset as more cases are resolved over the next two years as the PAP is reduced.

Encouraging an independent strong diverse and effective legal profession	As more cases are investigated and better data collected, LeO will have greater insight into the issues facing the profession. We will be able to identify and influence systemic themes and trends as well as support the regulators with their engagements with law firms, through increased data around issues like potential misconduct. All of these factors will help improve the profession in terms of the level of service it provides to its clients.
Increasing public understanding of the citizens legal rights and duties	It is important that consumers of legal services are sighted on the rights and options that are available to them if they are dissatisfied with the service they receive from their lawyers. Being seen as a viable service which is able to investigate complaints quickly and effectively will undoubtedly provide consumers with confidence that effective address is available. As changes to our Scheme Rules are introduced, we will be working with the sector and professional regulators to ensure that all consumers of legal services are advised of their right to access LeO's services – the increased profile of LeO over that period will in itself raise awareness and understanding within consumers as to the rights and options that are available to them.
Promoting and maintaining adherence to the professional principles	The professional principles outlined in S.1(3) LSA include acting in a client's best interests, maintaining proper standards of work, maintaining client confidentiality, acting with independence and integrity. All of these elements can be contained within a complaint about the level of service received and the more that LeO can be seen to be able to progress such investigations and offer appropriate redress or reassurance, the more that the profession will strive to improve the standard of service it provides. The Scheme Rules will enable more cases to be reviewed and closed which will help LeO contribute to the adherence of those professional principles.

We acknowledge the concern articulated by some stakeholders that by amending key provisions in the Scheme Rules, like time limits, access to justice could be restricted for certain customers either because they fall outside of the revised time limits or because they self-deselect based on a perception that they might fall outside of the time limits. LeO is committed to working with the sector, regulators and consumer support organisations to ensure that the reasons for these changes are understood, that customers and service providers fully understand how the new Rules will be applied and that discretion can be applied

Best practice across Ombudsman schemes

In developing the proposed revised Scheme Rules LeO looked at what is established practice in other Ombudsman schemes.

LeO has reflected on what other Ombudsman schemes do on the subject of time limits and, in doing so, has established that there are a variety of different time limits in place across different schemes. What is clear is that a significant proportion of other Ombudsman schemes employ a one-year time limit, albeit that they also retain the power to exercise discretion to allow complaints to be raised out of time. The Financial Ombudsman Service is the principal outlier to this in that they apply time limits broadly similar to those currently applied by LeO. Although there is no one consistent set of time limits in place across the redress sector the extensive use of a one-year time limit gave us confidence that the decision to reduce our time limits was not an unreasonable one.

As noted, a significant proportion of the key Ombudsman schemes all have the capacity within their rules and processes to exercise discretion to allow cases to be accepted for investigation if they were outside of the stated time limits. It was noted that most schemes looked for customers to evidence exceptional circumstances as to why discretion should be exercised, although some schemes, Local Government and Social Care Ombudsman (the LGSCO) for example apply a lower standard of good reasons. LeO's existing Scheme Rules apply the exceptional circumstances standard, but this was in relation to extending beyond a six and three year time limit. We acknowledge that with such wide time limits the justification for an extension would need to be exceptional. Given that it is the intention to reduce our time limits to one year, through discussion with the OLC Board, it is proposed that the exceptional circumstances test be relaxed to one of "fair and reasonable in the circumstances" to ensure that access to the scheme is not unduly restricted by the change.

It was also noteworthy that a number of Ombudsman schemes provide details on their website around the availability of discretion, and some provide case studies to help illustrate where it might be applied. As a result, LeO is committed to ensuring that the information on its website on this topic enables customers to understand the kind of circumstances in which discretion can be sought / requested.

Our review of other Ombudsman schemes also provided confidence around the proposed introduction of the significance test in Rule 5.7(b). A number of schemes make it clear in their process documentation (or indeed in the own rules) that they will typically focus their resources on investigating cases where there is evidence of a significant impact on the customer. The LGSCO, for example, state that they will only look at "what we decide are the most significant and serious complaints" and explain that they can decide to end an investigation at any point if in their view there is insufficient injustice to warrant further investigation. The Parliamentary and Health Service Ombudsman (the PHSO) state in their service model guidance that in some

circumstances they will take the decision not to investigate a case where someone tells them that the injustice they have experienced has not had a significant or lasting impact on them.

It is also relevant to note that Ombudsman Services contain a provision in their rules which provides them with the ability not to handle a complaint if dealing with the complaint would seriously impact the operation of the scheme. This kind of provision is reflected in the proposed revision to Rule 5.7(p) which is intended to enable LeO to decide not to investigate a complaint in very similar circumstances.

What is clear from our review of a broad range of Ombudsman schemes is that although they have the scope to exercise discretion across a range of different issues, the explanation around the scope of that discretion and the criteria that they would reflect on is very high level and does not seek to constrain or fetter the discretion. The PHSO, for example, in relation to the exercise of discretion around time limits state that there are no specific reasons why discretion should be exercised and that they will consider each request and the reasons for it on a case-by-case basis. It is for this reason that LeO does not propose setting down the grounds or criteria for discretion in the Scheme Rules but rather in a set of underpinning internal guidance.

Paramount across other Ombudsman schemes however is the need for a clear audit trail and set of reasons which justifies why discretion has or has not been exercised. This is a principle that we already adopt in relation to existing discretionary decisions and it is one that we would ensure is in place for the new discretionary grounds. This clear and documented audit trail will enable LeO to reflect on the way that discretion is being exercised and will be information that we will be able to cross reference with EDI data, as well, to provide assurance around the fairness and consistency of our decisions making.

Ombudsman Association

LeO has also reflected on the nature of Ombudsmanry when developing these proposals and in doing so has considered the Ombudsman Association's (the OA) Service Standards Framework which sets out what the public can look to expect when using the services of an Ombudsman scheme. The OA's stated vision is that it should be simple and straightforward to complain, that people making a complaint are listened to and treated fairly, that a complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff, that people have access to an Ombudsman in all areas of consumer and public services, and that the learning from a complaint is used to improve services. Having reflected on that vision, LeO is committed to putting in place a set of Rules which are simple and straightforward. The monitoring that we are committed to developing will help us to ensure that our customers continue to be treated fairly and consistently. Further, the work that we are committed to doing in terms of quality assurance and surveying customer satisfaction will enable us to ensure that customers are listened to and that our processes are followed correctly. Key for us is the desire to ensure that complaints are dealt with quickly and at the

earliest opportunity. The drive for increased efficiency and reducing the overall customer journey has been key behind LeO's front end initiatives and these will be enhanced further by the impacts of the revised Scheme Rules. The revised scheme still ensures that customers will have access to an Ombudsman and LeO absolutely remains committed to using the insight and intelligence gathered from its casework to drive improvements in the legal sector.

The OA framework also provides a set of principles that a scheme can assess its service against. Those principles are Accessibility, Communication, Professionalism, Fairness and Transparency. We believe that the changes we are proposing will ensure that the scheme is customer focussed as it will enable us to ensure that customers' complaints are dealt with quickly and efficiently and that the right outcome is achieved at the earliest opportunity – we will continue to assess our casework against our customer service principles and conduct customer satisfaction surveys to have confidence that we are still providing a suitable standard of service to our customers. The proposed revisions will continue to supplement the work being done at the front end of LeO's business process so that we can let complainants know what we can and cannot do and where we are unable to help explain why. We will also be much better placed to deal with complaints in a timely manner.

We are confident therefore that the changes being proposed to the Scheme Rules will not in any way adversely impact our performance against the OA framework or have an adverse impact on the quality of service we can offer to our customers.

Protecting vulnerable customers

We are committed to ensuring that the proposed changes do not have a disproportionate impact on any group(s) of our customers and to understand better the risk of any such impacts we have undertaken Equity Impact Assessment screenings for all of the key proposed changes. Those screenings, albeit for small sample sizes, have identified some areas where there is a risk that groups of customers could be impacted by the changes and we have committed to monitoring this on an ongoing basis once the Scheme Rules are approved to ensure that we can react as required.

To ensure that we have the best possible level of oversight of the impacts of the changes we have committed to moving the collection of EDI data to the very start of our process and to developing new reporting criteria within our case management system so that we can identify when customers cases are impacted by the scheme Rules changes and track those impacts.

We will ensure that all staff are fully trained on the application of the revised Scheme Rules and will carry out moderation exercises to ensure staff understand and can fairly apply the Rules, we will carry out dip sampling on cases impacted by the Rules to ensure that they are being consistently and fairly applied, and we will ensure that our

internal quality assurance framework monitors that standard of service and quality of outcomes in cases impacted by the Rule changes.

As there will inevitably be a period of dual running of the old and new Scheme Rules we will be able to compare the way cases are run under both sets of Rules and also identify if there is any significant difference in the service or outcomes received by our customers.

We are also committed to ensuring that vulnerable customers are not in any way adversely impacted by the proposed changes. We currently base our assessment of vulnerability on both the legislative criteria and on perceived situational vulnerability. Our staff are trained to be able to identify vulnerability in any of our customers (service providers of complainants) and to offer such adjustments as are required to ensure that they retain equal access to our service. We record details of vulnerability and adjustments on our case management system and therefore will be able to ensure that these factors are not overlooked when applying our new Rules.

Criteria 3

A finalised impact assessment of the rules particularly as regards case fees that meet MoJ requirements.

Impact Assessments

During the course of the Scheme Rules review we undertook Equality Impact Assessment screenings for the major proposed changes. Given that the proposed changes cannot be trialled or implemented before the Scheme Rules are approved by the OLC and the LSB Boards respectively, it has not been possible to assess the actual impacts of the changes. Therefore, the Impact Assessments have been completed based on some high-level assumptions of the type, number and nature of complaints that are likely to be impacted by the changes. The outcomes of those Impact Assessments screenings are attached at Appendix 2.

The Impact Assessment screenings identify that there are some groups of LeO's customers who might potentially be disproportionately impacted by some of the proposed changes. These findings have been reviewed and considered by LeO's EDI Manager and the LeO Executive as well as by the OLC Board members. Based on that review and the recommendation of LeO's EDI Manager we are satisfied that it is appropriate to progress with the proposed changes.

This decision is made on the basis that LeO will continue to review and report on the impacts of the proposed changes once they have been implemented. If, post implementation, any disproportionate adverse impacts are identified then LeO is committed to reviewing how those impacts can be removed or mitigated. LeO will assess and report on the significance of any potential impact as well as the scope for control or mitigation before reflecting on whether the impact is such that it requires an implemented provision to be reviewed, amended or possibly retracted.

When reflecting on the ongoing review of the impacts of the proposed changes LeO will make its assessment against a baseline based on the impacts seen under the existing Scheme Rules.

Alongside the ongoing review of the impacts of the proposed changes, LeO is committed to reflecting on the impacts (both positive and negative) of all the proposed changes to the Scheme Rules (and particularly the most radical ones, like the significance test in Rule 5.7(b)). This comprehensive review will take place once the Rules have been implemented and a sufficient period of time has elapsed to enable LeO and the OLC Board to fully assess the impacts of the changes. This review will enable LeO and the OLC Board to reflect on whether any of the revised Rules require further controls or mitigations or need to be revised or even retracted.

In order to fully assess the impacts of the proposed changes LeO will move the date at which EDI data is collected from the assessment stage to initial contact. This will enable us to maximise the available data and assess impacts at all stages of the

business process. We will also be enhancing the existing case management system to enable us to more accurately track when cases are impacted by the revised Scheme Rules – the combination of these changes will enable us to provide enhanced granularity of reporting. The reporting will be shared at the LeO Executive level on a regular basis while also forming part of a wider set of reporting to the OLC Board, with reporting on an exceptional basis to external stakeholders.

LeO is also mindful that the proposed Stage 2 consultation could provide an opportunity for a review of the impacts of the rule changes and, if required a chance to revise the provisions or revert to historic rules.

Case fee implications

LeO is aware that under the requirements of the Act any changes to the provisions relating to the recovery of case fee income cannot be implemented without the specific approval of the Lord Chancellor. It was for this reason that LeO proposed including revisions to the case fee structure as part of the Stage 2 review.

During the course of the consultation, it was identified that one of the potential implications of the proposed amendment to Rule 5.7(c) of the Scheme Rules was that it created a significant risk of an inconsistency around the application of LeO's case fee rules. This inconsistency would need to be addressed before the extended Rule 5.7(c) could be introduced. However, any such change would very likely impact the recovery of case fees and, as a result, would require the approval of the Lord Chancellor.

If changes are to be made to LeO's case fee structure we are keen to make one definitive and comprehensive set of changes after extensive engagement, research and consultation. It is for this reason that LeO has taken the decision not to pursue the extension of Rule 5.7(c) as part of the Stage 1 review and to defer it to Stage 2.

Case fees become potentially chargeable on LeO's casework once a complaint is formally accepted for investigation. The case fee becomes payable at the conclusion of LeO's investigation unless the case is dismissed by an Ombudsman under the provisions of Rule 5.7 or an Ombudsman is satisfied that the case fee should be waived in line with the provisions currently set down in Rule 6.2.

LeO acknowledges that the proposed revisions to the Scheme Rules will likely result in an increase in the number of cases dismissed by an Ombudsman, this does create a risk that the proportion of cases where a case fee is not chargeable will increase once the Scheme Rules have been approved and implemented. The scale of the change cannot be forecast as yet as the new Rules are not in force and therefore, we cannot say with certainty how many cases will meet the required criteria for dismissal.

We remain confident that this anticipated increase is unlikely to impact the amount of revenue generated through case fees over the course of 2022/23 and 2023/24. This

confidence is built on the assumption that any reduction in the proportion of cases where a case fee is payable will be offset by the significant increase in the number of cases closed over those two years under LeO's business plan and performance improvement trajectories.

It is important to note that once the PAP backlog has been cleared the number of case closures will inevitably reduce. At that point it is likely that amount of case fee income will also reduce as a result of fewer cases closing per annum, but the proportion of those closures coming by way of Rule 5.7 dismissals likely remaining at the higher level due to the efficiencies created by the Scheme Rules changes. As LeO better understands the likely proportion of cases that will be closed annually without attracting a case fee we will be able to more accurately forecast the implications for case fee income.

LeO are mindful that if the proposed changes to Rule 5.7(c) is introduced and the inconsistency in the Scheme Rules is addressed then this could signal a further increase in the proportion of cases where case fees are not charged. We are also mindful that any further refinement of the Rules around case fees made as a result of the Stage 2 Scheme Rules review would also change the profile and proportion of cases where a case fee is charged. It is for this reason that LeO does not feel able to progress any of those changes at this time as to do so would very likely impact the amount of case fee income generated and the size of the levy payment required from the sector. All of this would need to be considered and approved by the Lord Chancellor.

Value for money

LeO is committed to ensuring that it is able to provide a quality service and performance against a value for money (VFM) metric that now forms an established element of LeO's reporting to the LSB and other external stakeholders.

LeO has reflected on whether the proposed changes to the Scheme Rules are likely to help improve value for money and in doing so has considered how the proposed changes will impact on the various aspects of LeO's VFM metric.

- Unit cost – LeO currently reports this measure by dividing its operating costs by the number of cases closed over a defined period. Although LeO's costs will increase over the next financial year as staffing levels are increased to deal with increased demand, the new Scheme Rules will support and facilitate quicker and more effective investigations which will result in an increase in the number of case closures. It is likely that the increase in closures will offset the increase in operating costs and show a reduction in overall unit cost.
- Case closures – performance against this measure will likely improve once the revised Scheme Rules have been implemented as the Rules will remove perceived blockers to early resolutions and case progression.

- Volumes of cases awaiting assessment in the PAP - this will reduce as LeO takes full advantage of the current front-end initiatives and the efficiencies offered by the Scheme Rules changes.
- Investigator closures – this metric should again increase as the revised Rules facilitate more efficient and effective investigations and support the focus on early resolution of cases.
- Customer journey time – this measures the time from initial contact to case closure and we are confident that this will reduce further as the new Scheme Rules enhance the improvements seen through the front-end initiatives.

LeO is therefore confident that the changes that are being proposed under the Stage 1 review will contribute to an improved performance against the VFM metric.

Appendix 1 – Summary of responses to consultation

We have received a total of 24 responses to the OLC Scheme Rules consultation.

<u>Regulator and professional body responses:</u>	<u>Consumer/public responses</u>
CILEx Regulation	Legal Services Consumer Panel
Bar Council	Association of Consumer Support Organisations
Bar Standards Board	2 x consumer/general public responses
Council for Licensed Conveyancers	
Society for Licensed Conveyancers	
The Law Society	
Faculty Office	
Solicitors Regulation Authority	

<u>Legal Sector responses:</u>	<u>Internal responses</u>
4 x legal sector responses	8 x staff responses

Detailed summary of responses

	SR 4. Time Limits	SR 2.11 Declining to accept a complaint for investigation	SR 5.7 (b) (c) (p) and (q) Ombudsman discretion to dismiss or discontinue a complaint	SR 1.11 the wider delegation of decision making	SR 5.19 Escalation of cases to an Ombudsman for a final decision	SR 6. Case Fees	Additional changes
Regulator and Professional Body responses							
CILEX Regulation	- Agreement that it is in the best interests of consumers and service providers for a complaint to be brought to LeO at the earliest opportunity and recognises the desire to enable cases	- Agrees that early identification of cases for quick resolution benefits both parties but would have welcome additional information from the pilot in order to understand better any potential impact the new rule will have on consumers.	5.7(b) - Support the proposal to add 'significant' to the rule. It would be helpful to receive further detail to understand the factors and the skills required to answer the question of 'what is significant' in each case.	- Agree with the intention to widen the powers of delegation as it is sensible and proportionate in improving the efficiency of LeO and provides more timely responses to complainants. - With any delegation of powers, it is important that there is	- Support the proposal to limit the right to an Ombudsman decision in certain situations and agrees that it should enable more effective use to be made of an	- Agrees that it is appropriate to conduct a review of the case fees model. CRL would be happy to engage with this review, as it considers that any new fees model should support good behaviours from	- Agree with the other additional proposed changes to the rules. Given the change proposed to Rule 5.7 (a) separating it into two separate grounds, a revised 5.7 (a)

	to be progressed in a timely and efficient manner. - Concerns that a reduction from six years to one year may prejudice consumers whose cases are still in progress and who may thus be reluctant to escalate their complaint until the legal matter has been resolved. This may then result in consumer detriment in some cases, as consumers may be unable to gain resolution of their complaint.	- Welcomes the proposal that before dismissal the complainant will have an opportunity to explain why it should not be dismissed and that the explanation will be considered by an Ombudsman before deciding what action to take. This will assist consumers who may have difficulties in articulating their claim. - a clear set of criteria should be provided for refusing to investigate a matter.	5.7(c)	- Support the proposal and welcomes the introduction of monitoring to ensure that 'offers and revised offers' are used correctly by service providers. It is reasonable that the Legal Ombudsman will not charge a case fee if a case is dismissed	appropriate oversight both in relation to the ways that these powers are exercised and the outcomes that come from their use.	Ombudsman's time. - It will be important that there is oversight of the decisions to ensure that the 80% minimum level of consistency referred to in decision-making process is both maintained and improved. Similarly, that all the necessary factors have been considered and documented before a decision is reached. - It is important that the factors set out in para 111 are considered at an early stage rather than later,	service providers, be set at a proportionate level, and reinforce the good practice of resolution of complaints at an early stage. - How the fees are structured will be important in ensuring that it does not create a culture of 'paying off' parties to gain an early settlement.	and a new Rule 5.7 (o), CRL would suggest that consideration is given as to whether the new Rule 2.11 would also benefit from similar clarity.
			5.7(p)	- Agree with the proposal in principle but it's important that the investigator has explored with the complainant the issue(s) and has asked the complainant to provide only that information/ evidence that is relevant to support the complaint.				

			5.7(q)	- Supports in principle- however, there will need to be clarity on this point at the outset of any complaint being received by the LeO to ensure that consumers are aware of the potential ramifications of failing to disclose all relevant matters without undue delay.		when a review is requested. This would ensure that vulnerable clients are identified early within the process		
--	--	--	--------	--	--	--	--	--

Bar Standards Board	- No. This proposal is likely to have a negative impact on access to redress for legal consumers and hence on consumer access to justice. In particular: • Some consumers are likely to lose access to meaningful redress, by virtue of having been ruled out of scope of the LeO's jurisdiction. • It is likely to mean an increase in the number of inquiries which are raised with the BSB in the first instance, as well as the resultant proportion of cases in which we take no action, since matters of conduct are less likely to be	- Yes. We support efforts to reduce waiting times for consumers to access redress, and hence to reduce the size of the LeO's Pre-Assessment Pool. Ultimately, we believe that this proposed rule will have a net benefit for consumers of legal services by speeding up access to redress where appropriate.	5.7(p)	We have some concerns about the proposed introduction of Rule 5.7(p), which would allow the Scheme to dismiss complaints which may be considered disproportionate. We note that some legal complaints are by their nature voluminous, and that expert assessment and investigation may be warranted to assist the complainant in navigating a complex legal services environment. We would also note, however, that some of our concerns may well be alleviated through the proposed guidance, and so would be interested to review the proposed guidance for the operation of this rule before passing judgment.	- Yes. We believe that this proposal could help to speed up decision-making by the LeO, and that effective delegation of decision-making and flexibility are reasonable organisational ambitions for the LeO. If delegation is allowed to occur, we believe this is likely to be in the interest of consumers.	- We note that proposed revisions to Rule 5.19(c) may have a limited impact on the number of cases which become eligible for BSB handling if the Ombudsman decision in question is a jurisdictional one, as cases ruled out of scope become eligible for the BSB to handle. We do not imagine the impact will be major.		- We note that proposed changes to Rule 2.8 may reduce the number of cases eligible for BSB handling, and would welcome this proposal, as these cases are likely to be more suitable for the redress system. - The BSB broadly supports the ambition of these proposals in terms of modernising and streamlining the LeO's rules and processes and speeding up access to redress for those consumers who require it. We do not have any comments on specific questions beyond those made previously.
---------------------	--	---	--------	--	---	--	--	--

	raised. This may leave consumers dissatisfied. • For any consumers who are unable to bring a case to the LeO, and who understand that raising a case with the BSB will not result in them receiving redress, there is no potential source of recourse but the courts. Any potential increase in court cases would undermine the purpose of an Ombudsman scheme for legal services. - We would support guidance that encourages legal consumers to raise complaints promptly.							
--	--	--	--	--	--	--	--	--

Law Society	- Support the proposal to reduce the time limit for complaints to LeO to one year from the date of act/omission or date of awareness, whichever is later. This is a reasonable time within which to bring a complaint. - The retention of R4.7, allowing an Ombudsman to exercise their discretion, to extend the one-year time limit if there are	- Support the revised 2.11 rule as proposed but believe it would appear more logical for the clause to appear under a separate heading in SR.5. - The introduction would be a better process for rejecting frivolous/unmeritorious complaints at an early stage- and should reduce the likelihood or those cases being accepted into the first place. This type of triaging is common in other redress sector organisations. - Pleased to note LeO has considered and appreciates the risks of such a process and any representations	5.7(b)	- The criteria for the exercise of this discretion will need to be carefully thought through by LeO to ensure that it achieves the desired effect and avoids protracted engagement with the parties as to why a particular complaint is not appropriate for further investigation. - If criteria were to exist outside of the Scheme Rules, they must be part of a clear policy and made publicly available as part of the information that accompanies the application process.	- Generally supportive of LeO's intention to look at widening the extent of its delegation powers to facilitate the efficient and proportionate investigation and resolution of complaints. - Not clear whether delegation of decision-making powers relates internally to existing staff or to external consultants. In either scenario, sufficient safeguards need to be in place to ensure matters are considered fairly and without delay by properly trained individuals. - Would welcome more information on the development	- Generally, support the intention of the proposed amendments to R5.19 (c) to prevent duplication of work. However, we would suggest an amendment to the proposed rule as follows: - <i>'(c) if any party indicates disagreement within that time limit, arrange for an Ombudsman to issue a final determination only in circumstances where the disagreement is</i>	- The Law Society supports the "polluter pays" principle and that law firms which give cause for complaints, or who do not settle complaints effectively themselves, should meet the costs. Those law firms which are able to avoid complaints, or deal with complaints effectively should not pay. - Reservations about a tiered system, as it appears complex in its application, and can foresee	- Concerns that R5.55 cannot be classed as trivial and will need further consideration and possibly additional wording to clarify the scope. - LeO may wish to consider whether the power to make a fresh decision on grounds of procedural defect should only arise in relation to substantive procedural defects or where there have been repeated
-------------	---	---	--------	---	--	--	--	---

	'exceptional circumstances', if he/she considers it to be fair, should reduce concerns about access to justice. However, it would be helpful to understand how LeO defines 'exceptional circumstances'. Some examples would assist with that understanding. - Agree that it would be unfair to apply time limits retrospectively to complaints which have already been lodged.	should be considering by an Ombudsman in deciding how to proceed.	5.7(c) - We agree with this proposal- however the proposed revised wording appears confusing. We suggest editing the proposed wording for R5.7(c) as follows- 'c) <i>the authorised person either offers fair and reasonable redress in relation to the circumstances alleged by the complainant during the ombudsman's investigation or 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 ...</i>'.	programme to ensure technical competence.	<i>either based on a challenge of the facts and or evidence or a point of law on which the investigator's findings relies.'</i> - Question the need for the additional wording: - '<i>in circumstances where the ombudsman determines it fair and reasonable to issue a determination.</i>' If it is included in any amended Rules, we would like to understand better why it is necessary. - Support the gist of the proposed amendments to R5.20 but suggest some editing for clarity. We propose the following wording: - '<i>If neither party, in their response to</i>	arguments arising about what stage a process has reached. May find it difficult to administer a tiered case fee structure and any potential challenges could be resource intensive. The idea may therefore prove to be counterproductive. - A simpler structure would be helpful, with greater flexibility to remove vexatious complaints early and to support small firms and those organisations which provide free advice.	procedural errors that have a substantive effect on the safety or correctness of the determination.
			5.7(p) - Agree to the introduction.				

			5.7(q)	- Unsure whether the new paragraph (q) is correctly positioned. It would be helpful if LeO would define what it means by 'undue delay' and possibly provide some examples. We consider that the reason for the 'undue delay' in bringing the complaint should be considered before the complaint is accepted for investigation and suggest that there should be scope to consider this issue right at the outset as R2.11 addresses and not after the complaint has already been accepted for investigation. This would better manage the complainant's expectations.		<i>the investigator's findings, indicates disagreement within that time limit, the Legal Ombudsman may treat the complaint as resolved by the case decision in accordance with the investigator's findings.'</i> - Would support clearer guidance on compensation.		
--	--	--	--------	---	--	---	--	--

Bar Council	- Broadly welcome the proposal to reduce the time limits of 6 and 3 years from act/omission or date of awareness to 1 year, provided there is discretion retained to allow for late complaints to be pursued in relevant circumstances. - Useful to know which other Ombudsman Schemes have a 1-year limit but should not necessarily influence what is right for the LeO. - Pleased to see discretion being retained	- Agree in principle but have some suggested amendments to the new rule 2.11. Consider it unnecessary to include express reference to the requirement for dismissing a complaint to be “in an Ombudsman’s reasonable opinion” because this element is implicit in how an Ombudsman interprets the rules. - Also consider that the elements “lacks merit” or “involves no significant detriment” ought not to be including in the new rule, since it would not be possible to determine this at the outset without a detailed investigation of the merits and circumstances of the complaint (save in an	5.7(b)	- Consider the additional use of the word ‘significant’ to be unnecessary as it does not expand on the meaning within 5.7(b) or condense the wording within the Rules for ease. - If the word ‘significant’ is retained, we welcome the development of detailed criteria for an Ombudsman to refer to when considering dismissing a complaint.	- Support the intention to look at widening the extent of the delegation of Ombudsman decision making powers but significant work would need to be undertaken to ensure it does not result in adverse consequences. - A pilot period or desk-based research for this rule change could be undertaken, before seeking a change in primary legislation. - Would need to ensure staff are sufficiently trained- especially given the high number of new recruits and less established staff members in the organisation. - Change in primary legislation should not deter the Legal Ombudsman from pressing ahead with	- The right to a full review of an investigator decision by an Ombudsman is one that has procedural benefit to both the complainant and the authorised person. But recognise it can be problematic that either party can request that the complaint is escalated for a final decision with no requirement for that disagreement. Therefore do not disagree with the need for the person seeking an escalation to give some reason,	- The introduction of an alternative case fee structure may result in numerous queries and challenges about whether the high fee stage was reached. - As an alternative LeO could consider whether to increase the level of case fees overall that are currently capped at £400. This might have the intended effect of incentivising service providers to resolve cases early, whilst avoiding the challenges of a tiered system. LeO could also introduce an ‘unreasonable behaviour’ case fee by the investigator/ ombudsman on	- 5.7(a) consider it sensible to separate out ‘frivolous or vexatious’ claims or where ‘it does not have any reasonable prospect of success. - would add ‘or minimal in gravity on impact upon the complainant’. - Ensure consistency between references to “ombudsman” and “Ombudsman”.
	5.7(c)	- We agree that extending this rule to include revised offers is a sensible suggestion and would hopefully encourage service providers to engage with the complaints process.						

	to extend the time limits. It would be helpful for consumers to know what might fall under discretion.	extreme scenario) and is therefore again contrary to the stated aims of introducing the rule. - Agree with the mitigation of the rule proposed that before any complaint is dismissed, the complainant would be provided with an opportunity to explain why the complaint should not be dismissed.	5.7(p)	- Agree that there should be a means of filtering out low impact, low value complaints at the earliest stage but have included proportionality requirement under a new rule 5.7(d) with alternative wording to extend the remit to LeO as a whole, rather than just Ombudsman time.	the change as part of a long term strategy for improvement.	provided it is not too high a test. - Needs careful consideration to ensure that the investigator decisions of consistent high quality so that customers are not unduly impacted by the rule. - Para 111- An additional factor that might be incorporated, is the factor considered in paragraph 65 relating to the “value of providing learning and feedback to the service provider and sector as a whole”.	each or both parties, based on a set of criteria met. This would be permitted under s133(3)(i) in the Legal Services Act 2007.	
			5.7(q)	The introduction of 5.7(q) seems a sensible rule, provided it is pursued with the discretion laid out at paragraph 86. Abuse by complainants might legitimately be clamped down on, especially where this is a free service to complainants. We are pleased this has been considered and is the subject of a new rule.				

Society for Licensed Conveyancers	- Agreed. The SLC considers that it is within the best interests of all parties for any complaint escalated to LEO to be brought within a timely manner. As stated in the consultation the longer the wait the more difficult and costly it is to investigate the complaint.	- Agreed. The pilot scheme has shown that there are a number of cases where there is little or no benefit in a costly examination of the complaint, especially where the service provider has offered a reasonable sum to settle the complaint.	5.7(c)	- The SLC supports the proposed amendments under Scheme Rule 5.7. We note that one of the amendments seeks to right a wrong that is inherent within the current LeO framework in that a case fee applies even when a small minor increase in made to an existing offer, this is seen as punitive by law firms. The opportunity for the consumer to challenge/ query the decision is an acceptable remedy.	- The SLC would support the intention to look at being able to widen the extent of the delegation of Ombudsman decision making powers.	- Agreed. All too often a consumer will request this in the hope that a higher sum of compensation will be awarded, this adds unnecessary time and delay to the process. - Consumers should be advised at an early stage as to whether or not their claim for a high level of compensation is likely to be achieved.	- Supportive in principle of a review of the case fees model. However, no case fee or a higher chase fee should be applied where the consumer has simply been vexatious with their complaint. There is evidence of some consumers referring matters to the Ombudsman merely to invoke the case fee.	- Supportive of the proposed changes.
---	---	--	----------------------	--	---	--	--	--

Faculty Office	- Agree there is merit in reducing the time period. However, whilst we can see the attraction to LeO and, possibly, service providers of adopting a one-year time limit we consider that this is too great a change and too short a period. A two-year period from either the act/omission or the date of awareness of the act/omission would in our view represent a more proportionate reduction and an appropriate period to allow consumers to bring the complaint (whilst maintaining the requirement that this should be brought	- Yes. We agree that an initial tri-age mechanism for declining to accept a complaint for investigation at the earliest opportunity in the circumstances outlined in the consultation would ultimately benefit both complainants and service providers as well as LeO.	5.7 (all)	- Agree that all proposals appear to be reasonable and proportionate.	- Agreed, provided that the staff to whom decision making powers might be delegated are provided with adequate training and support and that clear processes are in place to ensure that the 'boundaries' of any delegation are transparent and maintained.	- We can see the benefit of reducing duplication of time and expense where neither the claimant nor the service provider have raised any substantive issues in response to the investigator's findings and/or case decision. - Take the view that, wherever possible, a negotiated/ mediated settlement agreed with the parties to any complaint is always the preferred outcome such that the relationship of trust and respect between the parties can be maintained or restored.	- Yes. We agree that any steps which may be taken to encourage early resolution of cases, including a review of the case fees model, are to be welcomed.	- We support all of the proposals outlined in the additional changes which appear to us to be necessary, sensible and proportionate.
----------------	--	--	-----------	---	---	--	--	--

	within six months of the service provider's response (if any) to the complaint).							
--	--	--	--	--	--	--	--	--

Council for Licensed Conveyancers	- Broad welcome the changes in principle, with 3 important considerations: - Timing – Further work around the one-year limit would be helpful. We would encourage a cost-benefit analysis and impact assessment on moving the limit to 12, 18 and 24 months. - Exemptions – We believe it is important for the OLC to have some discretion in this matter, e.g., if someone is vulnerable. At the same time, we would encourage an approach that carefully monitors and tracks how that discretion is applied (on subject matter and claimant).	- We would broadly support this measure. It seems sensible that any organisation should be able to dismiss if a matter can be seen as without merit or meeting acceptance criteria. To ensure its effectiveness and reasonable application there should be a focus on ensuring there is consistency across cases, particularly around exemptions. These should be looked at particularly carefully before any potential dismissal. Again some monitoring in the early years of implementation would be valuable in case any recalibration was necessary.	5.7 (all)	- We are broadly in support of these measures, and note OLC's wider highlighting of public interest, vulnerable consumers, and significant detriment. - In particular, we would support the recommended measures on undue delay (noting there should be clearer provision made for those who may have compelling reasons for not following this Rule). - Overall, we believe this set of changes to Rule 5.7 could and should be effective. We would welcome further steps to ensure that theory and practice operates in tandem. For example, the case study was helpful in the consultation, and we would request further	- Interim proposals: We would strongly support this measure and hope that the OLC approach the implementation of this change in a flexible and creative way. We agree these related set of proposals could potential help clear the OLC's backlog and improve the management of future cases. As such, we support these changes in principle, with the following recommendations. - The OLC note that these proposals above relate to an interim solution until primary legislation can be amended. While we support a temporary measure, we would also strongly encourage a reconsideration of a more permanent approach. There appear to be two solutions to the backlog. The first is operational (as covered directly above), i.e., to increase their Ombudsman decision making capacity and/or ensure the outputs from investigators are of sufficient quality to be capable of being signed off by Ombudsmen. The second is legal. The OLC has stated that, in their view, work can only be carried out by employed staff, not contractors or agency staff. The CLC believes that parts of the LSA allow for some flexibility which should be explored further.	- We agree with this proposal to review the case fee model. During that review we would encourage the application of any relevant lessons from the OLC's early resolution pilot. And in particular any insights on the factors that help the resolution of cases. Alternative models would be useful to develop to better understand the impacts to the overall charging model. The CLC would also be interested in learning more about how this model is intended to work, including how it could affect behaviours / trends, and look forward to being involved in further discussions about its application.	- Broadly support the list of measure noted but do not support the change to formalising the position on complaints by beneficiaries.
-----------------------------------	---	--	-----------	---	---	---	---

	- Communication - Regardless of the findings of such an exercise, it will be important to have a clear guide to exemptions (see above), for both OLC staff and consumers.			examples, as part of wider plan to consider these changes in further depth as well as close observation of the impact of the changes. - As this is an important change, it could also be beneficial to map a general support plan around this at an early stage.			
--	---	--	--	---	--	--	--

Legal Sector responses								
Slater and Gordon	- Yes, we agree there is merit in reducing the time limit for complaints to be brought to one year from the date of act/omission or date of awareness. As there is still Ombudsman discretion to extend the time limits. It can be difficult to recall cases that have been resolved a number of years ago, especially if has been attrition experienced with Fee Earners. We believe this change will not bring about any detriment to the consumer.	- Yes, we agree there is benefit in introducing new Rule 2.11. Having recently engaged with such pilots, we are in agreement this new rule would help with quicker resolution & effectively handle cases in which it is without merit or frivolous or vexatious.	5.7(all)	- Yes, we agree to all the proposed amendments within Rule 5.7. Introducing the word "significant" within Rule 5.7b to enable consideration whether conducting an investigation, is proportionate use of resource. Given our experience, we are confident decisions made by applying a threshold/criteria that can be changed quickly based on consumer & business feedback is a positive step to early resolution & best use of resource.	- Yes, we support the decision to widen the delegation of decision-making powers. In our experience we have been in agreement with all decisions made by the investigator, as we have found them to be fair & equitable in all occasions.	- Yes we support the proposal to limit the right, to escalate to an Ombudsman only on the grounds of substantive disagreement points. This still provides an opportunity for relevant cases, to be considered & should result in quicker responses at Ombudsman stage.	- Whilst in principle we support a review, we are keen to fully understand & be involved in any fee modelling. We are encouraged by the results of the current early intervention pilots, in being able to resolve complaints to customers full satisfaction. Prior to formal investigation, with the support of the Ombudsman.	- Yes, we support all the proposals outlined within the additional proposed changes

Manchester Law Society	- We agree with the proposal to reduce the time limit for bringing a complaint to not later than 1 year from the date of the act or omission being complained about or from when the complainant should have realised that there was cause for complaint. If a client has a genuine “poor service” complaint, it is difficult to envisage circumstances where a complainant	- Provided that the Ombudsman can be satisfied as to the competency of those performing the review of cases in the pre-assessment pool and provided there are very clear criteria of complaints which can be concluded without full investigation, we can see merit in introducing such a rule. - We also agree with the need to have any recommendation to dismiss at this early stage reviewed by an Ombudsman if requested by the complainant.	5.7(b)	- The question of proportionality will, we think, need careful explanation to complainants. To them, their complaint (no matter how trivial it may seem to others) will often be significant.	- We can see some logic to this in principle, but the Ombudsman would need to be satisfied with the training, guidance and quality assurance of investigatory staff and decision-making. There is also the potential concern (which arises in e.g. internal misconduct issues at the SRA) of being seen as acting as investigator, prosecutor and judge with no separation of powers/responsibilities. If the Ombudsmen would need to be heavily involved in supervision/training and development etc, will there actually be any significant time-saving benefits? We do not have enough	- We can see the benefits identified in the consultation of an Ombudsman triaging a decision request instead of having to spend time drafting and issuing a full decision but this will require clarity on the part of the investigator in setting out the grounds for their findings. If, having done so, there are no substantive reasons given for objecting, we can see that time could be saved in not having to have a final decision drafted. The Ombudsman	The case fee system is often seen as unfair to firms in circumstances where there is no fee being charged to the complainant in what are often seen as spurious complaints. Having the ability to dismiss such claims in the early stages before being accepted for investigation as per earlier proposals in this consultation may help to alleviate this. We can see that a flat fee imposed irrespective of the stage at which a LeO complaint is resolved (after being accepted for investigation) does	
			5.7(c)	- We also agree that an extension of the wording at Rule 5.7(c) to allow an Ombudsman to dismiss if a reasonable/revised offer is made by the service provider during the investigation process has merit. We agree that in such circumstances, no case fee should be payable by the firm.				

	could not reasonably have known they had grounds for complaint within a year of such poor service or alternatively within a year of becoming aware of issues giving rise to a complaint. The complainant does have the right of redress through the courts which gives them more time if necessary coupled with the discretion of the Ombudsman to extend the 1 year time limit if fair and reasonable to do so.		5.7(p)	- We agree with the proposal of a new rule 5.7 (p) to enable the Ombudsman to dismiss a complaint where it would be disproportionate for an investigation to be carried out, subject, again, to there being clearly defined criteria.	information to be able to comment on that.	has highlighted the situations where a final decision might still be required as set out in the consultation.	not encourage service providers to try and resolve complaints as early as possible and a tiered case fee structure based on the stage of the process reached might be more appealing but we can also see scope for further argument about which tier a particular complaint resolution falls into.	
			5.7(q)	- Agree with the proposal for a new rule 5.7(q) enabling the Ombudsman to prevent additional complaints being added to an ongoing investigation if they could have been raised sooner.				

Anon 1	- Yes, however on point 45 – Have they considered setting the one year time limit for 1 year after the matter has concluded? Wouldn't this be easier than exercising discretion? Are there any clear guidelines for when discretion can be used for those clients that want to wait until their matter is completed or is it a personal decision made by the person who has been allocated the complaint? This doesn't sound fair.	Yes.	5.7 (all)	Yes- agreed.	- No. Whilst an ombudsman might not feel that there have been any significant loss, distress, inconvenience, or other detriment, what a customer feels is significant to their own circumstances could be very different. I think all complaints where a loss has been suffered should continue to be looked at.	- Yes, providing there is an appeals process, or the ability request an ombudsman decision by either the customer or the law firm.	- Alternative way of reducing the number of complaints going to a final Ombudsman decision: Taking a random sample of cases and having them reviewed by an Ombudsman on a regular basis. Similar to file reviews that are conducted in law firms. So that there is oversight on the quality of work being done by investigators.	Agreed to all.
--------	---	------	-----------	--------------	---	---	---	----------------

Anon 2	- Agreed. It will make dealing with a complaint easier, when memories are fresher and additionally when the file will be available because it might be the case that the file has been destroyed after a 6-year	- Yes, it is not only clients that will benefit from this but service providers too, particularly where this would involve reasonable offer made. It creates a lot of stress waiting to be contacted by LeO when a complaint has been escalated to them. It is also fair to say that when the complaint has been dealt with, months pass and then	5.7(b)	- Agree with the changes in respect of the addition of the word 'significant'.	- I support this change. I have commented before on this particular issue. It is the case that other Ombudsman delegate outside of their business. As an example, The Property Ombudsman uses outside Adjudicators to make decisions about complaints raised with them. This works remotely and works well, whilst still providing a quality	- At the moment there is no reason why a complainant would not escalate a matter for an Ombudsman's decision, but this may well lead to further work for the legal provider and the stress of having a complaint hanging over their head. I	- Yes- supportive of the review.	5.7(a)- I think this will need careful consideration and determination on what substantiates that the complaint has no reasonable prospect of success, with both parties to be given an opportunity on commenting on the decision. It would be useful if what would be
--------	--	--	--------	---	---	--	---	---

	period. I feel that whilst 6 years is the timescale for bringing matters to Court in most circumstances, LeO do not deal with legal issues in any event, so it is fairer to have this shorter timescale. If a client is unhappy with the service, they should have to raise concerns sooner than later. I also think it would be fair for an Ombudsman to have discretion to extend this in specific circumstances, along as this applied uniformly.	contact is made, again the matter would not be 'fresh' and therefore involves further work for the profession. Whilst considering the clients thoughts on why it should be dismissed, I also feel that the service provider is asked why it should be dismissed. - It would also be beneficial for the profession to be provided with some general guidance about what LeO would consider 'a reasonable offer' based on generalised circumstances, although I appreciate all individual circumstances could not be covered, some general guidance would help both LeO and the profession, as they will know whereabouts to 'pitch' an offer for it to be considered as 'reasonable'.	5.7(c)	- Good idea to remove the case fee where the a 'revised offer' is made once a complaint has been accepted for investigation. I think would help move complaints along as at the minute there is no incentive to do so for the profession. I think this should also extend to when an Investigator first gets the complaint, as they would have spoken with the complainant, have a handle of what they want, but they ask if the service provider would like to increase the offer. I always refuse because even if it resolves matters, the case fee is still payable, whereas if I allow the investigation to go ahead, it is likely that the service will be found reasonable.	service to their complainants.	agree that this change should take place. I feel that considerations should not simply be that the complainant does not agree with the decision or where a resolution is suggested but rather it should be on the basis that there has been a mistake of fact. - The other adjustment could be that where the complainant escalates their complaint to an Ombudsman and the decision remains as the Investigator, then they could be charged for that decision to be made.		considered as no reasonable chance of success would look like. - 2.8- I do not agree with this. An executor provides instructions about actions taken on the estate. A legal representative should not act upon instructions that do not come from their client. A beneficiary is not a client of the firm. I do not therefore think that a complaint from a beneficiary should hold the same weight as that of a client.
--	---	--	--------	--	--------------------------------	--	--	---

Consumer bodies and public responses

Association of Consumer Support Organisations (ACSO)	- It is not apparent that a significant reduction in the time limit for when a complaint must be referred to LeO, from six years to one year, is in the best interest of consumers. - Although the current time limits mean there are complaints that cannot be investigated easily due to the amount of time that has passed since the act or omission, the reduction is substantial and not the universal norm across the ombudsman and redress sector. Moreover, there may be multiple reasons as to why a consumer is delayed in raising a complaint with LeO, including a lack of awareness of the service.	- Yes, we agree there is benefit in LeO providing consumers with a realistic assessment of the likely outcome of an investigation at the earliest possible opportunity. In order to ensure that consumers are not left wholly dissatisfied that their complaint has been dismissed, it is essential that LeO explains fully its reasons for dismissal. We suggest that examples of similar complaints and their outcomes are provided to consumers at the time of dismissal. The proposal to allow complainants an opportunity to explain why their complaint should not be dismissed is welcome, as is LeO's	5.7(b)	- In practice, it may be difficult to determine what should be considered significant under the new rules.	- There is a risk that the proposed revision to the Scheme Rules will result in adverse consequences for consumers, not least as decisions are potentially legally binding and subject to judicial review. Generally speaking, we are not opposed to the extension of the delegation of Ombudsman decision-making powers. However, further information is required on the development programme that LeO would introduce to provide suitable assurance as to the technical competence and expertise of the staff to whom decision making will be delegated. Moreover, additional information is needed as to how LeO intends to monitor the service provided and the	- In general, we are not opposed to the proposal to limit the right to an Ombudsman decision if no substantial issues have been raised in response to an investigator's findings, such as an error in fact or law, or additional new evidence. That the rule will still provide an Ombudsman the opportunity to pass a case for final decision in certain circumstances, such as if there were vulnerability issues or significant public interest in the subject matter of the investigation, is welcome. - The consultation document states	- Yes- we agree that the current flat fee of £400, irrespective of how or at what stage in the LeO process the complaint is resolved, does little to encourage service providers to try and resolve complaints as early as possible in the investigative process. An introduction of a tiered case fee structure is likely to reduce the significant backlog of complaints which currently characterises LeO. Moreover, it may change the perception held by some legal service providers that LeO attempts to recover the case fee from them wherever it	- Yes- the proposals outlined in the additional changes which appear sensible and unlikely to have any negative impact upon consumers.
			5.7(c)	- We agree with the proposed extension to Rule 5.7(c) which would allow an Ombudsman to dismiss a complaint if a reasonable revised/ increased offer has been made by the service provider during the course of an ongoing investigation. Consumers should be made aware from the outset of their complaint that their complaint may be dismissed in such circumstances.				

	- The examples of factors that might be considered when exercising a discretion appear sensible, although broad and therefore open to wide interpretation. Exceptions should be considered on a case-by-case basis, yet there may be inconsistencies in how they are applied across complaints. - additional evidence and analysis on the number of complaints	intention to accommodate any requests for reasonable adjustments in relation to communication or language barriers.	5.7(p)	- The consultation document states that “the proposed new rule would only apply to a small number of complaints”, yet no data has been provided to demonstrate how many complaints would likely be affected. Further information would be welcome, however in principle we agree with the proposed new Rule.	outcome delivered by these staff.	that LeO does not expect the proposal to reduce the number of cases where a decision is needed to a level where it critically affects LeO’s commitment to impact and insight work or driving improvements in the sector. ¹³ If any evidence is found that the proposals have	can and sometimes in unfair situations.	
--	---	---	--------	--	-----------------------------------	---	---	--

	that are likely to be affected by the proposed time limit would be welcome, and LeO will need to ensure that any reduction in the time limit for bringing a complaint to the service is communicated effectively to consumers.		5.7(q)	- Consumers may bring a complaint to LeO whilst their legal matter is still ongoing, particularly if the proposed reduction in the time limit to make a complaint is introduced. As Rule 5.7(q) depends upon the proposal to revise LeO's time limits, and therefore no timeframe has been proposed on the opportunity to bring new/additional complaints has been provided, we are not able to either support or oppose the introduction of the Rule.		caused a negative impact upon these commitments, they should be reviewed and amended as appropriate.		
--	--	--	--------	--	--	--	--	--

Legal Services Consumer Panel	- The Panel agrees that there is considerable merit in reviewing the current time limit for complaints to be brought to the Legal Ombudsman. We note that the current time limit was set to align with the court time limits for contractual claims. This in itself can be argued to be counter-productive for a resolution system that was intended to be informal, and one	- The Panel is persuaded by the arguments set out in the consultation document that in some cases there are justifiable reasons for dismissing a case early, though here again we would have expected to see some evidence of engagement with consumers about this. - The Panel would prefer that the Legal Ombudsman uses the	5.7(b)	- No- We believe this change risks sending the wrong message to providers, damaging consumer confidence in the complaint process, and weakening the culture of complaint handling in the legal services sector. We are concerned that there is too much scope for subjective value judgement with this proposal.	- Yes. The Panel supports this proposal for the reasons explained in the consultation document. We are convinced by the evidence which shows that up to 80% of all the cases referred to an Ombudsman for a final decision mirror the recommendation by the investigator. The only consideration we ask is that the Ombudsman considers utilising only	- Yes. The Panel supports this proposal for the reasons explained in the consultation document. We are convinced by the evidence which shows that up to 80% of all the cases referred to an Ombudsman for a final decision mirror the recommendation	- Yes, the Panel is in full support of a review of the case fee model for the reasons outlined in the consultation paper. The Legal Ombudsman may want to explore the merits of the principle 'the polluter pays.	- The Panel broadly supports the proposals outlined in the additional changes. We are particularly supportive of the proposal to widen the circumstances in which a hearing can be held, and the proposal to clarify the
---	---	--	----------------------	---	---	---	--	---

	that arguably offers minimal monetary awards, accompanied by prolonged delays. That said, the proposed change is very significant and as such it should only be made based on proper research and analysis of the impact on consumers and of consumer preferences. - An analysis of LeO's existing data about the volume of complaints made within one, two or three years of the act complained about; and an articulation of areas other than conveyancing where impacts may only become apparent after a delay, with an analysis of how different types of consumers might be	language of dismissal and not 'early resolution' as this better reflects the action. We welcome the Legal Ombudsman's assessment of impact and agree that those who are not able to articulate themselves should not be at a disadvantage. - LeO should publish quarterly data on the number of cases it dismisses to help manage consumers expectations. - LeO should also consider exploring exemptions for certain types of cases such as asylum, refugee and immigration. This is because of the high number of vulnerable consumers in this area.	5.7(c)	- The Panel agrees with the proposals under 5.7(c). We agree that an Ombudsman should be able to consider whether a case should be dismissed if a reasonable revised/increased offer is made by the service provider during an ongoing investigation and the complainant decides to reject that reasonable revised offer. In this instance we agree that the Ombudsman should be able to use their professional judgement and data to determine what is a reasonable offer. We agree with the benefits of this approach to both providers and consumers.	experienced investigators for this task. We are concerned with the high turnover at LeO, and such a proposal could be risky if new investigators are left to make these decisions. There should also be a transparent quality assurance process in place to ensure consistency and quality of decision making.	by the investigator. The only consideration we ask is that the Ombudsman considers utilising only experienced investigators for this task. We are concerned with the high turnover at LeO, and such a proposal could be risky if new investigators are left to make these decisions. There should also be a transparent quality assurance process in place to ensure consistency and quality of decision making.	position of beneficiaries, as outlined in the document. Clarifying the position of beneficiaries is particularly important and we welcome the attention being given to this.
--	---	--	--------	--	---	---	---

	affected would be helpful. - There are already many 'silent sufferers' which means there are already a large number of customers who do not complain so any proposal to curtail rights needs to be robustly justified beyond efficiency arguments.		5.7(p) We have some concerns about this proposal. If this proposal is to be taken forward, attention should be paid to the wording in paragraph 78, that LeO's discretion "would still enable a case to be investigated where there is a public interest, a vulnerable customer or significant detriment". The word "enable" is too permissive: it should be stipulated that this proposal "would not allow an investigation to be stopped" in these circumstances. We are concerned that throughout the document LeO makes references to its strategic objectives and to other principles without much reference back to its statutory objectives which it also shares with the regulators.				
--	---	--	---	--	--	--	--

			5.7(q)	The Panel agrees with the proposal under 5.7(q). We agree that once an investigation has started, delaying it to allow the complainant to pursue new issues with the providers and then adding it to an ongoing investigation is disproportionate. Communication to complainants would be key in this area; they must be clear that this would not be permitted.				
--	--	--	---------------	---	--	--	--	--

Anon 3	- There is no benefit to consumers of legal services from reducing the time limit allowed for complaints to one year. There is also no benefit to legal professionals who provide a decent and effective service, this restriction will only benefit legal professionals who provide poor service and seek to do so with impunity.		5.7(all)	- In relation to Q3 and Q4 there is no benefit to the consumer whatsoever in changing these rules, there is a great deal of benefit to a service provider, on the other hand, which provides poor service.	- This effectively removes the consumer's right to an ombudsman decision and further restricts redress.	- The number of cases escalated to the ombudsman in the hope of a more equitable result is indicative of a serious lack of confidence in the investigators, and the service as a whole. - LeO needs a far more robust approach to poor service, and far higher penalties and pay outs where poor service is identified.		
Anon 4	- This is a huge change, a huge restriction. It is stated 30% of complainants would lose the opportunity to complain if that rule change was made. LeO is being both prosecution and judge which is not acceptable.		5.7(b)	- What is significant to one person is not significant to another and again LeO wishes to hold it within its power to make that judgement. To cut the case backlog, LeO may be tempted to use "significant" to reduce the number of cases it accept for investigation.				- This has long been a thorn in the side of the public who are beneficiaries when a solicitor has been appointed as an executor, and virtually impossible to have dismissed from position of executor. It is to be applauded as

			5.7(q)	- The matter of adding new matters to existing complaints. Complainants will not be using a skilled experienced assistant such as a solicitor to bring complaints who could assist in ensuring that all aspects - all complaints - about a solicitor are brought at the same time. This is assuming expertise in complainants many of whom will not have that expertise or even the time to thoroughly consider if everything they can mention in their troubles with a solicitor have been included from the start.				massively long overdue to enable a complaint to be brought against a solicitor by someone - a beneficiary - who is not a client.
--	--	--	--------	---	--	--	--	---

Internal LeO responses								
Anon 5	- Agree in principle but this we need to be absolutely clear that this in respect of contacting Leo. I know 5.4b states it but to assist I think this should be state "in line with point 4.1 above". This should then reduce premature complaint too. - Providing a definite date in which changes would come into force would make the process easier to manage and communicate.	- Yes- but if we have already identified a possible dismissal reason at the front end, we should ask both parties for their comments for the Ombudsman to consider. I have seen many complaints where the complainant has reasonable adjustments but sometimes these are not as bad as we are led to believe.	5.7(b)	- Support the introduction of the word significant.	Yes- and look forward to understanding more about this if the proposal is agreed.	- I understand the logic behind this but feel that if we are providing the evidence bundle without a case decision, then we should have a summary template to provide as a cover for it. - We need to ensure that all investigators are encouraging both parties (where possible) at each stage of their option to resolve with each other directly. This will become even more inviting for the lawyers if the fee charge amendment is approved. It could then also lead to a 'reasonable offer made' decision which is far less time consuming for an ombudsman.	Would like to understand more how this would be structured. Often offers are made and accepted at findings so the time has already been spent on investigation. Is it still therefore reasonable to waive completely if the offer was made by the lawyer?	Yes.
			5.7(c)	- Agreed - we very often see this but can't consider dismissal as it was not at first tier.				
			5.7(p)	- This would be welcomed by the Investigator and the firm but is less likely to be welcomed by the complainant.				
			5.7(q)	- We could address this when we scope the customer's complaint, but I do not think we should consider once the investigator's investigation is complete. It would need to be a new complaint, but we would need to consider time limit/awareness to give this guidance?				

Anon 6	- Yes there is merit to these changes and I think it's a reasonable change. The vast majority who raise their complaints later will probably have a reason that we may need to consider, however, so I would anticipate more work from asking ombudsman to consider whether discretion should be shown.	There are a number of further risks that need to be considered Given LeO are not investigating, and are making any decision, solely based on the complaints correspondence, and speaking with the complainant, in my view, there would need to be strict criteria and guidance set out for when this could apply to protect customers. For example, if the complaint was clearly and strictly about poor communication or delay, and there were clearly no losses to consider (we would also need to confirm this with the complainant), and the remedy offered by the SP was reasonable for these poor comms or delays. I'm concerned that a number of risks could apply, meaning we could short-change customers of larger remedies that they	5.7(b)	- Concerns that this change is far too open to interpretation and despite guidance it would be difficult to maintain a level of organisational consistency in what cases we dismiss. This could also lead to service providers adopting a similar approach of determining significant detriment.	- Can't say without understanding more about the proposals here. Who are we proposing makes the final decision – investigators? But the suggestion that this would only be some investigators? Which cases? Low complexity only? Cases graded low at the outset actually vary widely in complexity and eventual remedy. Not sure I could say I support this based on the information known.	- Don't disagree with this in principal, but there needs to be better and more criteria added here. If there is an error in fact or additional new evidence, then the investigator should be considering this, and revising their decision in any event. If there is a disagreement about the facts it should be passed to an ombudsman. I think we might be overthinking this. If there are arguments presented by a complainant it should be passed for a final decision. There is merit in not doing this, in my view, where they simply ask for a decision just in	- Yes I support a change.	- In respect of 5.33, I'm unaware that we would ever currently agree to this as we could always make adjustments such as communicating on the phone if required. If we are making changes that suggest we might be more open to this, then we need some guidance on what specific criteria applies as there is currently none in place.
			5.7(c)	- I can see the benefits. However, this comes with the caveat of the same concerns set out at Q2/Rule 2.11. The further concern here is that by saying service providers can simply increase their offer once it is picked up by an investigator (and then presumably avoid paying a case fee) is that this would lead to a decrease in service providers trying to resolve complaints when they are first raised.				

		could have been fairly and reasonably awarded under our process.	5.7(p)	-On the detail that is provided, this rule on first glance appears to be too broad and in a similar way to the 5.7b rule is far too open to interpretation and would be difficult to maintain consistency. The consultation paper mentions that strict criteria would be introduced. I would need to see these criteria before I could say I support the change.		case its different with no real justification		
			5.7(q)	Broadly agreed as long as we ensure that the scope for new issues being included isn't too restrictive.				

Anon 7	- Yes but the flexibility to assess for special circumstances is a definite requirement.	- Yes. This is absolutely needed pre-investigation and also reinforces the changes to the case fees issue.	5.7 (all)	Yes- but specially to (p) and (q)	- Not sure about this. Such delegation is an increase in responsibility which needs to be addressed in pay grade considerations. It makes sense but will still be seen as potentially not a “real ombudsman” so we would need to consider how we package and sell this message. Room for further thought?	- Yes- agreed. A short summary of findings as per current quaf may be helpful rather than a formal report or CD. But we would need to ensure they were adequately robust for challenge purposes. - I like the idea of getting the parties together in person to try to resolve through shuttle or face to face mediation. I had experience of this in a former role with a challenge by a resident who felt we were discriminating by not providing access for his car across a greenspace to the front of his property. The outcome was legal and binding if he accepted it.	- Yes absolutely without question.	- Yes.
--------	---	---	-----------	--	--	---	---	---------------

Additional proposals raised internally

1. We use the gender-neutral pronoun “they” instead of “he/she” in the wording of the Scheme Rules such as “an Ombudsman may dismiss a complaint if [they] believe...” This would ensure we comply with our EDI objectives.
2. That we mention what the “burden of proof” and “standard of proof” are for our Scheme unless we derive these principles from another legal source like the Legal Services Act. We can mention something like “The standard of proof is the civil standard of balance of probabilities,” and “The burden of proof is [whatever it is]”. I believe that enshrining these principles in our Scheme Rules would provide better protection for JRs.
3. 5.48 - The Ombudsman will send copies of the determination to the parties and the relevant Approved Regulator. This is onerous and could be done on request from the regulator.

Appendix 2 - EQIAs

The EIA form

The Word version of this form can be accessed on [LINK](#).

Section 1: Purpose and scope of policy

Title	Scheme Rule 2.11				
New or existing	New				
Document Owner	Sian Lewis				
Name, Job title undertaking the EIA	Sian Lewis – Research and Impact Lead Steven Pearson – Deputy Ombudsman Nicola Sinclair – EDI Manager				
What is main purpose of policy, project, procedure?	The Legal Ombudsman is proposing the introduction of a new Rule which would enable an Ombudsman to exercise their discretion to dismiss a complaint, if specific criteria are met, without the need to first accept that new case for investigation.				
How is the policy , project, procedure related to other areas of work?	N/A				
Who is likely to be affected by this policy? (please tick)	staff	Complainants ✓	Service providers ✓	External stakeholders (regulators. MOJ, LSB)	Other

Section 2: Assessment of relevance and proportionality

Key points to remember:

- to assess relevance you must consider evidence related to all equality characteristics
- you must record all evidence considered in [section 4](#) of this form.

Question	No	Yes	N/A	Comments
Does the policy relate to LeOs equality objectives and identified actions?	✓	☐		
Is there any evidence that some groups are affected differently? (E.g. a policy could noticeably have a more positive or negative affect on a particular group, i.e. more beneficial for women than men)			✓	Insufficient data available to assess impact. Continue to monitor and evaluate impact through ongoing data analysis and quality checks.
If you have identified any potential for groups being affected differently, are these exceptions valid, legal and/or justifiable? (please provide details in the comments box)	☐	☐	✓	
Does the policy relate to an area where there are known inequalities, or a significant potential for reducing inequalities or improving outcomes		✓	☐	
Is there evidence to suggest that this policy, procedure, project may affect meeting the needs of people with equality characteristics (including through provision of reasonable adjustments)		☐	✓	Insufficient data available to assess impact. Continue to monitor and evaluate impact of application through ongoing data analysis and quality checks.
Do you need to consult with any other individuals/groups in the development of this? If you have existing evidence or consulted already please record in section 4)	✓		☐	

Is there any alternative to achieving the policy/procedure/project without the impact?	☐	☐	☒	
Can we reduce the impact by taking different action?	☐	☐	☒	

If you answer 'yes' to any of these questions, proceed to [section 3](#).

If a policy/project/procedure is not deemed relevant for conducting a full EIA, proceed to [section 5](#).

Section 3: Full Equality Impact Assessment

Key points to remember:

- you must consider at this stage any need for collection of further evidence - including through engagement with groups potentially affected by the policy;
- you must record all evidence informing this stage in [section 4](#)

Equality Impact Assessment Policy & Procedure

Characteristic	Negative impact			Positive impact			n/a	Justification based on the evidence considered	Proposed actions to mitigate negative impact /maximise positive impact	Negative impact			Positive impact		
	H	M	L	H	M	L				H	M	L	H	M	L
General aspects	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Age	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Disability	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Gender	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Gender reassignment	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Marriage & civil partnership	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Pregnancy & maternity	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Race	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Religion or belief	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Sexual orientation	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒

Section 4: Register of evidence and engagement

Existing evidence considered (please attach)	
Equality screening	It is anticipated that the impact of these changes would have parallels with the PAP Proportionality initiative. Equality screening of participants in this trial is not feasible due to limited sample sizes (resolutions through the trial with full E&D profile data available). The capture of E&D profile data is to be moved to the pre assessment stage to enable the application and impact of the changes to be fully monitored and evaluated. The findings from this formative evaluation will be used to inform operational application and supporting guidance for the changes.
Equality Impact Assessment	
Additional evidence collected	
Equality screening	
Method of evidence collection	N/A
Record of the evidence collected	
Date completed	
Equality Impact Assessment	
Method of evidence collection	
Record of the evidence collected	
Date completed	

Section 5: Outcomes report

EIA stage completed	Screening	☐	
	Impact assessment	☐	
Outcome of the EIA procedure	Proceed with policy – no changes	☐	
	Make changes to policy	☐	
	Do not proceed with policy	☐	
Action plan (full EIA only) Where actions are required to mitigate the level of negative impact or maximise positive impact, please specify:			
Key issue	Action to be taken	Responsible officer	Date for completion
Monitoring (full EIA only)			
Please outline monitoring arrangements			
Please specify responsible officer			
Publication needs (full EIA only)			
Was the impact deemed as substantial (high)?			
Authorised by the EDI forum &/or MT			
Date			

For PMO / Equality, Diversity and Inclusion Office use only

<i>Date authorised by Owner:</i>	
<i>Signed by Owner:</i>	
<i>Date authorised by Equality, Diversity and Inclusion Manager:</i>	
<i>Signed by Equality, Diversity and Inclusion Manager:</i>	
<i>Date EIA ratified:</i>	
<i>Ratifying Group / Committee / Board:</i>	

The EIA form

The Word version of this form can be accessed on [LINK](#).

Section 1: Purpose and scope of policy

Title	Scheme Rule 4				
New or existing	New				
Document Owner	Sian Lewis				
Name, Job title undertaking the EIA	Sian Lewis – Research and Impact Lead Steven Pearson – Deputy Ombudsman Nicola Sinclair – EDI Manager				
What is main purpose of policy, project, procedure?	It is proposed that that the time limit for when a complaint must be referred to the Legal Ombudsman should be changed to not later than one year from the date of the act or omission being complained about; or one year from the date when the complainant should have realised that there was cause for complaint. Fixing a lower time limit will ensure that cases can be investigated when the issues in question are fresh in the minds and memories of both consumer and service provider. This is more likely to aid the investigation process and therefore enable the investigation to be concluded as quickly and efficiently as possible.				
How is the policy , project, procedure related to other areas of work?	N/A				
Who is likely to be affected by this policy? (please tick)	staff	Complainants	Service providers	External stakeholders (regulators. MOJ, LSB)	Other
		✓	✓		

Section 2: Assessment of relevance and proportionality

Key points to remember:

- to assess relevance you must consider evidence related to all equality characteristics
- you must record all evidence considered in [section 4](#) of this form.

Question	No	Yes	N/A	Comments
Does the policy relate to LeOs equality objectives and identified actions?	✓	☐	☐	
Is there any evidence that some groups are affected differently? (E.g. a policy could noticeably have a more positive or negative affect on a particular group, i.e. more beneficial for women than men)		✓	☐	Complainants with health issues / disability may be adversely impacted. See S4.
If you have identified any potential for groups being affected differently, are these exceptions valid, legal and/or justifiable? (please provide details in the comments box)	✓		☐	No. Findings of EQIA to be considered in policy development and implementation and associated mitigating actions to be developed, including use of Ombudsman's discretion in application. Will require active monitoring and evaluation post implementation.
Does the policy relate to an area where there are known inequalities, or a significant potential for reducing inequalities or improving outcomes	✓	☐	☐	
Is there evidence to suggest that this policy, procedure, project may affect meeting the needs of people with equality characteristics (including through provision of reasonable adjustments)		✓	☐	Complainants with a health issues / disability more likely to fall out of jurisdiction.
Do you need to consult with any other individuals/groups in the development of this? If you have existing evidence or consulted already please record in section 4)		✓	☐	Policy currently out to public consultation. Further engagement / consultation with representative bodies / groups required following consultation period to inform implementation.

Is there any alternative to achieving the policy/procedure/project without the impact?	☐	☒		Development of supporting policy and operational procedures to mitigate impact. Ongoing quality checks to ensure consistency of application of supporting process and monitoring of front end EDI data to identify impact.
Can we reduce the impact by taking different action?	☐	☐	☒	

If you answer 'yes' to any of these questions, proceed to [section 3](#).

If a policy/project/procedure is not deemed relevant for conducting a full EIA, proceed to [section 5](#).

Section 3: Full Equality Impact Assessment

Key points to remember:

- you must consider at this stage any need for collection of further evidence - including through engagement with groups potentially affected by the policy;
- you must record all evidence informing this stage in [section 4](#)

Equality Impact Assessment Policy & Procedure

Characteristic				Positive impact			n/a	Justification based on the evidence considered	Proposed actions to mitigate negative impact /maximise positive impact	Negative impact			Positive impact		
	H	M	L	H	M	L				H	M	L	H	M	L
General aspects	☐	☐	☐	☐	☐	☐	☐			☐	☐	☐	☐	☐	☐
Age	☐	☐	☐	☐	☐	☐	☐								
Disability	✓	☐	☐	☐	☐	☐	☐	Complainants with disability are less likely to fall within jurisdiction than those without a disability.	Scheme Rules allow for use of Ombudsman Discretion in application. Internal policy ensures that disability status is captured at the initial contact stage and considered in application of the policy and discretion used where appropriate.	✓					
Gender	☐	☐	☐	☐	☐	☐	☐								
Gender reassignment	☐	☐	☐	☐	☐	☐	☐								
Marriage & civil partnership	☐	☐	☐	☐	☐	☐	☐								
Pregnancy & maternity	☐	☐	☐	☐	☐	☐	☐								
Race	☐	☐	☐	☐	☐	☐	☐								
Religion or belief	☐	☐	☐	☐	☐	☐	☐								
Sexual orientation	☐	☐	☐	☐	☐	☐	☐								

Section 4: Register of evidence and engagement

Existing evidence considered (please attach)	
Equality screening	Review of cases entering PAP between 1/Aug 2020 – 31 Jan 2022 A difference was observed amongst complainants with a disability ('health and disability' field) who were significantly less likely to meet the 1 year test than meet the 6 year test. Through the changes we will lose 48% of the total disabled
Equality Impact Assessment	
Additional evidence collected	
Equality screening	
Method of evidence collection	Analysis of cases entering the PAP between 1/Aug 2020 – 31-jan 2022 where E&D data has been provided. Profile of those complainants entering the queue <=12months after date of awareness (1 year test), and those complainants entering the queue >12 <=72 months after date of awareness (6 year test). This was tested for Age, Sex,
Record of the evidence collected	Time limits .xlsx
Date completed	March 2022
Equality Impact Assessment	
Method of evidence collection	
Record of the evidence collected	
Date completed	

Section 5: Outcomes report

EIA stage completed	Screening	☐	
	Impact assessment	☐	
Outcome of the EIA procedure	Proceed with policy – no changes	☐	
	Make changes to policy	☐	
	Do not proceed with policy	☐	
Action plan (full EIA only) Where actions are required to mitigate the level of negative impact or maximise positive impact, please specify:			
Key issue	Action to be taken	Responsible officer	Date for completion
Monitoring (full EIA only)			
Please outline monitoring arrangements			
Please specify responsible officer			
Publication needs (full EIA only)			
Was the impact deemed as substantial (high)?			
Authorised by the EDI forum &/or MT			
Date			

For PMO / Equality, Diversity and Inclusion Office use only

<i>Date authorised by Owner:</i>	
<i>Signed by Owner:</i>	
<i>Date authorised by Equality, Diversity and Inclusion Manager:</i>	
<i>Signed by Equality, Diversity and Inclusion Manager:</i>	
<i>Date EIA ratified:</i>	
<i>Ratifying Group / Committee / Board:</i>	

The EIA form

The Word version of this form can be accessed on [LINK](#).

Section 1: Purpose and scope of policy

Title	Scheme Rule 5.7b				
New or existing	New				
Document Owner	Sian Lewis				
Name, Job title undertaking the EIA	Sian Lewis – Research and Impact Lead Steven Pearson – Deputy Ombudsman Nicola Sinclair – EDI Manager				
What is main purpose of policy, project, procedure?	Ombudsman discretion to dismiss or discontinue a complaint. The Legal Ombudsman is proposing the introduction of the word 'significant' within Rule 5.7(b) which would then enable an Ombudsman to consider whether conducting an investigation into the complaints that have been raised, given the likely impact on the customer, is a proportionate use of resource.				
How is the policy , project, procedure related to other areas of work?	TBC				
Who is likely to be affected by this policy? (please tick)	staff	Complainants 	Service providers 	External stakeholders (regulators. MOJ, LSB)	Other

Section 2: Assessment of relevance and proportionality

Key points to remember:

- to assess relevance you must consider evidence related to all equality characteristics
- you must record all evidence considered in [section 4](#) of this form.

Question	No	Yes	N/A	Comments
Does the policy relate to LeOs equality objectives and identified actions?	☒	☐	☐	
Is there any evidence that some groups are affected differently? (E.g. a policy could noticeably have a more positive or negative affect on a particular group, i.e. more beneficial for women than men)	☐	☒	☐	Males and people with a disability are more likely to be affected by changes.
If you have identified any potential for groups being affected differently, are these exceptions valid, legal and/or justifiable? (please provide details in the comments box)	☐	☒	☐	It is not possible to directly attribute detriment through rule changes on EDI groups as other factors may influence outcomes. Discretion can be applied to ensure that impact on those disadvantaged consumers can be mitigated. Impact will continue to be monitored and evaluated once final parameters for dismissal are agreed and reported through wider project Impact assessment.
Does the policy relate to an area where there are known inequalities, or a significant potential for reducing inequalities or improving outcomes	☒	☐	☐	

Is there evidence to suggest that this policy, procedure, project may affect meeting the needs of people with equality characteristics (including through provision of reasonable adjustments)		✓	☐	Males and people with a disability are more likely to be affected by changes.
Do you need to consult with any other individuals/groups in the development of this? If you have existing evidence or consulted already please record in section 4)		✓	☐	Recommend to consult with consumer groups including consumers with a disability.
Is there any alternative to achieving the policy/procedure/project without the impact?	✓	☐	☐	
Can we reduce the impact by taking different action?	☐	✓	☐	Clear guidance on how discretion will be used in application of policy and ongoing moderation and monitoring to ensure consistency in application.

If you answer 'yes' to any of these questions, proceed to [section 3](#).

If a policy/project/procedure is not deemed relevant for conducting a full EIA, proceed to [section 5](#).

Section 3: Full Equality Impact Assessment

Key points to remember:

- you must consider at this stage any need for collection of further evidence - including through engagement with groups potentially affected by the policy;
- you must record all evidence informing this stage in [section 4](#)

Equality Impact Assessment Policy & Procedure

Characteristic				Positive impact			n/a	Justification based on the evidence considered	Proposed actions to mitigate negative impact /maximise positive	Negative impact			Positive impact		
	H	M	L	H	M	L				H	M	L	H	M	L
General aspects	☐	☐	☐	☐	☐	☐	✓			☐	☐	☐	☐	☐	☐
Age	☐	☐	☐	☐	☐	☐	✓								
Disability	✓	☐	☐		☐	☐	☐	People with an impairment are significantly more likely to have a no / low value remedy	Considered in operational policy. Use of discretion in application. Ongoing monitoring and evaluation of application of policy. Move to collect EDI data and initial contact to enable effective monitoring.		✓				
Gender	✓		☐	☐		☐	☐	Males are significantly more likely to have a low value remedy.	Considered in operational policy. Use of discretion in application.		✓				
Gender reassignment	☐	☐	☐	☐	☐	☐	✓								
Marriage & civil partnership	☐	☐	☐	☐	☐	☐	✓								
Pregnancy & maternity	☐	☐	☐	☐	☐	☐	✓								
Race	☐	☐	☐	☐	☐	☐	✓								
Religion or belief	☐	☐	☐	☐	☐	☐	✓								
Sexual orientation	☐	☐	☐	☐	☐	☐	✓								

Section 4: Register of evidence and engagement

Existing evidence considered (please attach)	
Equality screening	CRM Data analysis of cases resolved between 1 April 2018 and 31 March 2021.
Equality Impact Assessment	
Additional evidence collected	
Equality screening	
Method of evidence collection	CRM Data analysis
Record of the evidence collected	Scheme Rules 2.11 No remedy, low remedy.xlsx
Date completed	07/1/22
Equality Impact Assessment	
Method of evidence collection	
Record of the evidence collected	
Date completed	

Section 5: Outcomes report

EIA stage completed	Screening	☐	
	Impact assessment	☐	
Outcome of the EIA procedure	Proceed with policy – no changes	☐	
	Make changes to policy	☐	
	Do not proceed with policy	☐	
Action plan (full EIA only) Where actions are required to mitigate the level of negative impact or maximise positive impact, please specify:			
Key issue	Action to be taken	Responsible officer	Date for completion
Monitoring (full EIA only)			
Please outline monitoring arrangements			
Please specify responsible officer			
Publication needs (full EIA only)			
Was the impact deemed as substantial (high)?			
Authorised by the EDI forum &/or MT			
Date			

For PMO / Equality, Diversity and Inclusion Office use only

<i>Date authorised by Owner:</i>	
<i>Signed by Owner:</i>	
<i>Date authorised by Equality, Diversity and Inclusion Manager:</i>	
<i>Signed by Equality, Diversity and Inclusion Manager:</i>	
<i>Date EIA ratified:</i>	
<i>Ratifying Group / Committee / Board:</i>	

The EIA form

The Word version of this form can be accessed on [LINK](#).

Section 1: Purpose and scope of policy

Title	Scheme Rule 5.7c				
New or existing	New				
Document Owner	Sian Lewis				
Name, Job title undertaking the EIA	Sian Lewis – Research and Impact Lead Steven Pearson – Deputy Ombudsman Nicola Sinclair – EDI Manager				
What is main purpose of policy, project, procedure?	The Legal Ombudsman is proposing extending the application of 5.7(c) to allow an Ombudsman to consider whether a case should be dismissed if a reasonable revised / increased offer is made by the service provider during the course of an ongoing investigation and the complainant decides to reject that revised offer.				
How is the policy , project, procedure related to other areas of work?	TBC				
Who is likely to be affected by this policy? (please tick)	staff	Complainants ✓	Service providers ✓	External stakeholders (regulators. MOJ, LSB)	Other

Section 2: Assessment of relevance and proportionality

Key points to remember:

- to assess relevance you **must** consider evidence related to all equality characteristics
- you must record **all** evidence considered in [section 4](#) of this form.

Question	No	Yes	N/A	Comments
Does the policy relate to LeOs equality objectives and identified actions?	✓	☐	☐	
Is there any evidence that some groups are affected differently? (E.g. a policy could noticeably have a more positive or negative affect on a particular group, i.e. more beneficial for women than men)	✓	☐	☐	People with a disability are significantly less likely to be impacted by changes. This is tolerated as no outcome impact as a result of policy change. No other significant
If you have identified any potential for groups being affected differently, are these exceptions valid, legal and/or justifiable? (please provide details in the comments box)	✓	☐	☐	
Does the policy relate to an area where there are known inequalities, or a significant potential for reducing inequalities or improving outcomes	✓	☐	☐	
Is there evidence to suggest that this policy, procedure, project may affect meeting the needs of people with equality characteristics (including through provision of reasonable adjustments)	✓	☐	☐	
Do you need to consult with any other individuals/groups in the development of this? If you have existing evidence or consulted already please record in section 4)	✓	☐	☐	

Is there any alternative to achieving the policy/procedure/project without the impact?	☒	☐	☐	
Can we reduce the impact by taking different action?	☒	☐	☐	

If you answer 'yes' to any of these questions, proceed to [section 3](#).

If a policy/project/procedure is not deemed relevant for conducting a full EIA, proceed to [section 5](#).

Section 3: Full Equality Impact Assessment

Key points to remember:

- you must consider at this stage any need for collection of further evidence - including through engagement with groups potentially affected by the policy;
- you must record all evidence informing this stage in [section 4](#)

Equality Impact Assessment Policy & Procedure

Characteristic				Positive impact			n/a	Justification based on the evidence considered	Proposed actions to mitigate negative impact /maximise positive	Negative impact			Positive impact		
	H	M	L	H	M	L				H	M	L	H	M	L
General aspects	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Age	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Disability	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Gender	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Gender reassignment	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Marriage & civil partnership	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Pregnancy & maternity	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Race	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Religion or belief	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Sexual orientation	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒

Section 4: Register of evidence and engagement

Existing evidence considered (please attach)	
Equality screening	CRM Data analysis of cases resolved between 1 April 2018 and 31 March 2021.
Equality Impact Assessment	
Additional evidence collected	
Equality screening	
Method of evidence collection	CRM Data analysis
Record of the evidence collected	Scheme Rules 5.7 D (C).xlsx
Date completed	07/1/22
Equality Impact Assessment	
Method of evidence collection	
Record of the evidence collected	
Date completed	

Section 5: Outcomes report

EIA stage completed	Screening	☐	
	Impact assessment	☐	
Outcome of the EIA procedure	Proceed with policy – no changes	☐	
	Make changes to policy	☐	
	Do not proceed with policy	☐	
Action plan (full EIA only) Where actions are required to mitigate the level of negative impact or maximise positive impact, please specify:			
Key issue	Action to be taken	Responsible officer	Date for completion
Monitoring (full EIA only)			
Please outline monitoring arrangements			
Please specify responsible officer			
Publication needs (full EIA only)			
Was the impact deemed as substantial (high)?			
Authorised by the EDI forum &/or MT			
Date			

For PMO / Equality, Diversity and Inclusion Office use only

<i>Date authorised by Owner:</i>	
<i>Signed by Owner:</i>	
<i>Date authorised by Equality, Diversity and Inclusion Manager:</i>	
<i>Signed by Equality, Diversity and Inclusion Manager:</i>	
<i>Date EIA ratified:</i>	
<i>Ratifying Group / Committee / Board:</i>	

The EIA form

The Word version of this form can be accessed on [LINK](#).

Section 1: Purpose and scope of policy

Title	Scheme Rule 5.7Q				
New or existing	New				
Document Owner	Sian Lewis				
Name, Job title undertaking the EIA	Sian Lewis – Research and Impact Lead Steven Pearson – Deputy Ombudsman Nicola Sinclair – EDI Manager				
What is main purpose of policy, project, procedure?	A new rule which would permit an Ombudsman to dismiss a complaint if there has been undue delay on the part of the person wishing to bring the complaint. The proposal is intended to enable us to ensure that complainants raise all the issues that they are aware of and want to have investigated at the same time. Where a complainant has taken a conscious decision not to pursue certain issues under their complaint to the service provider, this rule would provide an Ombudsman with the discretion to dismiss those issues if the complainant sought				
How is the policy , project, procedure related to other areas of work?	N/A				
Who is likely to be affected by this policy? (please tick)	staff	Complainants ✓	Service providers ✓	External stakeholders (regulators. MOJ, LSB)	Other

Section 2: Assessment of relevance and proportionality

Key points to remember:

- to assess relevance you must consider evidence related to all equality characteristics
- you must record all evidence considered in [section 4](#) of this form.

Question	No	Yes	N/A	Comments
Does the policy relate to LeOs equality objectives and identified actions?	☒	☐		
Is there any evidence that some groups are affected differently? (E.g. a policy could noticeably have a more positive or negative affect on a particular group, i.e. more beneficial for women than men)			☒	Insufficient data available to assess impact. Continue to monitor and evaluate impact through ongoing data analysis and quality checks.
If you have identified any potential for groups being affected differently, are these exceptions valid, legal and/or justifiable? (please provide details in the comments box)	☐	☐	☒	
Does the policy relate to an area where there are known inequalities, or a significant potential for reducing inequalities or improving outcomes		☒	☐	
Is there evidence to suggest that this policy, procedure, project may affect meeting the needs of people with equality characteristics (including through provision of reasonable adjustments)		☐	☒	Insufficient data available to assess impact. Continue to monitor and evaluate impact of application through ongoing data analysis and quality checks.
Do you need to consult with any other individuals/groups in the development of this? If you have existing evidence or consulted already please record in section 4)	☒		☐	

Is there any alternative to achieving the policy/procedure/project without the impact?	☐	☐	☒	
Can we reduce the impact by taking different action?	☐	☐	☒	

If you answer 'yes' to any of these questions, proceed to [section 3](#).

If a policy/project/procedure is not deemed relevant for conducting a full EIA, proceed to [section 5](#).

Section 3: Full Equality Impact Assessment

Key points to remember:

- you must consider at this stage any need for collection of further evidence - including through engagement with groups potentially affected by the policy;
- you must record all evidence informing this stage in [section 4](#)

Equality Impact Assessment Policy & Procedure

Characteristic	Negative impact			Positive impact			n/a	Justification based on the evidence considered	Proposed actions to mitigate negative impact /maximise positive impact	Negative impact			Positive impact		
	H	M	L	H	M	L				H	M	L	H	M	L
General aspects	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Age	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Disability	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Gender	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Gender reassignment	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Marriage & civil partnership	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Pregnancy & maternity	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Race	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Religion or belief	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒
Sexual orientation	☐	☐	☐	☒	☒	☒	☐			☐	☐	☐	☒	☒	☒

Section 4: Register of evidence and engagement

Existing evidence considered (please attach)	
Equality screening	Data analysis shows that of the 16,634 cases resolved in the last 3 financial years, a different date for 'earliest' and 'oldest' complaint type was recorded on 228 occasions – representing 1.3% of the sample. Of these, we have EDI data for just 33 complainants. Given the sample sizes involved and the numbers that will be recorded once EDI is cut further, it is not a sufficient sample to to conduct EIA screening on this change.
Equality Impact Assessment	
Additional evidence collected	
Equality screening	
Method of evidence collection	CRM Data analysis
Record of the evidence collected	5.7 q Scheme rules IA data .xlsx
Date completed	25/3/2022
Equality Impact Assessment	
Method of evidence collection	
Record of the evidence collected	
Date completed	

Section 5: Outcomes report

EIA stage completed	Screening	☐	
	Impact assessment	☐	
Outcome of the EIA procedure	Proceed with policy – no changes	☐	
	Make changes to policy	☐	
	Do not proceed with policy	☐	
Action plan (full EIA only) Where actions are required to mitigate the level of negative impact or maximise positive impact, please specify:			
Key issue	Action to be taken	Responsible officer	Date for completion
Monitoring (full EIA only)			
Please outline monitoring arrangements			
Please specify responsible officer			
Publication needs (full EIA only)			
Was the impact deemed as substantial (high)?			
Authorised by the EDI forum &/or MT			
Date			

For PMO / Equality, Diversity and Inclusion Office use only

<i>Date authorised by Owner:</i>	
<i>Signed by Owner:</i>	
<i>Date authorised by Equality, Diversity and Inclusion Manager:</i>	
<i>Signed by Equality, Diversity and Inclusion Manager:</i>	
<i>Date EIA ratified:</i>	
<i>Ratifying Group / Committee / Board:</i>	

The EIA form

The Word version of this form can be accessed on [LINK](#).

Section 1: Purpose and scope of policy

Title	Scheme Rule 5.19				
New or existing	New				
Document Owner	Sian Lewis				
Name, Job title undertaking the EIA	Sian Lewis – Research and Impact Lead Steven Pearson – Deputy Ombudsman Nicola Sinclair – EDI Manager				
What is main purpose of policy, project, procedure?	The Legal Ombudsman is proposing a revision to Rule 5.19(c) to enable an Ombudsman to conclude that a final decision is not needed on a case if no substantive issues (such as an error in fact or law, or additional new evidence) have been raised in response to the investigator's findings. In those circumstances, the case would be deemed to have been resolved by the investigator's findings.				
How is the policy , project, procedure related to other areas of work?	NA				
Who is likely to be affected by this policy? (please tick)	staff	Complainants ✓	Service providers ✓	External stakeholders (regulators. MOJ, LSB)	Other

Section 2: Assessment of relevance and proportionality

Key points to remember:

- to assess relevance you must consider evidence related to all equality characteristics
- you must record all evidence considered in [section 4](#) of this form.

Question	No	Yes	N/A	Comments
Does the policy relate to LeOs equality objectives and identified actions?	☒	☐	☐	
Is there any evidence that some groups are affected differently? (E.g. a policy could noticeably have a more positive or negative affect on a particular group, i.e. more beneficial for women than men)		☒	☐	See S4.
If you have identified any potential for groups being affected differently, are these exceptions valid, legal and/or justifiable? (please provide details in the comments box)		☒	☐	Active monitoring of implementation including profile of complainants making appeals and associated service complaints. Ombudsman's discretion to be used to mitigate risks.
Does the policy relate to an area where there are known inequalities, or a significant potential for reducing inequalities or improving outcomes	☒	☐	☐	
Is there evidence to suggest that this policy, procedure, project may affect meeting the needs of people with equality characteristics (including through provision of reasonable adjustments)	☒	☐	☐	
Do you need to consult with any other individuals/groups in the development of this? If you have existing evidence or consulted already please record in section 4)		☒	☐	Ongoing monitoring and evaluation once approach to implementation agreed.

Is there any alternative to achieving the policy/procedure/project without the impact?	☐	☐	☒	
Can we reduce the impact by taking different action?	☐	☐	☒	

If you answer 'yes' to any of these questions, proceed to [section 3](#).

If a policy/project/procedure is not deemed relevant for conducting a full EIA, proceed to [section 5](#).

Section 3: Full Equality Impact Assessment

Key points to remember:

- you must consider at this stage any need for collection of further evidence - including through engagement with groups potentially affected by the policy;
- you must record all evidence informing this stage in [section 4](#)

Equality Impact Assessment Policy & Procedure

Characteristic				Positive impact			n/a	Justification based on the evidence considered	Proposed actions to mitigate negative impact /maximise positive impact	Negative impact			Positive impact		
	H	M	L	H	M	L				H	M	L	H	M	L
General aspects	☐	☐	☐	☐	☐	☐	☐			☐	☐	☐	☐	☐	☐
Age	☐	☐	☐	☐	☐	☐	☐								
Disability	☐	☐	✓	☐	☐	☐	☐	Complainants with disability are less likely to reach AR.	Ongoing monitoring of profile of complainants making appeals. Monitoring of profile of associated service complaints. Review implementation and use of Ombudsman Discretion.			✓			
Gender	☐	☐	☐	☐	☐	☐	☐								
Gender reassignment	☐	☐	☐	☐	☐	☐	☐								
Marriage & civil partnership	☐	☐	☐	☐	☐	☐	☐								
Pregnancy & maternity	☐	☐	☐	☐	☐	☐	☐								
Race	☐	✓	☐	☐	☐	☐	☐	BAME complainants are currently significantly more likely to have cases resolved through OD which will not automatically be available.	Ongoing monitoring of profile of complainants making appeals and outcome. Monitoring of profile of associated service complaints. Review implementation and use of Ombudsman Discretion.			✓			
Religion or belief	☐	☐	☐	☐	☐	☐	☐								
Sexual orientation	☐	☐	☐	☐	☐	☐	☐								

Section 4: Register of evidence and engagement

Existing evidence considered (please attach)	
Equality screening	E&D Outcomes analysis. Impairment/Disability - Complainants with a disability are significantly less likely to have their cases resolved through an agreed outcome than those without a disability. - They are also more likely to receive an Ombudsman's decision (albeit not significantly). Ethnicity - BAME complainants are significantly more likely to have their complaint resolved through an Ombudsman's decision and less through an agreed outcome. The reason for this difference is not clear and it is recommended that further research is undertaken to understand the context and drivers for this trend. Sex: 49% of females have resolved their cases informally, compared to 41% of males. This is a large and statistically significant difference, although may be partly related to trends in area of law use. - Males are also more likely to have their cases closed through an Ombudsman's decision than females. Age - No significant differences were found between resolution type and age bands. Sexual Orientation - No significant differences were found between resolution type and sexual orientation groups.
Equality Impact Assessment	
Additional evidence collected	
Equality screening	
Method of evidence collection	Analysis on the equality monitoring data for the Legal Ombudsman from 31/3/2019 to 1/04/2021. The data analysis focuses on the stage of resolution of complaints and highlights areas where the data suggest that a group or groups of complainants are experiencing differential patterns of outcome and satisfaction.
Record of the evidence collected	Outcomes report Feb 2022 DRAFT.docx
Date completed	

Equality Impact Assessment	
Method of evidence collection	
Record of the evidence collected	
Date completed	

Section 5: Outcomes report

EIA stage completed	Screening	☐	
	Impact assessment	☐	
Outcome of the EIA procedure	Proceed with policy – no changes	☐	
	Make changes to policy	☐	
	Do not proceed with policy	☐	
Action plan (full EIA only) Where actions are required to mitigate the level of negative impact or maximise positive impact, please specify:			
Key issue	Action to be taken	Responsible officer	Date for completion
Monitoring (full EIA only)			
Please outline monitoring arrangements			
Please specify responsible officer			
Publication needs (full EIA only)			
Was the impact deemed as substantial (high)?			
Authorised by the EDI forum &/or MT			
Date			

For PMO / Equality, Diversity and Inclusion Office use only

<i>Date authorised by Owner:</i>	
<i>Signed by Owner:</i>	
<i>Date authorised by Equality, Diversity and Inclusion Manager:</i>	
<i>Signed by Equality, Diversity and Inclusion Manager:</i>	
<i>Date EIA ratified:</i>	
<i>Ratifying Group / Committee / Board:</i>	

Appendix 3 – indicative criteria for the exercise of discretion

Indicative criteria for consideration when applying discretion in relation to time limits

When reflecting on whether to exercise discretion to extend a time limit under Rule 4.7 we would look for an Ombudsman to consider

Factors that might support the exercise of discretion
Is it fair and reasonable in all the circumstances to extend the time limit?
Does the customer have reasonable adjustment which would require us to extend the time limit?
Was the customer prevented from bringing the complaint to LeO within the time limits because of a protected characteristic?
Was the customer unable to bring a complaint due to a significant health issue?
Is / was the customer unable to adequately articulate the reasons why discretion should be applied?
Did the customer not understand the time limits due to language or other communication barrier?
Did the customer need but not have access to representation / support?
Was the customer prevented from bringing the complaint to LeO because of a delay by service provider
Did the service provider fail to explain right to complain to LeO to the customer
Did the service provider only refer old time limits when explaining the customer's rights?
Was the customer unwilling to complain until the legal retainer had concluded?
Was the complaint brought to LeO within one year of the retainer concluding?
Was the customer out of the country or physically unable to raise the complaint within the time limits?
Is there a significant public interest in allowing the complaint to be raised out of time?
Is there a significant imbalance of power which means that the complainant felt unable to bring a complaint or did not appreciate they have the right to do so?
Is the complainant out of time by such a small degree that it would be unfair to penalise them?
Was the customer adversely impacted by a delay or failure on LeO's part?
Factors that might prevent the exercise of discretion
Was there any unreasonable delay on the complainant's part?
Could the complainant have reasonably brought the complaint to LeO sooner?
Are the complainant's actions and behaviours frivolous or vexatious?
Did the service provider take all reasonable steps to ensure that the complainant knew of the right to complain to LeO and the relevant time limits?

Indicative criteria for consideration when deciding whether to pass a case for Ombudsman decision

Under the proposed revised Rule 5.19 an Ombudsman will be required to review cases where the investigator's findings have not been accepted by both parties. The revised rule will provide an Ombudsman with the discretion to direct that the investigator's findings are reasonable and that in the absence of substantive objections the complaint should be resolved by reference to the investigator's findings.

In making that decision below is a non-exhaustive list of factors and criteria that we would expect an Ombudsman to consider.

Decision required
Is it fair and reasonable in all the circumstances that the matter should go for a decision?
Is a decision required for purposes of enforcing the remedy?
Is a decision required because the service provider is closed and therefore an insurer will be paying the remedy?
Is a decision required because the service provider has not honoured an agreed outcome or investigator's findings?
Is a decision required for publication, category 1 publication, other public interest reason?
Is it in the best interests of all parties for a decision to be issued?
Does either party require support to adequately articulate their dissatisfaction with investigator's findings?
Has either party articulated substantive concerns with the investigator's findings earlier in the investigation?
Does either party have a reasonable adjustment that warrants the complaint going for decision?
Is there evidence of adverse behaviours on either party's part which a decision would help overcome?
Is there a significant financial remedy involved?
Has the service provider consistently failed to engage with LeO's investigation?
Does either party need a formal decision for another related matter?
Decision not required
Are the objections to the investigator's findings are wholly unsubstantive?
Is the motivation behind the rejection of investigator's findings / request for an ombudsman decision vexatious or malicious?
Have the concerns raised by either party already been fully addressed in the investigator's findings?
Are the investigator's findings fair and reasonable in light of the evidence and does the outcome align with organisational guidance?
Has the service provider fully accepted the investigator's findings and agreed to pay any remedy?

Indicative criteria for determining the significance of loss/ detriment/ impact under Rule 5.7(b)

The revised Rule 5.7(b) permits an Ombudsman to dismiss a complaint if the impact on the complainant has not been significant.

In making that assessment, below is non-exhaustive list of criteria and factors an Ombudsman might reflect on:

Are there any special circumstances, reasonable adjustments or protected characteristics which warrant the case being investigated?
Has there been a direct quantifiable financial loss?
Are the alleged losses entirely speculative?
Do the complainant's personal circumstances increase the value / impact of any likely remedy?
Is any likely remedy purely a compensatory award for the impact of distress and / or inconvenience?
Is the remedy to be shared amongst or payable to multiple parties?
Is the remedy below a threshold set by LeO?
Is there a level of public interest in the case that warrants full investigation despite the impact not being significant?
Is there a pattern of behaviour from the service provider that warrants full investigation despite the impact not being significant?
Is the complainant unable to evidence the alleged impact?
Is the decision to dismiss consistent with organisational precedent?

Appendix 4 – Review of the proposed rule changes:

This paper provides more granular detail around the changes that LeO has proposed making to the Scheme Rules, the consultation responses received and a specific LeO response to the various stakeholders' responses.

Key Changes for consultation		Recommendation
Rule 4	Time limits	Pursue
Rule 2.11	Declining to accept a complaint for investigation	Not pursue
Rule 5.7(b)	Ombudsman discretion to dismiss or discontinue a complaint (de minimis)	Pursue
Rule 5.7(c)	Ombudsman discretion to dismiss or discontinue a complaint (reasonable offer made post investigation)	Pursue as stage 2 consultation
Rule 5.7(p)	Ombudsman discretion to dismiss or discontinue a complaint (proportionality)	Pursue
Rule 5.7(q)	Ombudsman discretion to dismiss or discontinue a complaint (undue delay)	Pursue
Rule 1.11	The wider delegation of decision making	Pursue as stage 2 consultation
Rule 5.19	Escalation of cases to an Ombudsman for decision	Pursue
Rule 6	Case fees	Pursue as stage 2 consultation
Additional Changes for consultation		
Rule 1.1	Removing reference to obsolete dates	Pursue
Rule 2.1	Addressing historic drafting errors	Pursue
Rule 2.8	Formalising the position on complaints by beneficiaries	Pursue
Rule 4.5	Removing reference to obsolete dates	Pursue
Rule 5.4	Addressing formal challenges to ongoing investigations	Pursue
Rule 5.5	Providing Ombudsman discretion when to accept a complaint for investigation	Not pursue
Rule 5.7(a)	Clarifying discretion to dismiss a complaint	Pursue
Rule 5.7(c)	Ombudsman discretion to dismiss or discontinue a complaint (reasonable offer made) clarification	Pursue
Rule 5.7(d)	Clarifying discretion to dismiss a complaint	Pursue
Rule 5.20	Addressing situations where investigator's findings and recommendations are not accepted	Pursue
Rule 5.33	Addressing when an Ombudsman can direct that a hearing is required	Pursue

Rule 5.55	Allowing the Legal Ombudsman to rectify uncontested errors	Pursue
Rule 5.62	Updating reference to relevant data protection legislation	Pursue

Rule 4 - Time Limits

The proposal

Under LeO's existing time limits complaints can be brought for investigation within either six years of the act/omission complained about or three years of the date of awareness of the cause for complaint. Customers are also required to bring their complaint to LeO within no more than six months of a properly signposted final response from the service provider.

It is LeO's experience that the chances of the early resolution of complaints diminish the longer parties wait to bring their complaints for investigation. We have found that older cases can be more challenging to investigate for a number of reasons, including but not limited to: difficulties of gathering evidence, faded recollection of events, closed firms and fee earners having moved firms or even retired since the events being complained about.

It is LeO's proposal that complaints should be brought for investigation within one year of the date of act/omission or date of awareness. The additional six-month rule would still apply.

Based on a review of historic complaint profiles, around 30% of historic complaints raised with LeO would have fallen outside of these new time limits. If that profile is reflected in the future complaints, then that would have the potential to have a significant impact on levels of demand coming into the business and could restrict access to justice for a sizeable number of customers.

To mitigate this impact and to ensure that access to justice is preserved, it is LeO's proposal that any change to organisational time limits would be subject to the exercise of Ombudsman discretion to extend the time limits. Rule 4.7 of the Scheme Rules would be used to ensure that discretion could be exercised to allow complaints to be accepted for investigation where, on reflection, it is fair and reasonable to do so in all the circumstances.

Consultation responses

The majority of responses to the consultation expressed support for this proposal, reflecting LeO's views that dealing with cases at the earliest opportunity - when the evidence is easily accessible and when recollections are more likely to be fresh- is conducive to effective redress and the early and efficient resolution of cases.

However there have also been some reservations to the proposed rule change:

- CILEX Regulation expressed a concern that some customers may feel unwilling to bring a complaint to LeO whilst the retainer is ongoing and as such might fall outside of the revised time limits.
- Bar Standards Board (BSB) expressed a concern that the change would mean that some potential customers would lose their access to redress.
- The Faculty Office considered that the proposed time limit was too short, preferring instead a two-year time limit.
- The CLC have suggested that work be done to assess whether the time limit should be reduced to 12, 18 or 24 months alongside a lessons learned exercise with Ombudsmen in the UK and other jurisdictions. They also suggest the need for further engagement with consumers and consumer organisations.
- The ACSO felt that it might not be in the best interests of customers but acknowledged that the application of discretion, if properly structured and monitored, could mitigate the impact.
- The LSCP agreed that there was merit in changing the time limits but felt that it should only be considered after “proper research and analysis of the impact on consumers and consumer preferences”.

Impact Assessment

Findings:

Complainants with disability are more likely to fall outside of LeO’s jurisdiction based on time limits than those without a disability.

No other significant differences were observed.

Action:

Capturing EDI data, including disability status, at the initial contact stage will enable us to monitor this rule change and reflect on any emerging impacts. The use of Ombudsman’s discretion will also need to be monitored to provide assurance around fairness and consistency.

The findings from the initial impact assessments will be periodically reviewed as part of the programme management framework.

LeO Response, Controls and Mitigations

In developing the proposed change, we reflected on the approach to time limits in place across the Ombudsman sector. These time limits derive from the relevant legal or statutory framework for each scheme, including in many cases recently passed primary legislation. It shows that although there is no consistent norm across other Ombudsman schemes, a one-year time limit is commonplace and in fact the most typically applied limit. It is also noteworthy that a number of schemes with a twelve-month time limit are those whose remit extends to protecting the interests of the most

vulnerable in society and those in receipt of critical public services such as health, social care or benefits, and income support. Many, but not all, have the ability to apply discretion to accept complaints out of time limits with clear information and examples available to customers on where these would apply.

Scheme	Time limit from date of act / omission	Time limit from date of awareness	Availability of discretion to accept OOT?
Northern Ireland Public Services Ombudsman	N/A	6 months from completion of complaints process.	Yes
Parliamentary and Health Services Ombudsman	N/A	12 months	Yes
Local Government and Social Care Ombudsman	N/A	12 months	No
Public Services Ombudsman for Wales	12 months	12 months	No
Scottish Public Services Ombudsman	N/A	12 months	Yes
Property Ombudsman	12 months from date of final response	N/A	No
Housing Ombudsman	12 months from date of final response	Formal complaint needs to be raised at first tier within 6 months	No
Energy Ombudsman	N/A	12 months	Yes
Prison and Probation Ombudsman	3 months from date of final response	12 months	Yes
New Homes Ombudsman Scheme	2 years from date of completion, 12 months from date of final response	N/A	No
Scottish Legal Complaints Commission	Start of retainer before 1st April 2017 - 1 year after end of retainer. Start of retainer on or after 1st April 2017 - 3 years after end of retainer.	N/A	Yes

Pensions Ombudsman	3 years	3 years	Yes
Motor Ombudsman	6 years, 6 months from final response	3 years	No
Financial Ombudsman Scheme	6 years, 6 months from final response	3 years	Yes
Furniture Ombudsman	6 years from date of purchase	N/A	None
Ombudsman Services	Not stated	Not stated	Discretion to accept any and all complaints where reasonable grounds to do so

We have also reflected subsequently on the question of whether a different time limit would be preferable or whether we could apply different time limits to different groups of customers. Having reflected on this, we believe that having a single one year time limit is preferable from a clarity and consistency perspective and that a one year time limit (when supported by the exercise of discretion) strikes an appropriate balance between encouraging cases to be brought to this office at the earliest possible opportunity and protecting the interests of those who, for reasons beyond their control are unable to do so.

We acknowledge the risks and concerns that have been articulated in response to the consultation but are confident that they can be mitigated by the steps outlined below.

Communication around the implications of a change to our time limits to consumers, service providers, regulators and consumer support organisations is key:

- We will ensure that the information on time limits is clear and accessible through all customer channels (be that on our website or elsewhere). We will also explain the likely circumstances in which discretion can be exercised and how customers can request that it be exercised.
- We will ensure that our templates, factsheets and guidance all adequately explain when customers can request an Ombudsman to reconsider whether a case is outside of our time limits.
- We will engage with the approved regulators to ensure that all branches of the profession are adequately sighted on the proposed change and that their members' signposting information is updated accordingly.
- We will track levels of demand coming into the business to ensure that we are fully sighted on any unintended adverse consequences of the change.
- We 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.

The exercise of discretion is the key mitigation that will enable us to ensure that, in cases where it is fair and reasonable to do so, customers who fall outside of our time limits will have the chance to have their complaints heard and investigated.

Formal guidance around the application of discretion will be developed after the proposals are approved (and before the changes are implemented). In the interim, we have developed a set of indicative criteria (set out in Appendix 3) to provide assurance around the range and breadth of issues that will be considered by an Ombudsman when reflecting on this issue.

It is important to note that Rule 4.7 currently states that an Ombudsman can only exercise discretion if there are “exceptional circumstances” – it is intended that Rule 4.7 be amended to allow the Ombudsman to exercise discretion if it is considered “fair and reasonable to do so in all the circumstances”. This proposed amendment did not form part of the original consultation but we consider that it is a change that does not require further consultation.

It is also important that the exercise of the Ombudsman discretion is overseen and that the implications of the changes can be tracked and monitored. To achieve this, we will:

- Ensure that there is clear internal guidance for all staff (and particularly for our Ombudsman) around the application of discretion.
- Limit the application of discretion to ombudsmen only for consistency purposes.
- Move the collection of EDI data to the very start of our process so that we are able to capture EDI data for those customers who submit their complaint to LeO but are deemed to be out of time.
- Where possible, track and monitor those cases where customers are considered to be out of time or where discretion has been refused so that the impacts of the changes are understood.
- Ensure that the application of discretion is the subject of moderation to ensure that the rules are consistently applied.

Recommendation

Having reflected on the breadth of responses to the consultation, the standards applied across other Ombudsman schemes and subject to the above controls and mitigations, LeO remains convinced of the view that a change to the current time limits is a proposal that should be progressed.

Rule 2.11 - Declining to accept a complaint for investigation

The proposal

This proposed revision was designed to enable LeO to identify as soon as a complaint is received whether it is something that it can or should investigate.

Consultation responses

Through the consultation there has been broad acceptance that dealing with cases at the first possible opportunity is the right approach.

There were some concerns raised around:

- the need to understand the grounds on which cases could be dismissed / resolved
- the need for assurance around the level of available information to enable an Ombudsman to decide not to accept a case for investigation
- the need for assurance that cases would be considered by an Ombudsman
- the need for assurance around dealing with vulnerable customers

Impact Assessment

Findings:

It is anticipated that the impact of these changes would have parallels with the Pre-Assessment Pool (PAP) Proportionality initiative. Equality screening of participants in that initiative is not feasible due to limited sample sizes (cases resolved through the initiative with full EDI profile data available).

LeO Response, Controls and Mitigations

LeO committed to not making changes to the Scheme Rules if a similar objective could be achieved within the existing Scheme Rules structure.

Over the last year, 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 and, therefore, effectively achieves the objectives of the proposed amendment to Rule 2.11 without the need for further changes to the Scheme Rules.

Work is already ongoing to develop a set of quality metrics to assess the level of service and outcome delivered on cases handled by way of the proportionality initiatives. These will enable LeO to provide assurance that the initiatives are providing appropriate outcomes and delivering on the objectives of achieving the right outcome earlier in the overall business process and thereby reducing the customer journey.

We will also be moving the collection of EDI data to an earlier point of the business process which will enable us to capture and monitor EDI data for cases closed by way of the proportionality initiatives. This will allow us to provide assurance that the initiatives are being applied fairly and consistently and that no specific group(s) of customers are being adversely impacted by the initiative.

After consideration, although we are pleased to see that stakeholders were supportive of this proposed improvement, LeO believe that the proportionality initiatives already deliver much of what was proposed by way of the introduction Rule 2.11.

It is worth noting that dealing with these cases under the proportionality initiatives is likely to have an increased demand on investigator and Ombudsman time and resource, when compared to declining to accept them for investigation under Rule 2.11. The projections around proportionality closures have already been factored into closure projections and any possible improvements that might have come on the back of the adoption of Rule 2.11 will now not be seen. However, we believe that these impacts are actually minimal and proportionate when balanced against the ability to deal with cases at the earliest possible opportunity, to overcome clear stakeholder concerns around access to justice and to avoid the inevitable disruption that would come from having to make further changes to the Scheme Rules and operational processes.

Recommendation

As a result, LeO will not be recommending that we pursue the proposed introduction of the Rule 2.11 but instead will rely on the process and service improvements already evident under the proportionality initiatives.

Rule 5.7 - Ombudsman discretion to dismiss or discontinue a complaint

Rule 5.7(b)

The proposal

The amendment to Rule 5.7(b) will enable an Ombudsman to consider whether a complaint should be dismissed if they were satisfied that the customer had not suffered “significant” loss, distress, inconvenience or detriment.

This provision would allow an Ombudsman to consider whether it is likely to be a proportionate use of LeO resource and time to investigate a complaint where the detriment to the complainant is not significant.

Consultation responses

The introduction of a significance test into this Scheme Rule generated a range of responses. Internal respondents and a number of the key regulators and representative bodies were supportive of the change albeit with a very clear consensus around the need for clear guidance and criteria to underpin this test. The ACSO, the Law Society and CILEx Regulation all identified the risk of inconsistency and subjectivity around establishing what is considered significant in individual cases.

The LSCP considered 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. They also articulated a concern about the risk of complainants having to “argue about the significance of the loss in order to claim compensation”.

One of the other concerns raised was that this provision may lead to service providers adopting a similar approach to the assessment of potential detriment at first tier.

It was noted by the Law Society that this test might result in an increase in the number of challenges being brought around what constitutes significance and whether that might be an unexpected drain on operational resource.

It was acknowledged that there was a need for clear guidance accessible externally around the definition / assessment of significance which might encourage customers to reflect on whether or not to pursue a complaint to LeO.

Impact assessment

Findings:

Males and people with a disability are more likely to be affected by changes as complainants with an impairment are significantly more likely to receive a no / low value remedy and males are significantly more likely to receive a low value remedy. However, it is not possible to directly attribute detriment through the proposed Rule changes on these groups as other factors may also influence case outcomes (such as area of law used, nature of complaints).

Action:

Collection of EDI data from the outset will support the ongoing monitoring and evaluation of the application of the policy, including robust quality moderation to ensure consistency in the application of discretion. Evaluation of the findings will be periodically reviewed as part of the programme management framework.

Further consultation with consumer groups including consumers with a disability.

LeO Response, Controls and Mitigations

A not inconsiderable number of the cases that LeO investigates result in a minor financial remedy and in many of those cases the feedback we receive from the customer is that they find the size of the remedy to be insulting. In circumstances where it is possible to assess the likely remedy early in the process, the opportunity to manage a customer's expectations as to the likely outcome is critical, as is the ability to take proactive steps if the customer is unwilling to accept that assessment and is determined to pursue a full investigation at all costs.

We understand that this is a sensitive issue and that an assessment of what is significant differs for each customer based on their personal situation, circumstances and characteristics. It is therefore critical that we can be confident in the fair, proportionate and consistent application of discretion in these cases. To achieve this, we will take the following steps:

- We will develop and continue to review and refine a clear set of criteria for our ombudsmen to consider when assessing whether a complaint falls within this criteria and what constitutes significant impact. These criteria will reflect the need to be mindful of the subjectivity of the term “significant” across different individual circumstances and situations.
- We will consider whether there are certain categories of complainants for whom the test of significance might be set at a lower level.
- In line with all dismissals under Rule 5.7, the complainant will be provided with the opportunity to explain why their case should not be dismissed and this will be considered by the Ombudsman when making their decision-
- Dismissal decisions can only be made by an Ombudsman and in each specific case the decision-making Ombudsman will be independent of the investigation.
- We will undertake moderation of Ombudsman dismissals under this ground and will carry out regular dip samples of the decisions made to ensure consistency.
- We will track and monitor any dismissals under this ground to ensure that it is being applied fairly and consistently and to ensure that it is not being applied disproportionately to any one or more groups of customers.

As noted above the formal guidance that will underpin the application of this rule has yet to be developed. To provide a level of assurance around the criteria that an Ombudsman will be expected to reflect upon when deciding whether to dismiss under this ground, we have developed a set of indicative criteria which is set out at Appendix 3.

During engagement and challenge with the OLC Board one of the questions raised was around the application of a test of “insignificance” as opposed to “significance” with insignificance being more closely linked to the principle of de minimis. When reflecting on this point consideration was given to the rationale for the change to Rule 5.7(a) below and LeO’s experience of the level of response and reaction received when seeking to dismiss a complaint on the basis of it being “frivolous or vexatious”. We believe that advising complainants that we consider their losses or the impact on them to have been “insignificant” is likely to generate an increase in the number of service complaints and service escalations across the business. Conversely, we believe that customers can more objectively and dispassionately reflect on whether they consider the impact of the service failing to have been significant.

Further, LeO believes that the use of the criteria of “significance” actually provides LeO with the scope for greater flexibility and agility to react and adapt to changes in social

and economic factors. It also provides LeO with the ability to react to sudden significant influxes of very low impact complaints which could run the risk of overwhelming the business and detracting from the organisation's ability to offer redress to those who have suffered a significant loss or detriment.

Recommendation

There is a clear need for comprehensive internal guidance and oversight in this area to ensure that the Rule is being applied consistently.

LeO is committed to carrying out a review of the impacts of key provisions such as this once the Rules have been in place for a sufficient period of time to enable the impacts to be fully understood. At that point, a decision can be made around the continued application of this and other key provisions.

However, we believe that, if applied correctly and consistently, this Rule would provide the opportunity to ensure that LeO is able to focus its efforts and resource on those cases where there has been, or there is alleged to have been, a significant service failing and resultant impact on a customer.

We therefore recommend that this change is incorporated into the revised Scheme Rules.

Rule 5.7(c)

The proposal

The extension of the existing "reasonable offer made" provision to enable cases to be dismissed by an Ombudsman if a service provider makes a revised offer to resolve a complaint after the case has been accepted for investigation, which is considered reasonable but rejected by the customer.

Consultation responses

This provision was widely supported as a logical extension of the existing "reasonable offer made" process and was seen as one which would encourage service providers to take a more pragmatic approach to the resolution of complaints.

Some concerns raised during the consultation were:

- Whether it might actually dissuade service providers from trying to resolve at first tier, knowing they could always make a revised offer once the case had been accepted for investigation.
- The risk of service providers making revised offers at the time case decisions were issued or even before an Ombudsman decision was made and this could mean that much LeO and customer time had been spent only for the case to be dismissed very late in the process.

However, upon further reflection, LeO identified a wider potential inconsistency that the extension of this rule might create:

- If a service provider made a revised offer that was rejected by the customer but considered reasonable by LeO then the case could be dismissed under Rule 5.7(c) and by virtue of having been dismissed, no case fee would be payable (which was one of the attractions of this initiative from a service provider perspective).
- However, if the customer were to accept the revised offer and the case was resolved on that basis, then a case fee would be chargeable under the current wording of Rule 6.2 (as it would not satisfy the test of having been resolved in the respondent's favour).

In an effort to address this potential inconsistency we have sought external legal advice on whether it was possible to change / reinterpret the wording of Rule 6.2 to deem a case resolved by way of a revised offer as having been resolved in the service provider's favour.

The advice received from external Counsel was that to make any such changes would likely be considered a change to the provisions relating to the recovery of our case fees which would therefore need to approval of the Lord Chancellor.

Impact assessment

Findings:

People with a disability are significantly **less** likely to be impacted by changes. This is tolerated as no outcome impact as a result of policy change. No other significant differences observed.

LeO Response, Controls and Mitigations

Although we, and our stakeholders, see significant value in amending Rule 5.7(c) to include revised offers, we believe that doing so now without making changes to Rule 6.2 would create an inconsistency in the application of the Scheme Rules.

It is therefore our intention not to pursue this change now but to include an amendment to the terms of Rule 6.2 in the second stage of our Scheme Rules review (where case fees are likely to be under consideration) to address this inconsistency.

Assuming this is approved by the Lord Chancellor, we would then look to introduce the change to Rule 5.7(c) and ensure that all cases where a revised offer is made can be closed and the Rule around the payment of a case fee be consistently applied to all such cases.

Recommendation

We do not propose pursuing this amendment at this point.

Rule 5.7(p)

The proposal

This proposed change was intended to provide an Ombudsman with the opportunity to consider if a case should be dismissed on the basis that the size and complexity of the complaint meant that it was disproportionate for it to be investigated.

This Rule would apply to a very small proportion of cases and then only those where it is considered disproportionate, unreasonable or even impossible for LeO to investigate the complaint.

Consultation responses

Whilst there was support for this provision and an appreciation that there may be some cases that LeO is simply not able to investigate due to the size, nature or complexity of the case, there was again a call for clarity around how this Rule would be applied and how LeO would ensure consistency of application.

It was suggested that LeO may be able to address some aspects of this issue, and avoid having to dismiss complaints, through better direction and guidance around what evidence is needed to enable a proportionate investigation to be carried out.

The BSB noted that “some complaints are by their nature voluminous and that expert assessment and investigation may be warranted to assist the complainant in navigating a complex legal services environment”

Impact assessment

Given that these cases are extremely rare it has not been possible to identify a sample to accurately assess the potential impacts of this proposed change.

LeO's Response, Controls and Mitigations

We are conscious that cases of this nature are very few and far between and that as a result this Rule will likely be applied very infrequently. This increases the need for clear guidance and criteria that must be considered when exercising, or conversely deciding not to exercise, the discretion to dismiss under this ground.

- We will develop guidance that will define the circumstances when this Rule can be applied.
- As with all Rule 5.7 dismissals, the complainant will be able to explain to an Ombudsman why their complaint should not be dismissed.
- The Ombudsman will also be required to reflect on whether the case is likely to be of public interest, such as to warrant a more significant investment of LeO time and resource.
- When considering the application of this criteria the Ombudsman will be required to consider whether any issues with the scope and extent of the investigation can

be attributed to a characteristic of the complainant which might in turn justify the complaint not being dismissed

- We will track and monitor any cases that are proposed for dismissal under this ground and any that are actually dismissed to ensure that there are no unintended adverse consequences arising out of the application of this rule.

We acknowledge that the extent and nature of an investigation can typically be successfully managed through good investigation and customer engagement skills. To that end, we are already working internally to ensure that our guidance around the scoping of complaints, requesting evidence and managing challenging behaviours is revised and updated so that our investigators are able to actively manage an investigation in a way that is efficient, achievable and proportionate. The application of these pieces of guidance may negate the need for this provision or reduce its practical application to very isolated incidences.

We are also aware that in these types of cases customers can be firmly entrenched in their position and their assessment of the service received and the impact experienced can be unrealistic. In these cases there can be very limited prospect of achieving any form of outcome that meets or exceeds the customer's expectations. We are mindful of the disproportionate impact that a very small number of cases can have on LeO's resource and time and see merit in using this rule to free up investigator and Ombudsman time to focus on a wider number of complainants.

Recommendation

Subject to clear guidance, monitoring and oversight we believe that this ground should be incorporated into the revised set of scheme rules.

Rule 5.7(q)

The proposal

The intention of this provision was to avoid new issues being added to an ongoing investigation if they were already known to the complainant at the time the investigation commenced but were not included within the complaint at that time.

This provision is intended to ensure that once an investigation has commenced all parties have certainty as to the issues that have been raised and form part of the complaint. It also ensures that parties cannot deliberately protract or delay investigations by seeking to add additional grounds to the scope of the original complaint. Adding in new complaints mid-investigation causes the original investigation to be suspended for up to eight weeks whilst the new issues are considered all of which breaks the flow of the original investigation.

Consultation responses

It was broadly accepted by all those who responded to the consultation that it is disproportionate for an ongoing investigation to be delayed whilst a complainant raises issues with the service that they could have raised prior to the complaint being brought to LeO.

It was stated that clear communication was needed to ensure that complainants knew that they had one opportunity to set out what complaints they wanted to have investigated and understood the implications if they sought to add in issues that they had known about previously. One respondent articulated the fact that many complainants' lack knowledge around what they can and cannot raise as complaints and that it was important for LeO to explain this fully at the outset of an investigation.

Impact Assessment

Findings:

The proposed changes will affect a very small proportion of cases and as a result insufficient EDI profile data was available to conduct robust equality screening at this stage.

Action:

Capturing EDI profile data at the earliest opportunity will enable the application and impact of the changes to be fully monitored and evaluated. The findings from this formative evaluation will be periodically reviewed as part of the programme management framework and used to inform operational application and supporting guidance.

LeO's Response, Controls and Mitigations

We believe that through improved internal process and case management techniques the need to use this provision will be relatively low. However, in instances where customers deliberately seek to frustrate our processes and protract investigations it is important to have a mechanism to address those behaviours.

- Work is already ongoing and guidance being developed to support investigators when they agree the scope of their investigations.
- This provision will not prevent a customer from being able to raise wholly new complaints if those issues only come to light after the complaint has been raised with LeO or has come to light through LeO's investigation.
- As with all Rule 5.7 dismissals the complainant will have the chance to explain to the Ombudsman why a specific aspect of their complaint could not have been raised earlier and why it should be included in their ongoing investigation.
- We will track and monitor any cases proposed for dismissal and any dismissed under this Rule to ensure that it is being applied consistently and not adversely impacting any specific group of customers.

Recommendation

We believe that this provision will provide investigators, service providers and customers alike with clarity and certainty over the scope of an investigation and will help ensure that cases are progressed efficiently and in a timely manner. This is in line with practice applied in other Ombudsman schemes to ensure the investigation of complaints is managed effectively.

We recommend that this provision be included in the revised Scheme Rules.

Rule 1.11 – delegation of decision making

The proposal

The wider strategic proposal to extend the delegation of Ombudsman decision making powers outside of the Ombudsman cohort.

This proposal would require a change to primary legislation and was therefore included in the consultation to gauge stakeholder appetite

Consultation responses

It was accepted that delegated decision making could speed up the decision-making process and ensure that appropriate levels of resource are used for different types of decision making. Those responding to the consultation reflected on the need for:

- Appropriate levels of oversight of the way the delegated powers are exercised
- Clarity around which types of decision making this might apply to
- Adequate training and quality assurance
- Assurance that this would only be delegated to experienced investigators

Impact assessment

As this proposal was raised to understand stakeholder appetite and is not something that can be undertaken at this time, no impact assessment has been completed.

As we work to build on this proposal as part of Stage 2 of the consultation, we will look to assess the potential impacts on our customers

Recommendation

The responses to the consultation suggest that there is an appetite to understand more about this proposal and a degree of acknowledgement that it could offer improvements in our process and thereby improve the overall customer experience.

We would propose progressing with this option as a part of Stage 2 of our Scheme Rules review.

Rule 5.19 - Escalation of cases to an Ombudsman for decision

The proposal

This proposal is intended to reduce the demand for Ombudsman final decisions. Currently, around 40% of all investigations result in an Ombudsman decision and around 80% of all cases referred to an Ombudsman for decision result in the same outcome proposed by the investigator. The ability to resolve those cases by reference to the investigator's findings would free up a significant amount of Ombudsman time and resource which could then be deployed elsewhere within the business process.

This rule would apply if neither party raised any substantive objection to the investigator's findings on service or remedy.

The aim is to bring LeO more closely in line with other Ombudsman schemes in terms of the proportion of complaints which are taken through for full investigation.

Consultation responses

Broadly those who responded to the consultation were supportive of reducing reliance on the ombudsmen and of avoiding escalation for the sake of escalation.

The responses did identify a number of areas for attention and further consideration:

- The need to ensure levels of consistency are maintained and improved.
- The need for clear audit trail around the decision-making process when not escalating to an Ombudsman.
- Ensuring that cases which might offer learning and feedback to individual service providers or the sector as a whole are identified and passed for an Ombudsman decision.
- Ensuring that any reduction in the number of Ombudsman decisions would not have an adverse impact on LeO's commitment to insight and improvement work.

Impact Assessment

Findings:

Complainants with disability are less likely to reach an agreed resolution and therefore are more likely to seek an Ombudsman's decision. BAME complainants are also currently significantly more likely to have cases resolved through Ombudsman decision.

Action:

Active monitoring of implementation including profile of complainants making appeals and associated service complaints. Ombudsman's discretion to be used to mitigate risks.

LeO's Response, Controls and Mitigations

LeO acknowledges that the proportion of customers requesting an Ombudsman decision is very high when compared to other schemes. LeO is approaching this challenge from two directions and are not relying on this provision as the sole means

of addressing this challenge. Alongside this proposed Rule change LeO are also working hard on ensuring the quality of its investigations is as high as it can reasonably be. By providing LeO's customers with confidence in the thoroughness of the investigation, it is hoped that, even if they are not satisfied with the outcome, the number of customers escalating their cases to an Ombudsman for review will reduce.

We are also mindful that within proportion of the cases referred for an Ombudsman decision although 80% result in an outcome that mirrors that recommended by the investigator there are 20% of cases where the Ombudsman does not agree with the investigator's findings. There is an understandable concern that by reducing the number of cases being passed for decision this 20% of cases will not be identified and a proportion of customers will end up with an outcome that might under current processes have been overruled. We believe that this risk can and will be mitigated against in a number of ways:

- Typically, the cases where an Ombudsman takes a different view tend to be those where either or both of the parties have expressed serious concerns about the investigation. Those cases would very likely still be picked up as part of the proposed triage process.
- There will be cases where an Ombudsman can identify a concern with the proposed outcome just by reviewing the evidence, the investigation file and the investigator's findings. As part of the proposed triage process we would still expect an Ombudsman to review the evidence, file and investigator's findings and it is therefore likely that cases with very obvious errors will still be spotted and rectified by the Ombudsman.
- We will track the number and proportion of cases where a provisional decision is issued under the new process and investigate any significant variation when compared to the historic 20% rate. If the proportion drops significantly that will suggest that these cases are being missed in the triage process and we can review and revise the triage criteria as required.
- As part of LeO's quality assurance framework we can ensure that we are reviewing and dip sampling cases resolved under this new mechanism to ensure that our Ombudsmen are still spotting problem cases. Alongside this we will track and monitor the number of legal challenges and service complaints we receive to ensure that these issues are not being missed by operational teams.

LeO fully acknowledges that the act of an Ombudsman reflecting on whether a complaint should be passed for a final decision is a significant change to our existing process and something that could have significant impacts on complainants and service providers alike.

A number of controls are proposed:

- Every case, where the investigator's findings are not specifically accepted will be triaged by an Ombudsman to decide if an Ombudsman decision is required.

- A set of indicative criteria that an Ombudsman will consider when triaging the complaint is set out at Appendix 3. This will be developed into a set of guidance for use by the Ombudsman when assessing this issue.
- An Ombudsman review will ensure that vulnerable customers, those with protected characteristics and those where reasonable adjustments are required will be identified and steps taken to ensure that the customer is not denied access to an Ombudsman's decision if the obstacle is their ability to articulate their objections to the investigator's findings.
- Certain categories of cases will automatically require an Ombudsman decision – closed firms, enforcement cases, public interest subject matter.
- The process will still provide for cases to be escalated to an Ombudsman if the service provider does not comply with the investigator's findings.
- We will develop a process to provide oversight of the cases which are not passed for decision to ensure that processes are applied consistently and fairly.
- We will track and monitor the profile of cases where decisions are made and where they are not to ensure that unintended consequences or disproportionate impacts are identified and addressed.
- We will track and monitor the number of cases that are subject to send backs and provisional decisions to ensure that any change in the current proportions is assessed for the adverse consequences of this change in process.
- We will expect our Ombudsman to fully record the decision-making process and the criteria that have been assessed so that we can be sure of the existence of comprehensive audit records if the case is challenged.

It is important to articulate 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 – for example, cases where an Ombudsman decision is required for enforcement purposes or where a claim needs to be made against a firm's indemnity insurers. 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. If those findings recommend that a remedy is payable LeO would expect the service provider to honour that recommendation and, were they not to do so within a defined period of time, 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.

Recommendation

We recommend that we progress with this proposed change.

We believe that it is part of a suite of changes (when combined with the future changes to delegations) which will help support improvements in our process drive

improvements in customer journey and experience and allow us to continue to reach the right outcome at an earlier point in the process.

We are also confident that those customers who need an Ombudsman decision will still have access to an Ombudsman and can still get the decision they need to protect their interests.

We are also confident that this change will not adversely impact our ability to identify insight and learning through our casework or reduce the value of the work done to publish Ombudsman decision data.

Rule 6 – case fees

The proposal

A review of the existing mechanism around the payment of case fees as a means of incentivising early resolution of cases.

Consultation responses

There was a broad agreement that a review of the position in relation to case fees would be beneficial and many could see a need for case fees to be set at a proportionate level. More specific responses raised:

- Application of the polluter pays principle. Firstly, in terms of seeking to require a complainant to pay if their complaint was not upheld or if their behaviour had been unreasonable. Secondly, looking at focussing the case fees on those firms which raise a disproportionate number of complaints or do not settle them effectively.
- A concern around creating a culture of “paying off” parties to gain an early settlement
- A concern that a tiered system of case fees might result in increased challenges to what level of fee is payable

Impact Assessment

As this is a longer-term strategic change and one that would need further development, research and consultation we have not conducted an impact assessment at this time.

LeO's Response, Controls and Mitigations

The Act requires that any change to the Rules around the charging of case fees needs to be approved by the Lord Chancellor and again therefore was not something that could be immediately implemented. The intention behind this aspect of the consultation therefore was to gauge the appetite amongst our stakeholders for a review of the Rules in this area.

It is worth reflecting on the “polluter pays” principle at this point. Firstly, the Act talks only of charges being payable by respondents (service providers) and does not suggest that a case fee could be payable by a complainant if their complaint was not upheld. However, s.133(3)(i) does provide that an Ombudsman can award costs against a complainant (as well as against a respondent) in favour of the OLC for “the purpose of providing a contribution to the resources deployed in dealing with a complaint if in the Ombudsman’s opinion that person acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances to make such an award”. LeO firmly believes that seeking to charge a case fee to a complainant if their complaint was not upheld (it should be noted that over 40% of all cases investigated by LeO find that the service provided was of a reasonable standard) or seeking to recover costs from them (for the handling of an investigation) would only serve to discourage members of the public from bringing a complaint to this office. We can see that it could present a highly undesirable optic of LeO having to consider whether to pursue customers for recovery of case fees or costs arising out of casework. We would therefore not be supportive of the inclusion of a provision that sought to introduce the polluter pays principle in that context.

The application of the polluter pays principle to service providers who consistently deliver a poor service or fail to engage with first tier complaints is, in essence, what the current structure delivers – however as further work is undertaken on possible case fee structures, we will consider whether this is an option that warrants further investigation.

Recommendation

The responses to the consultation suggest that there is an appetite to understand more about this proposal and a degree of acknowledgement that it could offer improvements in our process and thereby improve the overall customer experience.

Given the overall appetite for a review in this area and a broad acceptance that it could help incentivise early and pragmatic resolutions, we would propose progressing with this option as a part of Stage 2 of our Scheme Rules review.

Rule 1.1: Removing reference to obsolete dates

The proposal

The Legal Ombudsman proposes removing reference to 6 October 2010 as, given the passage of time, that date is now obsolete. This Rule will also be updated to reflect the date from which any approved changes will come into effect.

Consultation responses

There were no responses to the consultation on this proposed change.

Recommendation

We recommend that Rule 1.1 is amended as proposed

Rule 2.1: Addressing historical drafting error

The proposal

The changes to this Rule would address an historic drafting error. The Rule currently states that complaints brought by the trustee of a trust, under Rule 2.1(e), must relate to services provided to someone who has died and not referred their complaint the Legal Ombudsman before their death – this reference is incorrect. Further, the reference to 2.1(f) is a duplication of the wording in 2.1(f) and therefore also obsolete.

Consultation responses

There were no responses to the consultation on this point.

Recommendation

We recommend that Rule 2.1 is amended as proposed

Rule 2.8: Formalising the position on complaints by beneficiaries

The proposal

This proposal was intended to address a long-standing issue with service providers disputing that beneficiaries have the standing to bring a complaint to the Legal Ombudsman on the basis that it is the executor and not the beneficiary who is the firm's client

Consultation responses

We had two responses to the consultation expressing concern with this proposed addition; one came from a legal sector respondent and the other from the CLC. The CLC did not support the change contending that there was a need for an answer on this issue at a more strategic level and that it required a system wide position to be taken.

We also had a response from a member of the public who acknowledged the difficulties faced by beneficiaries in bringing complaints and was very supportive of this change.

The LSCP echoed the need for clarity in this area and welcomed the proposed change. The BSB were supportive of this change in their response to the consultation.

LeO's Response, Controls and Mitigations

It has long been LeO's position that beneficiaries are recipients of a service from lawyers administering estates and that, as a result, they have the right and the standing to raise a complaint about the service they received, albeit that the level of service that they are entitled to expect would differ from that which an executor might

expect to receive. This change is therefore simply to address a long-standing challenge that is raised when beneficiaries look to bring complaints.

There already exists clear guidance within LeO around the rights of beneficiaries.

Recommendation

Although we note the concerns raised and would support wider ranging debate on this issue, we do not see any reason why this should not be pursued and therefore recommend that it is include within the proposed revised Scheme Rules.

Rule 4.5: Removing reference to obsolete dates

The proposal

The Legal Ombudsman proposes the deletion of Rule 4.5 (a) as it currently states that the issue complained about, or the date when the complainant ought to have known there was an issue to complain about, must have been after 5 October 2010. Given the passage of time, and the time limits the Legal Ombudsman works to, this date is now obsolete.

Consultation responses

There were no responses to the consultation on this point.

Recommendation

We recommend that Rule 4.5 is amended as proposed and that any other ancillary amendments to numbering caused by the deletion of Rule 4.5 (a) be adopted.

Rule 5.4: Addressing formal challenges to ongoing investigations

The proposal

The Legal Ombudsman proposes amending Rule 5.4 (which deals with the circumstances under which service providers can challenge the Legal Ombudsman's jurisdiction or request that investigations be dismissed) to require that, in the absence of extenuating circumstances, any such challenge should be raised at the first possible opportunity.

Introducing this new time element will encourage issues and challenges to be raised and addressed at the outset of an investigation and therefore, once addressed, investigations will be able to progress in a timely manner which is clearly in all parties' best interest and will help deliver a reduction in the customer journey time.

Consultation responses

The CLC were supportive of this proposed revision. Internal staff responses were supportive of this proposed change.

Recommendations

We recommend that Rule 5.4 is amended as proposed.

Rule 5.5: Providing Ombudsmen with discretion when to accept a complaint for investigation

The proposal

The proposed revision to Rule 5.5 will introduce a new ground under which an Ombudsman can decide that a complaint should not be accepted for investigation, in line with the provisions of Rule 2.11 above.

Consultation responses

Although there were some responses to this proposal for reasons outlined below, we will not be progressing with this proposed amendment.

Recommendation

This Rule was proposed as a mechanism to enable a case not to be accepted for investigation under Rule 2.11. As noted above the decision has been taken not to pursue the amendment to Rule 2.11. As a result, the need for this additional amendment becomes redundant and therefore we will not be pursuing this change.

Rule 5.7(a): Clarifying grounds for dismissal of a complaint

The proposal

It is proposed that the current Rule 5.7(a) be separated into two separate grounds:

- The revised 5.7(a) would enable an Ombudsman to dismiss if they were satisfied that the complaint had no reasonable prospect of success.
- A new Rule 5.7(o) would be created to focus on the dismissal of cases that were considered to be frivolous or vexatious.

By separating out the two distinct grounds it will be possible for the Legal Ombudsman to consider dismissing complaints on the basis that they do not have any realistic prospect of success without risking customers being offended by a perceived suggestion that the complaints being raised are either frivolous or vexatious.

Consultation responses

The CLC response on this point was supportive but encouraged engagement and monitoring to ensure that the Rules and relevant checks and balances are working effectively.

LeO's Response, Controls and Mitigations

We will be amending our case management system to enable us to track and report on the number of applications made, refused or approved under these grounds. As such we will be able to cross reference that data with EDI data to ensure fair application and that there are no groups of customers that disproportionately

impacted, we will also review these closures under our quality assurance framework to ensure fair and reasonable outcomes have been achieved.

Recommendation

We recommend that this change be adopted as part of the revised Scheme Rules.

Rule 5.7(c): Clarification around dismissal under existing reasonable offer made

The proposal

In addition to the wider amendment to Rule 5.7(c) above, the application of which is being postponed to a later point, LeO proposed an amendment to the existing provision relating to offers made at first tier to resolve a complaint. This change will ensure that, unless there had been some significant intervening event, customers who have already accepted an offer during their service provider's internal complaint handling process would not be able to have that agreement overturned in the hope of securing a preferential outcome through LeO's investigation.

Consultation responses

There were no responses to this aspect of the consultation

Recommendation

It is LeO's recommendation that this amendment should be incorporated into the new Scheme Rules.

Rule 5.7(d): Clarifying grounds for dismissal of a complaint

The proposal

The Legal Ombudsman proposes to delete reference to "*predecessor complaints scheme*" from this Rule as, with the passage of time, this reference has become obsolete. Cases that would have been dealt with by a predecessor organisation would now be out of time under Rule 4.5.

Consultation responses

There were no responses on this issue.

Recommendation

We recommend that this amended be incorporated into the Scheme Rules.

Rule 5.20: Addressing situations where investigator's findings and recommendations are not accepted

The proposal

The Rule will support the more substantive changes proposed in relation to Rule 5.19 above.

The Legal Ombudsman intends to extend the wording of this rule to allow an Ombudsman to treat a complaint as having been resolved by the investigator's findings and recommendations if neither party to the complaint has raised any substantive challenge to the investigator's findings. This change will reduce the level of demand upon the Ombudsman cohort. In doing so, it will enable the Ombudsmen to focus their skills and knowledge on cases where a decision is required and to support investigation staff.

Consultation responses

The Law Society and Bar Council have both proposed some alternative wording which they felt addressed the provision more clearly. We remain satisfied that the original proposed wording suitably addresses the intention behind this change and do not propose amending the wording.

Recommendation

The amendments to this provision facilitate the amendments to Rule 5.19 above. On the basis that we are recommending the adoption of the changes to Rule 5.19, it is important that this provision is amended. We therefore recommend that this amendment is adopted.

Rule 5.33: Addressing when an Ombudsman can direct that a hearing is required

The proposal

The proposed change would allow for face-to-face hearings to take place if it was considered that they could facilitate the early resolution of a complaint

Consultation responses

The CLC responded on this point suggesting that meeting should be virtual by default and seeking further clarity around whether access to a hearing might impact the application of (or amount of) a case fee.

We also had an internal response suggesting that this Rule would require clear guidance and criteria around when a hearing might be offered.

LeO's Response, Controls and Mitigations

Under this proposal it would be for an Ombudsman to assess whether a hearing was appropriate in all the circumstances of a case whereas historically a hearing would only be offered if a case could not be determined without a hearing.

We will develop clear guidance around the factors that would need to be considered when deciding whether a hearing would be advantageous – those criteria would also enable us to protect the rights and interests of customers who are unable to

communicate or articulate their complaints or objections to an investigator's findings in writing or by usual other communication channels.

Recommendation

Acknowledging the need for guidance to support the application of the Rule we recommend that it should be included in the revised Scheme Rules.

Rule 5.55: Allowing the Legal Ombudsman to rectify uncontested errors in Ombudsman decisions

The proposal

This proposal was intended to allow the Legal Ombudsman to address uncontroversial administrative errors in decisions without the need for formal application to the Courts. It is envisaged that this Rule would apply in circumstances where, for example, the digits in a financial remedy had been accidentally transposed making the remedy incorrect. Where all parties accept that the error is clear and inadvertent this Rule would allow the decision to be rectified efficiently and cost effectively.

Consultation responses

The Law Society suggested that LeO should only look to take this step if there was a substantive procedural defect or repeated procedural errors which impacted on the decision itself.

The CLC in response flagged the need for the application of this Rule to be time limited to ensure the issues are identified and corrected as quickly as possible,

LeO's Response, Controls and Mitigations

This Rule would be used only very rarely as the number of administrative errors that occur in the substantive elements of an Ombudsman's decision are extremely rare.

We will develop guidance internally as to how and when this Rule could be applied and by whom and with whose authority. Further, any exercise of this Rule would be overseen by LeO's Legal Team and with approval from either the Deputy or Chief Ombudsman – this level of approval and oversight would remove the scope for abuse or misapplication of the Rule.

We will track and monitor the number of applications made and approved under this Rule as part of the overall assurance of the quality of our decision making.

We acknowledge the CLC's comments on the period within which any such application can be raised and changes made and will ensure that this is a factor that is considered when these applications are considered.

Recommendation

We believe that it is in the interests of all parties to a complaint that LeO should be able to take steps to correct a clear administrative error of the type mentioned without the need for formal application to the Courts.

We therefore recommend that, in the interests of good administration, this rule be included in the revised Scheme Rules.

Rule 5.62: Updating reference to relevant data protection legislation

The proposal

The Legal Ombudsman proposes updating existing Rule 5.61 (Rule 5.62 under the proposed revised numbering) to reflect GDPR legislation.

Consultation responses

There were no substantive responses to the consultation on this point.

Recommendation

We recommend that Rule 5.62 is updated as proposed.

Appendix 5 - Proposed Amendments

Scheme Rules

1 Introduction and definitions

Contents

- 1.1 These scheme rules are about complaints made ~~from 6 October 2010~~ to authorised persons including legal practitioners and others, authorised in England and Wales.
They explain which complaints are covered by the Legal Ombudsman and how it will deal with them.
This version includes amendments that apply to complaints referred to the Legal Ombudsman from ~~1 April 2019~~ DD/MM/YY.
- 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 complaints and cooperate with an ombudsman; 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 orders made by the Lord Chancellor (though it is the Act and the orders 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 for 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; - 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).
- 1.7 Authorised person means:
- a) someone authorised, in England and Wales, to carry out a reserved legal activity at the time of the relevant act/omission or covered under section 129 of the Act, including:
 - alternative business structures (licensed under part 5 of the Act);
 - barristers;
 - costs lawyers;
 - chartered legal executives;

- licensed conveyancers;
- notaries;
- patent attorneys;
- probate practitioners;
- registered European lawyers;
- solicitors; or
- trade mark attorneys;

b) (under section 131 of the Act):

- 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.

1.8 Approved Regulator means:

a) 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, 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 England and Wales (for reserved probate activities)
- the Institute of Chartered Accountants in Scotland (for reserved probate activities);
- CILEX Regulation, through the Chartered Institute of Legal Executives;
- the Chartered Institute of Trade Mark Attorneys, through the Intellectual Property Regulation Board;
- the Law Society, through the Solicitors Regulation Authority;
- the Master of the Faculties (for notaries); and
- the Legal Services Board (but only for any alternative business structures it licenses directly);

1.9 Determination means a final decision that is made by an ombudsman on a complaint.

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

1.11 Ombudsman means:

- a) any ombudsman from the Legal Ombudsman; 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).

1.12 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.

1.13 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.

1.14 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;
- f) administration of oaths.

2 Who can complain about what

Who can complain

2.1 A complainant must be one of the following:

- 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;
- 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:

- 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.

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

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

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.

What they can complain about

- 2.6 The complaint must relate to an act/omission by someone who was an authorised person at that time 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; 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.
- 2.7 The act/omission does not have to:
- a) relate to a reserved legal activity; nor
 - b) be after the Act came into force (but see the time limits in chapter four).
- 2.8 The complaint must relate to services which the authorised person:
- a) provided to the complainant; or
 - b) provided to another authorised person who procured them on behalf of the complainant; or
 - c) provided to an estate of a person who is deceased where the complainant is a beneficiary of that estate; or
 - d) provided to (or as) ~~a personal representative/~~trustee where the complainant is a beneficiary of the ~~estate/~~trust; or
 - e) offered, or refused to provide, to the complainant.
- 2.9 A complaint is not affected by any change in the membership of a partnership or other unincorporated body.
- 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; and
 - b) complaints already outstanding against A become complaints against B.

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.
- 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.

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). Time limit from authorised person's final response
- 4.2 But a complainant can use the Legal Ombudsman if:
- 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.
- 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

- 4.5 Ordinarily:
- ~~a) the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and~~
 - ~~b) the complainant must refer the 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.
- 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~~ it is fair and reasonable in all the circumstances, he/she may extend any of these time limits to the extent that he/she considers fair.
- 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
 - 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 complaints

- 5.1 The Legal Ombudsman may require a complainant to complete its complaint form.
- 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).

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.
- 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;
- then the authorised person should provide reasons for their challenge at the earliest possible opportunity following which an ombudsman will give all parties an opportunity to make representations before deciding.
- 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.
- 5.6 The ombudsman will then give the complainant and the authorised person his/her decision and the reasons for it.

Grounds for dismissing or discontinuing a complaint

- 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) significant 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 **which has either already been accepted by the complainant or ~~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; 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; or
- 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; or
- m) the complaint is about an authorised person'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.
- o) it is frivolous or vexatious; or**
- p) it would not be a proportionate use of the ombudsman's time to investigate the complaint, due to the likely impact or due to its complexity, the amount of evidence provided, or due to the conduct of the complainant during the investigation; or**
- q) the ombudsman considers that there has been undue delay in the complainant raising the complaint**

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.
- 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.
- 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.

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.
- 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.

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.

Related complaints

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

Resolution

- 5.17 The Legal Ombudsman will try to resolve complaints at the earliest possible stage, by whatever agreed outcome is considered appropriate.
- 5.18 If a complaint is settled, abandoned or withdrawn, an ombudsman will tell both the complainant and the authorised person.

Investigation

- 5.19 If the Legal Ombudsman considers that an investigation is necessary, it will:
 - a) ensure both parties have been given an opportunity of making representations;
 - b) share with both parties the findings of its investigation ~~send the parties a case decision (which the Act calls an 'assessment')~~, with a time limit for response; and
 - c) if any party indicates disagreement within that time limit, arrange for an ombudsman to issue a final decision (which the Act calls a

'determination') but only in circumstances where the disagreement is either based on new facts or evidence which may have a bearing on the investigator's findings, or on the basis of a challenge of the facts and or evidence on which the investigator's findings relies, or in circumstances where the ombudsman determines it fair and reasonable to issue a determination.

- 5.20 If neither party, in their response to the investigator's findings, indicates disagreement within that time limit, or in circumstances where no new facts or evidence has been provided in response to the investigator's findings, or where the disagreement is not based on a challenge of the facts or evidence on which the ~~case decision~~ the investigator's findings rely, the Legal Ombudsman may treat the complaint as resolved ~~by the case decision~~ in accordance with the investigator's findings.

Evidence

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

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.
- 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.

Hearings

- 5.33 An ombudsman may hold a hearing where he/she considers that it is appropriate to do so in the circumstances ~~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.
- 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.
- 5.35 A hearing may be held by any means the ombudsman considers appropriate in the circumstances, including (for example) by phone.

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.
- 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.
- 5.38 The ombudsman's determination may contain one or more of the following directions to the authorised person in favour of the complainant:
- 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;
 - 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;
 - 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:
- a) all or part of any amount paid is refunded;
 - b) interest is paid on that refund from a specified time;
 - 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).
- 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.
- 5.43 There is a limit of £50,000 on the total value that can be awarded by the determination of a complaint in respect of:
- 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, an ombudsman may direct which part or parts of the award are to take preference.
- 5.45 That limit does not apply to:
 - a) an apology;
 - b) interest on specified compensation for loss suffered;
 - 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:
 - 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.
- 5.48 The ombudsman will send copies of the determination to the parties and the relevant Approved Regulator.
- 5.49 If the complainant tells the ombudsman that he/she accepts the determination, it is binding on the parties and final.
- 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.
- 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.

- 5.53 If the complainant accepts or rejects the determination, the ombudsman will notify the parties and the relevant Approved Regulator of the outcome.
- 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.
- 5.55 However, if after the determination the ombudsman becomes aware of either a procedural defect or a fundamental error contained within the determination which, in the ombudsman's reasonable opinion, renders it wrong or unsafe, then the ombudsman may withdraw the determination and provide a new determination, taking into account the procedural defect or fundamental error.

Publication

- 5.56 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.

Enforcement

- 5.57 A binding and final determination can be enforced through the High Court or a county court by the complainant.
- 5.58 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.
- 5.59 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.

Misconduct

- 5.60 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.

- 5.61 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.
- 5.62 An ombudsman, the Legal Ombudsman and members of its staff will disclose to an 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 [and the General Data Protection Regulation 2018](#) or the Human Rights Act 1998)

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.
- 6.2 A case fee is payable by the business/partnership or individual authorised person for every potentially chargeable complaint when it is closed 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.
- 6.3 The case fee is £400 for all chargeable complaints.
- 6.4 The remaining costs of running the Legal Ombudsman are covered by a levy on Approved Regulators by the Legal Services Board.
- 6.5 There is no charge to complainants.