

Title: Office for Legal Complaints Review Scheme Rules - Complaints that the Legal Ombudsman can investigate. IA No: MOJ 176 Lead department or agency: Ministry of Justice Other departments or agencies: Office for Legal Complaints Legal Ombudsman	Impact Assessment (IA)		
	Date: 25/10/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Alex Moore, Media and Policy Team, Laura Smith, Media and Policy Manager.			

Summary: Intervention and Options **RPC Opinion:** RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes IN

What is the problem under consideration? Why is government intervention necessary?
The Legal Services Act 2007 sets out the conditions which a complainant must meet in order to bring a complaint to the Legal Ombudsman. The Legal Ombudsman is concerned that there is a gap in the redress system and is seeking an extension to those conditions to allow complainants to complain to the Legal Ombudsman where they have been unreasonably refused a service or unreasonably or persistently offered an unwanted service by an authorised legal provider. Government intervention is required since the changes can only be made by secondary legislation under section 128 of the Legal Services Act 2007.

What are the policy objectives and the intended effects?
The policy objectives are: to support the Legal Services Act regulatory objectives by protecting and promoting the interests of consumers and the public by extending the situations in which consumers are able to obtain redress; to harmonise the Legal Ombudsman with the Financial Ombudsman which can already accept complaints from prospective customers; and to respond to the growth of aggressive marketing techniques for legal services.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0: Do nothing
Option 1: Extend the conditions under which a complainant may seek redress from the Legal Ombudsman

Option 1 is the preferred option since it will address a gap in the current legal complaints handling system identified by the Legal Ombudsman when reviewing its current scheme rules and provide greater consumer protection.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2015					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible **SELECT SIGNATORY:** _____ Date: 30/10/12

Summary: Analysis & Evidence

Policy Option

Description: To broaden the scope of parties who complain to LeO by including a new form of complainant under section 128, covering situations where customers may have unreasonably refused a service or persistently offered an unwanted service.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate	NQ		NQ		NQ
Description and scale of key monetised costs by 'main affected groups'					
<p>Legal Ombudsman: The addition of prospective customers is one of a number of changes to the scheme rules which requires changes to the case management computer system at a cost of no more than £10,000. The portion of this cost attributable to this change is anticipated to be around £1,000 for the whole industry (approximately 69,000 businesses) and this cost would be passed on to providers through an annual levy.</p>					
Other key non-monetised costs by 'main affected groups'					
<p>Profession: If the Legal Ombudsman decides there has been poor service then authorised providers are liable to pay the consumers financial compensation of upto £1,000 along with a case fee of £400. It is anticipated that compensation will normally be around £50-100 and only apply in a small number of cases. The Legal Ombudsman may face some small additional costs (not recovered through case fees) for handling new complaints and it is anticipated that these would be absorbed by the Ombudsman.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate	NQ		NQ		NQ
Description and scale of key monetised benefits by 'main affected groups'					
<p>It has not been possible to quantify the benefits of this proposal.</p>					
Other key non-monetised benefits by 'main affected groups'					
<p>Consumers: Will be able to bring a complaint about a firm when it is clear that the actions of a provider has had a negative impact on them. This will mean that they will be able to get appropriate redress from the authorised provider which may include compensation payments. Consumers may also benefit from a reduction in discrimination or unwanted contact if providers change their behaviour. This would be a second round impact and may also benefit providers through a reduction in complaints</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
<p>A-There is sufficient evidence to investigate complaints, of persistent and unwanted offers of legal services. A-There is a small increase in case volumes, perhaps in the 10s rather than 100s and providers may change their behaviour to reduce complaints. A- LeO absorbs any ongoing additional costs from this proposal. R - There is a larger than anticipated increase in case volumes, resulting in higher costs and less likelihood of the LeO absorbing the costs.</p>					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net: NQ	Yes	IN

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	Quarter 1 2013				
Which organisation(s) will enforce the policy?	MOJ/The Legal Ombudsman				
What is the total annual cost (£m) of enforcement for these	N/A				
Does enforcement comply with Hampton principles?	YES				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

	Impact	Page ref within IA
Statutory equality duties	NO	11
Economic impacts		
Competition	NO	11
Small firms	NO	11
Environmental impacts		
Carbon emissions	NO	11
Wider environmental issues	NO	11
Social impacts		
Health and well-being	NO	11
Human rights	NO	11
Justice	NO	11
Rural proofing	NO	11
Sustainability	NO	11

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
1	The Legal Services Act 2007
2	<u>Legal Ombudsman Review of Scheme Rules and case fee structure: consultation paper and discussion draft at</u> <u>http://www.legalombudsman.org.uk/downloads/documents/consultations/Final%20draft%20scheme%20rules.pdf</u>
3	<u>Legal Ombudsman Scheme Rules Revision Response Paper at</u> <u>http://www.legalombudsman.org.uk/downloads/documents/consultations/</u>
4	
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Evidence Base (for summary sheets)

Introduction

1. The Office for Legal Complaints (OLC) was established by the Legal Services Act 2007 in 2009. It established an independent ombudsman scheme (the Legal Ombudsman) as the single point of contact for all complaints about the service provided by authorised legal providers, which became fully operational on 6 October 2010.
2. The role of the Legal Ombudsman is: to investigate and resolve complaints about the service that consumers have received from their legal provider in a fair and effective way; and to provide feedback to the wider profession in order to help drive improvements to legal services.
3. The Legal Services Act 2007 gives the Legal Ombudsman the power to ask the authorised provider to:
 - a. Apologise;
 - b. Take steps to put a matter right;
 - c. Limit, refund or reduce legal fees; or
 - d. Pay compensation for financial loss up to a maximum of £30,000, and for any inconvenience caused;
 - e. Take any other actions specified by the ombudsman.
4. The detail of who can make a complaint, the type of complaints that can be investigated, how that complaint will be dealt with, and the redress that is available is set out in the Legal Ombudsman's Scheme Rules.

Review of Scheme Rules

5. In March 2012, with the benefit of eighteen months operational experience the Legal Ombudsman undertook a review of its Scheme Rules. When the rules were first formulated, the Legal Ombudsman made a commitment to revisit them to gauge whether improvements or changes needed to be made to promote and protect the interests of consumers, take account of new business structures emerging under the alternative business structure regime and to allow the Ombudsman Scheme to operate more effectively and efficiently. Following the review, the Legal Ombudsman issued a consultation which ended on 18 June. As a result of the consultation, the Legal Ombudsman is proposing to make a number of changes to its Scheme Rules. These changes include:
 - a. The increase in the financial compensation limit from £30,000 to £50,000;
 - b. Extending the Legal Ombudsman scheme to allow it to investigate complaints about the services offered or refused by an authorised legal provider, not just those provided by an authorised legal provider;
 - c. Removing the two free case provision before a case fee is charged to the authorised legal services provider;
 - d. Increasing the time limits of when a person can bring a complaint so that complaints can be accepted up to six years from the event or three years from the knowledge of the event;
 - e. Updating the terminology used or clarification of existing rules.
6. Of these proposed changes, the removal of the free case fees requires the Lord Chancellor's approval. The increase in the maximum compensation limit and the ability of the Legal Ombudsman to investigate additional types of complaints also require not only the approval of the Lord Chancellor but also secondary legislation before the changes can take effect. This IA considers the impacts of extending the scheme to allow it to investigate complaints about the services offered or refused by an authorised legal provider.

Current position about the complaints for poor service

7. Under the Legal Services Act and Legal Ombudsman's Scheme rules a complainant has to either receive a service from a legal provider or be a beneficiary of an estate or trust before the Legal Ombudsman can accept a complaint for investigation.
8. During 2011-2012, the Legal Ombudsman received over 75,000 enquiries which resulted in 7,800 cases being investigated.

Problem under consideration

Increased Consumer Protection and access to redress

9. As part of the review of its Scheme Rules, the Legal Ombudsman identified, based on anecdotal evidence, that there is a gap in the current complaints handling system which prevents consumers, who are not yet customers of an authorised legal provider, from bringing complaints in at least two legitimate scenarios.
10. The first example is when a consumer has unreasonably been refused legal services from an authorised legal provider (e.g. a solicitors firm) and in particular when the reason for refusal is on discriminatory grounds. For example, the Legal Ombudsman recently received a complaint from a member of the public who felt she had been discriminated against by a law firm who have refused to take on her case because she had undergone gender reassignment. The Legal Ombudsman could not investigate the case because the complainant had not engaged the lawyer.
11. A second possible scenario is where consumers have been unreasonably and persistently offered an unwanted service by an authorised provider. For example where an authorised person continues to make unsolicited phone calls to a consumer despite being asked to stop the calls, and particularly if this leads to a cost to the consumer (perhaps because they are travelling outside of the UK at the time) or distress because the calls are being made to a vulnerable person.
12. Consumers can currently complain to the relevant approved regulator about the conduct of the authorised legal provider and the approved regulator can take action against the provider but cannot award redress to the consumer for any distress or inconvenience caused.

Harmonisation with the Financial Ombudsman

13. Alternative Business Structures (ABS) are firms which are partly or wholly owned or controlled by non-lawyers to provide legal services, or a mixture of legal and non-legal services. Part 5 of the Legal Services Act 2007 sets out arrangements under which licensing authorities may license such bodies to provide legal services. For example a firm could be set up to provide a one-stop shop for property purchase, provide estate agency and mortgage advice and provision as well as conveyancing. In this situation a complaint about a service from the firm could come under the jurisdictions of both the Legal and the Financial Ombudsman Service (FOS).
14. These firms began to be licensed by the Licensing Authorities in late 2011 and therefore it will take some time before the Legal Ombudsman begins to receive regular complaints about ABS firms. However, the Legal Ombudsman has been working with FOS to look at how complaints which could come under both jurisdictions can be dealt with effectively.
15. FOS can already accept from prospective customers and therefore the changes proposed below would bring the Legal Ombudsman into line with that scheme and reduce the potential for consumer confusion.

Policy Objectives

16. The policy objectives are: to support the Legal Services Act regulatory objectives by protecting and promoting the interests of consumers and the public by extending the situations in which consumers are able to obtain redress; to harmonise the Legal Ombudsman with the Financial Ombudsman

which can already accept complaints from prospective customers.; and to respond to the growth of aggressive marketing techniques for legal services.

17. Following the consultation, the options considered in this IA are:

- a. Option 0: Do nothing
- b. Option 1: Extend the conditions under which a complainant may seek redress from the Legal Ombudsman

18. The preferred option is Option 1.

Economic Rationale

19. The conventional economic approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies, overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases, the proposed intervention should avoid generating a further set of disproportionate costs and distortions. The Government may also intervene for reasons of equity or fairness and for redistributive reasons (e.g. reallocating resources from one group in society to another).

20. Intervention in this case would be justified on equity (fairness) considerations as the consumers in question might not have other viable avenues of redress.

Main affected stakeholder groups, organisations and sectors

21. The following groups/sectors are likely to be affected by the proposals:

- a. Legal services providers
- b. Legal Ombudsman
- c. Consumers
- d. Legal Services Regulators

Cost and Benefits

22. This Impact Assessment attempts to identify both monetised and non-monetised impacts on individuals groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact assessments place a strong emphasis in valuing the costs and benefits in monetary terms (including estimating the value of good and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Option 0: Base Case (do nothing).

23. Under this option no intervention would be made. This would mean that the current jurisdiction would remain and the Legal Ombudsman would not be able to deal with complaints about which an authorised legal provider offered or refused to provide to consumers. The gap in the redress system identified by the Legal Ombudsman would not be addressed.

24. The do nothing option is included for comparative reasons. As its costs and benefits are compared against themselves, they are necessarily zero, as is its net present value.

Option 1: Extend the conditions under which a complainant may seek redress from the Legal Ombudsman

25. Under Option 1, if a complaint is brought to the Legal Ombudsman, and it is decided that a consumer has been unreasonably refused a service, or been persistently offered a service they do not want then the Legal Ombudsman has the power to ask the authorised provider to take actions to put matters right. Any actions will be appropriate to the impact of any poor service, and

it is envisaged that the remedies will usually be an apology or a small amount of compensation to acknowledge the inconvenience. This will usually be around £50-£100, but the maximum that can be offered under this criterion is £1,000.

26. The handling of complaints also generates costs for the Legal Ombudsman and £400 is charged directly to the firm being investigated as a complaint handling fee. A case fee waiver may be applied if the Legal Ombudsman judges that the provider dealt with the case reasonably through their first tier complaint handling process. The Legal Ombudsman is fully funded by the legal services industry (authorised providers) and therefore, if the waiver applies and no case fee is charged, the entire Legal Ombudsman cost would typically be met via an annual industry levy. This levy is an annual charge to all providers to cover the costs of running the Legal Ombudsman.
27. It is initially anticipated that this reform will lead to a small increase in the total number of cases investigated by the Legal Ombudsman although it is difficult to estimate the number with precision because information on this type of case is not currently collected. However some anecdotal evidence is available to give a sense of the potential magnitude of complaints for discrimination.
28. In 2011/12 around 35 cases out of a total of around 7,800 investigated included a complaint about discrimination which suggests that this is a relatively small problem for existing customers of providers. There is no evidence available to suggest that this would be a significantly larger problem amongst provider's prospective customers.
29. Further anecdotal evidence recently collected by the Legal Ombudsman also suggests that there would not be a large number of cases arising from this proposal. Over a two week period 8 enquiries were identified by the Ombudsman as relating to prospective customers and if the Legal Ombudsman had the power to do so, it is unlikely that all would proceed to investigation (in 2011/12 around 1 in 10 enquiries received by the Legal Ombudsman led to investigations). These figures should be considered illustrative only and may not be representative but they do not suggest that this reform would lead to a significant increase in complaints and costs to business. Overall, the Legal Ombudsman is therefore anticipating an increase in case volumes that is perhaps in the tens rather than hundreds.
30. There is one parallel change to the Legal Ombudsman's remit which may affect the volume of cases the Legal Ombudsman deals with but is outside of the scope of this IA. In 2013 the Legal Ombudsman will take on responsibility for handling complaints against Claims Management Companies which, following this change would include complaints from prospective customers. The addition of CMC complaints handling is, however, outside of the scope of this IA as it is subject to a separate IA which will consider all of the costs to CMCs and the Ombudsman of complaints handling for this sector.

Costs of option 1:

Legal services providers

31. Under Option 1 providers that generate complaints may be subject to additional costs. Firstly, providers who have complaints brought against them, and where it is found that the provider did not act reasonably, may be required to provide redress to consumers. As stated above it is anticipated that this would be for a small number of cases only and remedies are expected to typically be around £50-100 although they could be as much as £1,000 if there are particularly serious cases. These costs represent a transfer to consumers who would benefit from these remedies.
32. In addition to remedies paid, the Legal Ombudsman has a complaint handling fee of £400 which is applied to each case (unless a case qualifies for a fee waiver). This would represent a cost to firms who have not acted reasonably.
33. There will be a negligible one-off cost of around £1,000 to the whole industry associated with small IT changes undertaken by the Legal Ombudsman.

Legal Ombudsman

34. The proposal to allow prospective consumers to bring a complaint is one of a number of changes to the scheme rules which will require some alterations to the case management computer system. These changes are expected to cost no more than £10,000 and will be a one-off cost incurred in the current financial year. The portion attributable to this proposal is anticipated to be £1,000. It is expected that these costs would be passed on to providers via the levy although for each of the 69,000 providers recorded on the Legal Ombudsman's case management system the impact would be negligible.
35. The Legal Ombudsman also expects to see a small increase in cases as a result of this proposal. This may lead to an increase in costs which are not fully recovered through case fees however it is anticipated that these will be absorbed within current staffing levels and, therefore, no costs would be passed on to businesses through the annual levy. However, this does represent an opportunity cost because, in the absence of this change, the Ombudsman may have had capacity to undertake other work or lower the annual levy.

Benefits of option 1:

Consumers

36. If the scheme rules change this will mean that consumers will be able to bring a complaint about a provider (in the examples given) when it is clear that the actions, or lack of action by an authorised provider has had a negative impact on them. This will mean that they will be able to get appropriate redress, including financial remedies, from providers.
37. Consumers may also benefit if providers change their behaviour to improve their service which reduces instances of discrimination or unwanted contact for example.

Legal services providers

38. Providing redress for prospective complainants may also lead to a change in provider's behaviour that reduces instances of discrimination and unwanted contact. It is unclear whether any significant business costs would be associated with this, for example the costs of using different business-enticement and advertising approaches in place of unacceptable cold calling. This would be a second round impact of this proposal and, if it occurs, may result in a net benefit to providers through reduced costs of complaints handling, financial remedies to consumers and case fees charged by the Legal Ombudsman.

Legal services regulators

39. There is an expectation that the proposed amendment will allow the Legal Ombudsman to support the work of regulators by collecting more information on complaints against providers. By collecting information about issues for prospective consumers the Legal Ombudsman will be able to support the regulators, who in turn have the opportunity to address any clear patterns of service or misconduct which arise.
40. The Legal Ombudsman also intends to work with organisations such as the Information Commissioner and forward on complaints about aggressive marketing techniques for example text-messaging.

Risks and assumptions;

41. The following assumptions have been made about the proposed change:
- a. That there is sufficient evidence to investigate complaints, of persistent and unwanted offers of legal services.
 - b. That there is a small increase in case volumes, perhaps in the 10s rather than 100s.
 - c. That the Legal Ombudsman is able to absorb any additional costs from this proposal as part of normal business change processes.

- d. That providers may change their behaviour to improve their services and complaints handling processes and, if they do this, that it would generate net benefits for them. This would be a second round impact of this proposal.

42. There is a risk that there is a larger than anticipated increase in case volumes. Greater case numbers would result in higher costs for providers and the Legal Ombudsman which may not be able to absorb all of these costs.

One-in, One-out implications

43. This proposal would be within the scope of One in One Out. However, overall this proposal is anticipated to generate very low additional costs for legal services providers. This is because the Legal Ombudsman intends to absorb the ongoing costs of complaints handling and therefore, the only costs to businesses will be negligible one-off costs (of around £1,000 across the whole industry) and costs to those providers that act unacceptably against prospective customers. There is expected to be only a small number of cases overall (perhaps in the 10s rather than 100s), with a small amount of compensation payable in each (typically £50-100), so in aggregate these costs will be negligible.

44. Therefore, this proposal represents a negligible cost IN.

Micro Business Exemption Waiver

45. The Ministry of Justice and the Legal Ombudsman are seeking an exemption on the moratorium on the basis that without such an exemption, the intended effects of the proposals would be unduly limited. It is also in keeping with the role of the Legal Ombudsman not only to investigate complaints but use the data to improve standards throughout the profession. If legal services providers are causing distress and inconvenience by unreasonable behaviour then this allows the Legal Ombudsman to take action as it deems appropriate and there is no evidence to suggest that one type of firm will be disproportionately affected.

Enforcement and Implementation

46. The Legal Ombudsman will implement the changes to the Scheme Rules to reflect the new types of complaints once the necessary secondary legislation is approved and in force. The aim is to implement the proposals in the first quarter of 2013, subject to parliamentary approval.

Specific impact assessments

Equality Impact Assessment

47. The initial screening stage of the Equality Impact Assessment has been completed. As the proposals are not expected to have any impact on equality, a full assessment is not considered necessary.

Competition Assessment

48. There are no anticipated impacts on competition.

Small Firms Impact test

49. The regulators do not provide the Legal Ombudsman with data about the size of the firms that they regulate, however given the small number of cases that will receive compensation of up to £50,000 it is not expected that small firms would be disproportionately affected.

Carbon Assessment

50. There are no anticipated carbon impacts.

Other environment

51. There are no anticipated environmental impacts.

Health Impact Assessment

52. There are no anticipated health impacts.

Human Rights

53. There are no anticipated human right impacts.

Justice Impact Assessment

54. There are no anticipated impacts on the wider justice system.

Rural Proofing

55. There are no anticipated rural impacts.

Sustainable Development

56. There are no anticipated sustainable development impacts.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

The impact of the changes will be evaluated by the Legal Ombudsman as part of its ongoing monitoring of complaints and feeding back to the profession areas for improvement. The Office for Legal Complaints and its Ombudsman Scheme will undergo a triennial review in 2015 which will look at the functions in more detail.

Review objective:

To assess how effective the changes have been in driving up standards and changing the behaviour of those who acting unreasonably and the volumes of cases reported to, or investigated by the Legal Ombudsman.

Review approach and rationale:

The Legal Ombudsman monitors the complaints received and feeds back to the profession any areas where standards need to be improved. It is also committed to reviewing its Scheme Rules to ensure that they remain relevant and effective in a changing legal services market

Baseline:

The baseline for the review is the current position.

Success criteria:

Success will be based on the level of complaints received and if the feedback to the profession in such cases results in low complaints volumes, a rise in standards and a change in behaviour of legal services providers.

Monitoring information arrangements:

This will be monitored by the Legal Ombudsman who will keep their complaints handling system under review on an ongoing basis.

Reasons for not planning a PIR:

N/A