

EXPLANATORY MEMORANDUM TO
THE LEGAL SERVICES ACT 2007 (ALTERATION OF LIMIT) ORDER 2012

2012 No. 3091

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument amends the Legal Services Act 2007 (“the 2007 Act”) to increase the total value of directions that can be made in respect of a complaint under the Office for Legal Complaints (“the OLC”) ombudsman scheme from £30,000 to £50,000.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The 2007 Act sets out the framework for the regulation of legal services in England and Wales. Part 6 of the 2007 Act established the OLC as a new independent complaints handling body and provided for an ombudsman scheme (operating as the Legal Ombudsman) as the single point of contact for all service complaints about authorised persons (for example, barristers, solicitors, solicitors’ firms).
 - 4.2 Section 137 of the 2007 Act sets out the powers vested in an ombudsman to determine a complaint. This includes the power at section 137 (2) (c)-(e) to direct an authorised person to pay compensation to the complainant of such an amount specified by the ombudsman, secure the rectification of any deficiency arising in connection with the matter in question and take such other action in the interests of the complainant as specified. The total value of the directions that can be made by the ombudsman under section 137(2) (c)-(e) must not exceed the limit set in section 138 (1) of the 2007 Act, which is currently £30,000. The limit can be altered on the recommendation of an interested body (the OLC, the Legal Services Board or the Legal Services Consumer Panel).
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Helen Grant MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Legal Services Act 2007 (Alteration of Limit) Order 2012 are compatible with the Convention rights.”

7. Policy background

- What is being done and why

- 7.1 The OLC and the Legal Ombudsman became operational on 6 October 2010. When the scheme rules were first drafted by the OLC, they were based on a number of assumptions about the legal services market and the complaints that would be made. Following 18 months of operational experience, the OLC reviewed the scheme rules in March 2012 and identified a number of changes and improvements it wished to make and which it considers will: promote and protect the interests of consumers; take account of changes to the market, particularly the emergence of new business structures; and allow the Legal Ombudsman to operate more effectively and efficiently.
- 7.2 For the period April 2011 until March 2012, the Legal Ombudsman received over 75,000 enquiries; around 7,800 cases were subsequently investigated. The Legal Ombudsman directed that authorised persons should pay compensation in around 2,600 cases. Whilst the value of the majority of these awards was less than £1,000, a small number of cases involved compensation awards valued at around £30,000 and in some cases the Legal Ombudsman indicated that if it had been possible to do so it would have ordered an award of a value greater than £30,000.
- 7.3 The Legal Ombudsman was set up to be a quick, fair and independent complaints' handling scheme and an alternative to resolving disputes in court. The Legal Ombudsman accepts that there are complex cases that will require resolution by the courts but has found that there are a number of cases which have a high financial value but where the problem with the service provided is relatively easy to identify, e.g. conveyancing transactions. It considers that having to take those matters to court can be expensive, time consuming and stressful for both the complainant and the authorised person and that the Legal Ombudsman would offer a viable alternative to the courts if the maximum value of directions is increased.
- 7.4 In addition, since the Legal Ombudsman became operational new types of business entities have been emerging as a result of the alternative business structure regime becoming operational in October 2011. Alternative business structures are firms which are partly or wholly owned or controlled by non-lawyers and which provide legal services or a mixture of legal and non-legal services. Because a complaint could relate to not only the legal advice provided by

such entities but also, for example, financial or property advice, this could lead to the need for higher compensation awards for poor service. The Legal Ombudsman has been in discussions with other ombudsman schemes, including the Financial Ombudsman, aimed at mitigating the risk of cross jurisdictional issues that may emerge to avoid delays and gaps in dealing with complaints which fall under more than one ombudsman scheme.

7.5 In recommending an alteration to the financial limit, the OLC considered a number of different options including: having no financial limit; a limit similar to that imposed by other ombudsman schemes particularly the Financial Ombudsman (whose maximum limit is £150,000); a smaller proportionate increase based on operational experience; or retaining the current limit. It concluded that whilst there was some evidence to support awards of greater than £30,000, there was no evidence to support an increase to £150,000 or more. It therefore concluded a smaller increase to £50,000 would be: proportionate; underpinned by evidence from its operational experience; and minimise the risk of a rise in insurance cover for authorised persons.

7.6 The Lord Chancellor considers that with the evidence available and the impact of the new alternative business structures on complaints handling still unknown, increasing the financial limit of directions to £50,000 is a proportionate and prudent policy decision. It is also in line with the regulatory objectives of the 2007 Act to protect and promote the interests of the consumers and potentially offers a quicker, less costly and less stressful alternative to court for resolving disputes.

- Consolidation

7.7 There is no intention to consolidate the relevant legislation. An informal consolidated version of the Legal Services Act 2007 is available at <http://www.legislation.gov.uk/>.

8. Consultation outcome

8.1 Section 139 (4) of the 2007 Act sets out that before an interested body, in this case the OLC, makes a recommendation to the Lord Chancellor it must publish a draft of the proposed recommendation, invite representations regarding the proposed recommendation and consider any representations that are made. The OLC discharged this duty by conducting a public consultation of the Legal Ombudsman's scheme rules which included the proposal that the maximum value of compensation permitted under the scheme should be increased.

8.2 The OLC published its consultation document, "*Review of the scheme rules and case fee structure: consultation paper and discussion draft*", on 26 March 2012. The consultation closed on 18 June 2012 and 18 written responses were received from a range of bodies including: the Law Society, Solicitors Regulation Authority and the Bar Standards Board; consumer bodies such as Which? and the Legal Services Consumer Panel; and individual firms and members of the public.

In addition to the consultation paper, the OLC also held three workshops for stakeholders to discuss the changes to the scheme rules. The majority of respondents considered that the limit should be increased or some discretion allowed to award compensation greater than £30,000. Those who were against an increase were concerned that the increase could lead to more complex cases being referred to the Legal Ombudsman, which would be better resolved in the courts and that the system might be open to abuse. The OLC considers that the underpinning scheme rules will allow the Legal Ombudsman to dismiss cases it considers should be dealt with by the courts as is currently the case. Details of the consultation and the responses can be found at <http://www.legalombudsman.org.uk>.

9. Guidance

- 9.1 The Legal Ombudsman will issue guidance and work with the approved regulators to make sure that the legal profession is aware of the changes to the scheme rules.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is likely to be small. Paragraphs 29-35 of the attached Impact Assessment show that the number of businesses affected is anticipated to be very small and they are likely to be businesses which are not providing a reasonable level of service to consumers. Some businesses may benefit by being able to use the Legal Ombudsman rather than the courts to resolve disputes.
- 10.2 The impact on the public sector is expected to be negligible. Paragraph 42 of the attached Impact Assessment indicates that it is possible that some complaints which are currently dealt with by the courts may now be dealt with by the Legal Ombudsman instead, leading to a small decrease in the number of court cases, although the numbers are expected to be low.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business. However, only those businesses which have provided an unreasonable level of service to consumers (resulting in determination of a complaint by the Legal Ombudsman) would be affected by the changes.
- 11.2 To minimise the impact of the requirement on small firms employing up to 20 people, clear guidance is provided by the Legal Ombudsman and approved regulators in respect of what complaints handling procedures should be put in place by individuals or firms providing legal services.

11.3 The basis for the final decision on what action to take to assist small business is informed by the consultation responses and the experience gained by the Legal Ombudsman in dealing with complaints about such bodies. Small firms may also benefit (in addition to the complainant) if cases which would otherwise be dealt with by the courts are dealt with by the Legal Ombudsman since the costs, timescales and stress for both authorised persons (including small firms) and complainants could be reduced.

12. Monitoring & review

12.1 The Legal Ombudsman will monitor the impact of the changes to the scheme rules through its case management system.

12.2 More widely, the OLC is subject to parliamentary scrutiny since it is required to produce an annual report and accounts which must be laid before Parliament by the Lord Chancellor. The OLC functions will be reviewed in 2015 as part of its second triennial review, including the operation of the Legal Ombudsman.

13. Contact

13.1 Dawn Sanderson at the Ministry of Justice, Tel: 0203 334 4269 or email: Dawnm.sanderson@justice.gsi.gov.uk can answer any queries regarding the instrument.