



THE FACULTY OFFICE OF THE ARCHBISHOP OF CANTERBURY

ADVISORY BOARD

CHANGES TO LEGAL OMBUDSMAN SCHEME RULES

Background

The Legal Ombudsman (LeO) was established under the Legal Services Act 2007 to investigate complaints about the service received from consumers/clients of legal service providers. It provides redress if the standard of service has been poor, such as work being done too slowly or excessive fees. It does not deal with misconduct cases which are a matter for the Faculty Office.

The way in which the LeO works is governed by the [Scheme Rules](#).

If a client has a concern about the level of service he or she has received from a notary, they may contact the notary in question. If unable to resolve that complaint, they may apply to the Notaries Society or the Worshipful Company of Scriveners depending on which body the notary is a member and that society operates a complaints procedure for its members. The society may at the end of the procedure recommend to the notary some form of redress such as an apology or to pay back fees. The form of complaints procedure has been approved by the Faculty Office. The principle is that as notaries do not generally work in firms (in their capacity as a notary), the society complaints procedure takes the place of that “first-tier”, as a practice manager would in a firm. Finally, if dissatisfied with the outcome of the society’s procedure, the client/consumer may apply to the Legal Ombudsman. The Legal Ombudsman has the power to direct the legal services provider to do any of the following:

- 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.

Each notary is under a duty to give his or her client a prescribed form of words drawing to their attention their ability to complain. The prescribed form of words under Rule 8.1.4 the Notaries Practice Rules 2019 is set out in Annex 2. The wording at Annex 2 includes a change that the Faculty Office proposes to make for the reasons that are to follow.

The Faculty Office has a page on [complaints](#).

Changes to the Scheme Rules

The LeO has amended its Scheme Rules and the changes take effect on 1st April 2023. There are three key areas for change, alongside several additional minor technical changes. These are outlined in Annex 1. Jonathan Coutts has kindly drawn to the attention of the Faculty Office the need to change the prescribed complaints wording so that the client/consumer's attention is drawn to the need to make the complaint to the LeO within a year of the act/omission or one year from when the complainant should reasonably have known there was cause for complaint. The Faculty Office posted a [news item](#) on the changes to the Scheme Rules on 27 February.

Advice to the Master

1. Does the Advisory Board agree with the proposed change of prescribed complaints wording issued under Rule 8.1.4 the Notaries Practice Rules 2019? This is shown at the bottom of Annex 2 in italics.
2. Is there any other matter arising out of service level complaints that the Board wishes to raise with the Master? One of the Master's priorities is a review of the complaints and disciplinary system generally.

Annex 1

Scheme Rule 4: Time Limits

From 1 April 2023, the time limits for referring a complaint to the Legal Ombudsman will be 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.

The Legal Ombudsman will retain the ability to apply Rule 4.7, which allows an Ombudsman to exercise discretion to extend the 1 year time limit for specific customers if, on the evidence, it was fair and reasonable to do so.

The communication of the change to time limits is key and it will be important that the communication service providers provide to their clients is amended from 1 April 2023 to reflect the new time limits. This will include information published on service providers websites as well as any signposting or guidance document providers may use which outline when a complaint can be taken to the Ombudsman. The Legal Ombudsman will also ensure that information and guidance on time limits is clear and accessible through all of its customer channels. The circumstances in which discretion can be exercised and how customers can request that it be exercised will also be published on LeO's website.

Scheme Rule 5.7: Ombudsman discretion to dismiss or discontinue a complaint

Rule 5.7(b)

LeO will be introducing the word 'significant' within Rule 5.7(b) which will allow an Ombudsman to consider whether it is a proportionate use of resource and time to investigate a complaint where the detriment to the complainant is not significant.

The introduction of 'significant' provides for cases to be dismissed if the loss, detriment, or impact is deemed minor enough that it would be disproportionate to conduct a full investigation whereas under current wording a complaint can only be dismissed under this rule if there has been no loss or detriment.

As with all dismissals under Rule 5.7 it is important to note that this is a discretion to dismiss that can only be exercised by an Ombudsman and only after the parties have been given the opportunity to explain why the complaint should not be dismissed.

Rule 5.7(p)

The introduction of Rule 5.7(p) will 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 means that it would be disproportionate for it to be investigated.

It is important to note that this Rule would apply to a very small proportion of cases and then only to those where it is considered disproportionate, unreasonable or even impossible for LeO to investigate

the complaint. LeO will be producing and publishing guidance which outlines the circumstances in which this rule can be applied.

Rule 5.7(q)

The introduction of Rule 5.7(q) will ensure that new issues cannot be 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 will ensure that once an investigation has commenced, all parties have certainty as to the issues that have been raised.

It also ensures that parties cannot deliberately protract or delay investigations by seeking to add additional grounds to the scope of the original complaint.

Rule 5.19: Escalation of cases to an Ombudsman for decision

There will be 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 have been raised in response to the investigator's findings or remedy. In those circumstances, the case would be deemed to have been resolved by the investigator's findings, using an amended version of the existing Rule 5.20 provision.

An Ombudsman will still have discretion to pass a case for final decision irrespective of the responses to the investigator's findings if, for example, there were vulnerability issues, or if the service provider has closed and a decision is needed for a claim against the firm's run off insurance, or if the decision was needed for enforcement purposes.

Minor amendments will also be made to the following Scheme Rules:

Rule 1.1:

Removing reference to obsolete dates.

Rule 2.1:

Addressing historic drafting errors.

Rule 2.8:

Formalising the position on complaints by beneficiaries.

Rule 4.5:

Removing reference to obsolete dates.

Rule 5.4:

Addressing formal challenges to ongoing investigations.

Rule 5.7(a):

Clarifying discretion to dismiss a complaint.

Rule 5.7(c):

Ombudsman discretion to dismiss or discontinue a complaint (reasonable offer made) clarification.

Rule 5.7(d):

Clarifying discretion to dismiss a complaint.

Rule 5.20:

Addressing situations where investigator's findings and recommendations are not accepted.

Rule 5.33:

Addressing when an Ombudsman can direct that a hearing is required.

Rule 5.55:

Allowing the Legal Ombudsman to rectify uncontested errors.

Rule 5.62:

Updating reference to relevant data protection legislation.

Annex 2

Prescribed form of words under Rule 8.1.4 the Notaries Practice Rules 2019

1. My notarial practice is regulated through the Faculty Office of the Archbishop of Canterbury:

The Faculty Office
1, The Sanctuary
Westminster
London
SW1P 3JT

Telephone 020 7222 5381

Email faculty.office@1thesanctuary.com
Website www.facultyoffice.org.uk

2. If you are dissatisfied about the service you have received please do not hesitate to contact [me/ my firm].

3. If we are unable to resolve the matter you may then complain to [The Notaries Society/ the Society of Scrivener Notaries of which I am a member, who have a Complaints Procedure which is approved by the Faculty Office] [the Faculty Office who will refer the complaint to be considered by one or several independent notaries]. This procedure is free to use and is designed to provide a quick resolution to any dispute.

4. In that case please write (but do not enclose any original documents) with full details of your complaint to [-
contact details of relevant Approved Procedure including telephone number and email address] [the Faculty Office].

If you have any difficulty making a complaint in writing, please do not hesitate to call [The Designated Society/The Faculty Office] for assistance.

5. Finally, even if you have your complaint considered under the Complaints Procedure, you may at the end of that procedure or after a period of eight weeks from the date you first notified me that you were dissatisfied, make your complaint to the Legal Ombudsman, if you are not happy with the result:

Legal Ombudsman
PO Box 6806
Wolverhampton WV1 9WJ
Tel : 0300 555 0333

Email: enquiries@legalombudsman.org.uk Website: www.legalombudsman.org.uk

6. If you decide to make a complaint to the Legal Ombudsman, you must refer your matter to the Legal Ombudsman within ~~six months from the conclusion of the complaint process. This must be done either~~ *one year from the act/omission or one year from when you should reasonably have known there was cause for complaint.*