

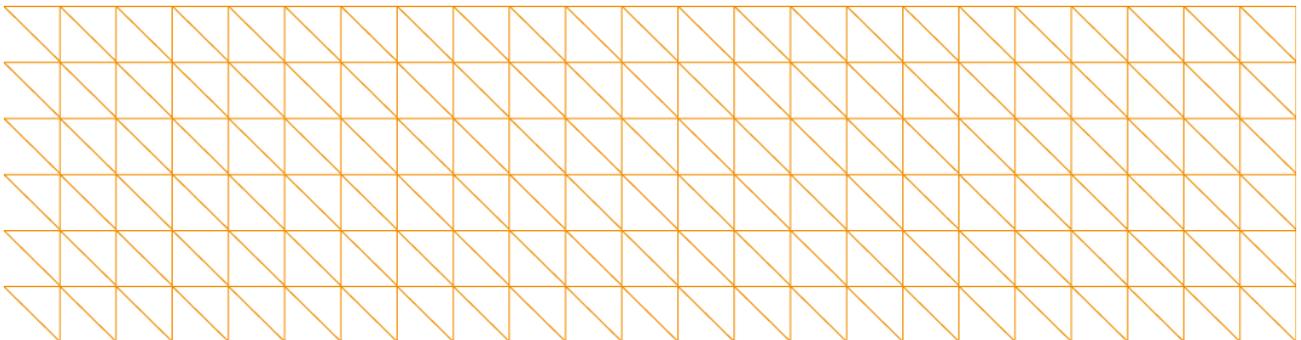


Ministry
of Justice

Claims Management Regulation

Proposals for amendments to the Complaints Handling Rules – Complaints handling by the Legal Ombudsman

This response is published on 18 December 2014





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Response to consultation carried out by the Ministry of Justice.

This information is also available on the Ministry of Justice website: www.justice.gov.uk

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Introduction and contact details

This document is the post-consultation report for the consultation paper, Proposals for amendments to the Complaints Handling Rules – Complaints handling by the Legal Ombudsman.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting

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This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from claimsmanagementregulation@justice.gsi.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

1. In August 2012 the Government announced that it would extend the Legal Ombudsman's jurisdiction to deal with complaints from clients dissatisfied with the service provided to them by persons authorised by the Claims Management Regulator (CMR). The CMR is principally concerned with the conduct of authorised persons and currently has a limited remit to review consumer complaints about an authorised person. The CMR can direct the authorised person to apologise, re-do work and in limited circumstances provide a full or partial refund of fees, but cannot award compensation. The extension of the Legal Ombudsman's jurisdiction means that consumers will have greater scope for redress, including awards for compensation which have not been previously available. The regulation of authorised persons will remain with the Ministry of Justice.
2. The consultation paper 'Proposals for amendments to the Complaints Handling Rules – Complaints handling by the Legal Ombudsman' was published on 3 November 2014. It invited comments on technical amendments to the Complaints Handling Rules. It was proposed that the Complaints Handling Rules are amended to ensure that they are not in conflict with the Legal Ombudsman's Scheme Rules and that they fulfil the requirements for the CMR under the Legal Services Act 2007 set out by the Legal Services Board.
3. The following amendments to the "Complaint Handling Rules" were proposed:
 - Rule 1 – Reference to the Compensation (Claims Management Services) Regulations 2006 inserted and the reference to the Conduct of Authorised Persons Rules updated.
 - Rule 2 – Removal of the sentence that the rules do not apply to other activity that a business may undertake. The remaining content of the Rule is to be retained.
 - Rule 3 – The application of and compliance with, the rules for authorised persons when handling ongoing and new complaints.
 - Rule 6(d) – Notifying clients of their right to complain to the Legal Ombudsman.
 - Rule 13(a) – Informing clients in a final response or a response by the end of 8 weeks after receipt of the complaint that they can complain to the Legal Ombudsman, the timeframe to do so and full contact details.
 - Rule 14(a) – Notifying prospective clients in writing of their right to complain before signing a contract and notifying existing clients of their right to complain at the next appropriate opportunity.
4. The following additional requirements were proposed to be inserted into the "Complaint Handling Rules":
 - Rule 6 – General requirement to comply with the Legal Ombudsman's Scheme Rules when dealing with complaints within the scope of the Legal Ombudsman.

- Rules 19, 20 and 21 –providing assistance to the Legal Ombudsman when investigating complaints, complying with a notice for information or documents and compliance with any direction made by the Legal Ombudsman.
5. Removal of the following “Complaints Handling Rules” and content were proposed:
- Rule 10 – Discretion for authorised persons to decline complaints made six months after the complainant was aware.
 - Rule 12 – Requirement for authorised persons to provide a final response or a holding response to a complainant within 4 weeks.
 - Rule 16 – Requirement for authorised persons to provide fair compensation when deciding that redress is appropriate.
 - Rule 17 – The forms of redress and reference to a reasonable rate of interest.
 - Rule 18 – Requirement for a final response to include a reference to the CMR, the address, phone number and email address of the CMR.
 - The explanatory note and the reference to the Compensation (Claims Management Services) Regulations 2006
6. The consultation period closed on 24 November 2014 and this report summarises the responses, including how the consultation process influenced the proposal consulted upon. A list of respondents is at Annex A.

Summary of responses to the consultation question

Do you have any comments in respect of the proposed amendments to the Complaints Handling Rules 2006?

7. A total of six responses were received to the consultation paper. Of these, two responses were received from authorised persons, three were received from trade bodies and organisations and one was received from a financial institution.
8. Five responses were supportive of the proposed amendments. Money Active stated that the proposals were *“overall clear and fair”*. The Association of Regulated Claims Management Companies stated that *“The changes seem appropriate to ensure that the LeO scheme is workable”* whilst the Professional Financial Claims Association stated *“The proposed amendments appear to be fair and reasonable.”*
9. Barclays Bank PLC stated that *“At a very high level, Barclays agrees with the proposals submitted within the consultation paper circulated on 3 November 2014 and continues to form the view that the move to extend the Legal Ombudsman (LEO) jurisdiction to deal with complaints from consumers dissatisfied with the service provided to them by CMCs is a positive one for consumers...”*
10. The Law Society stated *“We agree that it is appropriate that all practitioners who come into contact with the Legal Ombudsman should be subject to the same processes and requirements.”*
11. Money Active also stated *“Examples of 'reasonable steps' in terms of staff awareness may be useful to help support some firms in complying and adopting best practice.”* This comment has been considered and further information will be supplied to authorised persons in a practical guidance document attached to this consultation response.
12. Barclays also stated that it was keen to discuss *“Clarity on who has accountability where a CMC elects not to co-operate with the LEO in relation to complaints investigations including enforcement of any redress or costs associated with the complaint/case fee.”*
13. The proposed amendments to the Complaint Handling Rules intend to create an obligation for authorised persons to co-operate with the Legal Ombudsman, in particular that an authorised person must comply with a determination issued by the Legal Ombudsman which can include directions for the authorised person. Failure to comply with determinations from the Legal Ombudsman will be a breach of the Complaints Handling Rules, and will therefore also be a breach of an authorised person's conditions of authorisation under regulation 12(5)(a) of the Compensation (Claims Management Services) Regulations 2006. A decision of the Legal Ombudsman is also enforceable by the High Court or the county court under section 141 of the Legal Services Act 2007.

14. Three respondents provided comments that were out of the scope of the consultation on the proposed amendments to the Complaints Handling Rules 2006. This included:
- Concerns about the scope of the Legal Ombudsman and the complaints that it will consider.
 - Concerns raised about the extension of the Legal Ombudsman's jurisdiction due to the difference in regulatory arrangements applied to other practitioners that come into contact with the Legal Ombudsman, in particular with reference to the requirement of Professional Indemnity Insurance (PII). The CMR will monitor this situation; however it has completed a review of the requirements for PII and is not considering extending the requirements.
 - Queries regarding the actions of the Legal Ombudsman including the publication of complaints data and the timeline for complaints.
15. As these issues are beyond the scope of this consultation they have not been addressed formally in the response to this consultation, instead we have passed them to the Legal Ombudsman or the relevant policy department within the Ministry of Justice.

Conclusion and next steps

1. The proposed amendments are a consequence of the extension of the Legal Ombudsman's remit and are necessary in order for the CMR to comply with the Legal Services Act 2007. They are also needed to ensure that authorised persons are aware of their obligations and provide a requirement for them to notify their clients about their right to complain to the Legal Ombudsman.
2. Positive responses have been received from those that responded to the consultation and whilst the changes to the Complaints Handling Rules have an impact on authorised persons by requiring them to make changes to their complaints handling procedures and ensuring that their current clients are aware of their right to complain to the Legal Ombudsman, the changes are fair and reasonable in order for the extension of the Legal Ombudsman's jurisdiction to work effectively.
3. The amendments to the Complaints Handling Rules should assist authorised persons in handling complaints effectively. Where a client has contacted the Legal Ombudsman this determination should further educate authorised persons on best practice complaints handling. Further to this, the information and intelligence that will be shared between the CMR and the Legal Ombudsman will allow the CMR to take targeted enforcement action against those authorised persons who continue to break the rules.
4. The Complaints Handling Rules 2015 are to be finalised with the proposed changes detailed. A final version of the Rules is annexed to this document and will be published on the CMR website. A document has been created to give practical guidance to authorised persons and consumers about the changes to the CMRs role with respect to complaints, how the Legal Ombudsman will deal with complaints and what authorised persons can expect when dealing with them.
5. It is intended that the Legal Ombudsman will begin taking complaints about authorised persons from 28 January 2015. We therefore intend that the Complaints Handling Rules 2015 are effective from 28 January 2015 and will issue information to authorised persons once this is confirmed.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Annex A – List of respondents

Association of Regulated Claims Management Companies

Barclays

Congruent Financial Partners

Law Society

Money Active Ltd

Professional Financial Claims Association

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