

Response to consultation: March 2010

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# Setting a fair case fee

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LEGAL  
OMBUDSMAN

# Setting a fair case fee: Legal Ombudsman response

The Legal Ombudsman is being set up by the Office for Legal Complaints (OLC) under the Legal Services Act 2007 as an independent, impartial, 'single-point-of-entry' Ombudsman scheme for all consumer legal complaints.

The OLC must set a structure for a case fee that lawyers who use the Legal Ombudsman will be charged. The Legal Services Act requires us to do this and the Act is also specific about when it does and does not apply. A case fee is payable unless a complaint is resolved in favour of a lawyer and if the Ombudsman is satisfied that the lawyer took all reasonable steps to try and resolve the complaint.

Case fees are a charge to be paid by lawyers and law firms whose customers file a complaint about them with the Legal Ombudsman, following an unsuccessful attempt to resolve their dispute in-house. The fees, which will be charged at the end of the process, may be waived in line with the provisions in the Act (see section 136).

On 5 October 2009, we published for consultation our approach to developing a structure for the case fee which supports the role of an ombudsman scheme as an independent and impartial service. Our aims were to be as fair as possible and to recognise that our role is not to take sides or allocate blame. We were, and remain, reluctant to use case fees as a form of punishment. The consultation process has reinforced our view that the case fee is a mechanic for encouraging good complaints handling and recouping some of the administrative costs of running the scheme from those using the service rather than the profession as a whole.

The consultation *Setting a fair case fee* closed on 4 December 2009. As part of the consultation process, we published an initial, qualitative impact assessment and called for evidence to support our further analysis. We asked stakeholders to attend a discussion group, in addition to receiving written responses to the consultation which are published on our website. A list of those people and organisations who submitted responses is at the end of this document.

## Proposed fee structure

The proposed case fee structure is for a flat fee of £400 charged for each complaint filed with the Ombudsman scheme and allowing two free cases per lawyer or firm per financial year. The fee will be payable once a complaint had been formally accepted as a case by the Legal Ombudsman and would be collected at the end of the process. The fee would apply to complaints that are in jurisdiction and are not

dismissed or discontinued at any stage, subject to the provisions that allow us to waive the fee. This is set out in the Scheme Rules at Chapter six.

Our key task is to set up the Legal Ombudsman to successfully resolve complaints and we are keen to start with a simple structure that will allow us to focus on our service as a whole and build from as strong a foundation as possible. We agree though with the views of stakeholders that we should be clear about our plans for the future and commit to re-visiting the level of the case fee and the case fee structure within two years of the Legal Ombudsman opening its doors. Specifically we will review and consult on a revised case fee structure before the end of 2012.

This paper outlines the feedback we received as well as our response and our chosen approach to the case fee structure. The case fee structure is set out in Chapter six of the Scheme Rules for the Legal Ombudsman.

## **Funding of the Legal Ombudsman**

Our business plan outlines the funding arrangements for the Legal Ombudsman. The Legal Services Board recently approved the budgets (as required by the Act) included in the Business Plan. As our plan notes, any conclusions about the ongoing operating costs of the Legal Ombudsman after the launch of the scheme are provisional. As a consequence of this, and given our limited knowledge about the level of demand we will face and how the case fee structure may impact on that demand, we propose to take a relatively cautious approach to the case fee in this initial period of operation.

The feedback from the informal discussions about the draft scheme rules confirmed our preference to start the initial phase of Legal Ombudsman operation recovering a smaller proportion of the Legal Ombudsman cost via fees, with a greater proportion of the cost being recovered via levy. During the consultation stage we used 10% cost recovery from case fees for illustrative purposes. Following the consultation period we again modeled the options set out in the accompanying impact assessment. Using these models and having re-visited our assumptions in light of stakeholder comments, the preferred flat fee structure would account for recovery of around 10% of cost via fees and 90% via levy, assuming efficient collection mechanisms.

The responses we received to the consultation stated that there is currently low recovery of charges of this sort in at least one of the current complaints handling bodies. We also heard strong views stating that income from case fees should make up a greater proportion of funding for the Ombudsman scheme. A key factor to ensuring a higher level of income is derived case fees is a high rate of compliance by firms and lawyers. This will also require crisp signals from Approved Regulators to encourage cooperation with the Ombudsman scheme.

## Setting a fair case fee

Our aim in developing the case fee structure was to put in place a regime that would be seen as fair. In part, this was to accord with the aims of the OLC to put in place an ombudsman scheme that would herald a new way of resolving complaints. In part too, this is to emphasise the impartiality of the Legal Ombudsman: it is being established to resolve complaints rather than to allocate blame or distribute punishment.

During this consultation we heard a lot of language that does not sit with the ethos of an Ombudsman scheme. Our work will be dispute resolution, not attribution of blame, and awards are intended to put matters right, not to punish. Most of the consultation responses predicated their views about the case fee structure on notions of lawyers being guilty or innocent. For the reasons set out above, this does not fit with the new organisation we are seeking to create.

### **Q1. Do you think our approach to the case fee is fair? Please give your reasons.**

The proposed case fee structure is for a flat fee of £400 charged for each complaint filed with the Ombudsman scheme and allowing two free cases per firm per financial year. The fee would be payable once a complaint had been formally accepted as a case by the Legal Ombudsman and would be collected at the end of the process. The fee would apply to all complaints that are in jurisdiction and are not dismissed or discontinued at any stage.

The responses we received to the consultation indicated that stakeholders believed our overall approach was fair. Consumer groups supported the fact that the service would be free to consumers and a range of stakeholders (from both the legal community and consumer representatives) told us that the factors we sought to balance in developing our structure were the right ones to be considering.

Many stakeholders, however, argued that a two stage approach would reward those who strive for an early, informal complaint resolution in the process, and who contribute to saving some operational costs. We looked at the experience of other Ombudsman schemes after hearing these views; the evidence of how a two stage structure might influence behaviour is not conclusive.

The experience of other schemes that have adopted a two tier structure does not provide encouraging evidence that this approach to a case fee fuels the desired behavioural change. Instead, these experiences indicate that companies may take a commercial approach, and decide that in the small percentage of cases that may go to the Ombudsman scheme it is worth the cost of the lower initial case fee. In other words, it may be that firms will decide that the costs of offering a settlement before Ombudsman decision is worth the reduced opportunity costs of handling complaints earlier in the process. Rather than promoting good complaints handling, this structure

may instead drive perverse behaviour. Stakeholders such as the current Legal Services Ombudsman in her scheme rules response highlighted these concerns to us. As some of the other responses to the consultation noted, charges and fees may not be the best way of influencing behaviour.

In addition, the duration of a complaint might not always entirely depend on the willingness of a lawyer to settle early and save themselves some case fees. Cases often depend on the complexity, contentiousness and emotional charge of each case, which might lead it to go on to a late stage in the Legal Ombudsman process no matter how constructively the lawyers have behaved. This would burden a disproportionate and unjustified case fee cost to lawyers operating in more contentious areas of the law, where complex and emotionally charged cases are more likely to arise. For small firms, this could affect their economic viability.

We acknowledge that there was a strong appetite from a range of representatives of the legal profession who engaged with this consultation for a two stage approach. As the Legal Services Act asks us to look to ombudsman best practice we believe we must take seriously the lack of conclusive evidence that this approach will encourage early resolution of complaints.

In addition to it being unclear whether the two stage approach would encourage behavioural benefits, this structure also carries the risk of the process being dogged by disputes over what level of fee should be charged in a case. The key cost (described in more detail in the impact assessment) of a case fee charging structure is the administrative burden it will impose both on lawyers as well as on the Legal Ombudsman. Setting a flat fee has the advantage of operating with a simple fee structure: fee decisions will be clear, easy to make, and non-contentious, which should contribute to keep lawyers costs as well as OLC administrative costs down, not the least by minimising distracting disputes about amounts and chargeability of fees. As the Legal Ombudsman is a new service, starting simply is important; there are many unknowns about how the scheme will work in practice and the volume of activity required to make sure the new scheme will be a success from its start supports adopting this option for this initial period.

This approach gives us time to establish our operation and understand the real level of demand and actual cost of the ombudsman scheme. The consultation process confirmed that there are many aspects of the operation of the Legal Ombudsman that are unknown. Our key task is to set up the Legal Ombudsman to resolve complaints successfully and we are keen to start with a simple structure that will allow us to focus on our service as a whole and build from as strong a foundation as possible. However, we agree with the views of stakeholders that we should be clear about our plans for the future and commit to re-visiting the level of the case fee and the case fee structure within two years of the Legal Ombudsman opening its doors. Specifically, we will review and consult on a revised case fee structure before the end of 2012.

**Q2. Do you think there is likely to be a potential impact on small firms or sole practitioners, or specific areas of the law which might attract more complaints or potential impact on diversity within the profession? Please give your reasons and provide any evidence that you think will help us measure any impact.**

One main concern about which we sought views during the consultation process was the impact of charging case fees on access to justice: certain areas of the law, such as immigration, mental health, family, or criminal law, through their emotional and contentious nature, are likely to generate more complaints than other areas. Firms operating in these areas might hesitate to take on cases seen as contentious, not wanting to incur the risk of accumulating complaints and a high total of case fee charges. This may be particularly true for small law firms or sole practitioners, whose economic viability may be more vulnerable if charged with high case fees.

We heard evidence to say that we were right to be mindful of potential disproportionate impact on certain areas of the profession. Stakeholders agreed that there may be a disproportionate impact of case fees policies on small firms or sole practitioners, who, it was said, may not have the economic robustness to tolerate exceedingly high case fees or sudden rises in the number of complaints filed against them. We also saw, from consultation responses, that black and ethnic minority lawyers, junior lawyers and lawyers who work contentious areas of the law, such as immigration, criminal, family, or mental health, were also likely to generate more complaints than those operating in other, less contested areas of law, and may therefore suffer a disproportionate impact.

The hard evidence to judge the level of impact is not readily available, but stakeholders agreed that it was worth beginning cautiously and gathering evidence as the Ombudsman scheme began operation to measure any impacts. There were cogent arguments to say that the case fee should not deter lawyers, especially legal aid lawyers from taking cases of “unlovely clients”. To do otherwise could see an impact on small legal aid firms and access to justice by clients who rely on those firms.

Another argument that was raised was that for some parts of the profession, higher fees could raise costs for the regulated profession and make the unregulated practitioners a cheaper alternative. We do not wish to begin operation by alienating regulated patent practitioners or encouraging people to de-register; this would not serve either the consumer or the profession’s interests. The proposal to set a flat fee of £400, an amount sufficiently high to be motivating quality in-house complaint resolution, but still within the range charged by most Ombudsman schemes, should relieve some of the disproportionate impact of case fees on these lawyers.

Allowing two free cases per firm per financial year was also recognised during the consultation process as another way we could give confidence to sole practitioners or firms working in these sectors that they need not be nervous of the new Ombudsman scheme or of any unintended or disproportionate impact on their practice. The discussion group that we held with a range of stakeholders (including the profession and consumer groups) indicated that, despite there being little evidence to support analysis, there seemed to be sufficient anecdotal concern to justify a small number – two – free cases as a legitimate way of mitigating any disproportionate impact on small firms and those who practice in more contested areas of the law. In addition, the fact that firms, post-investigation, may have their case fees waived should further mitigate this concern.

**Q3. Do you agree with the option of structuring the case fee as a flat fee with two free cases per firm per year? Please give your reasons why or why not.**

The debate about this structure and our reasons for adopting a flat fee approach are set out above. Setting a flat fee has the advantage of operating with a simple fee structure: fee decisions will be clear, easy to make, and non-contentious, which should contribute to keep lawyers costs as well as OLC administrative costs down, not the least by minimising distracting disputes about amounts and chargeability of fees. As the Legal Ombudsman is a new service, starting simply is important; there are many unknowns about how the scheme will work in practice and the volume of activity required to make sure the new scheme will be a success from its start supports adopting this option for this initial period.

We propose to allow firms two ‘free cases’ per financial year. This was an area of debate during the consultation, with some arguing that allowing ‘free’ cases would not encourage due attention to resolving complaints in-house. Others warmly welcomed the two ‘free’ case approach as a useful gesture of goodwill during the start up of the scheme, acknowledging that some firms may receive complaints despite their best efforts to resolve them.

We were asked during the consultation how the ‘free’ cases would work in practice. Our proposal is to count the first two cases per firm in each financial year as ‘free’, charging any subsequent cases.

**Q4. Do you think that £200 - £400 pounds for the case fee is at the correct level? Please give your reasons why or why not.**

In publishing the scheme rules and in our case fee consultation we did not include specific amounts in relation to the case fee, instead suggesting that between £200 and £400 was our preferred starting point. This range echoed the fees charged by other Ombudsmen but we acknowledge is at the low end of the spectrum. We heard views to say that this is an appropriate starting point, and we heard no views to

convince us to increase the fee above £400 at this stage. We will however, look at the level of the fee when we review the structure of the fee after an initial period of operation and before the end of 2012.

In setting the structure and level of a case fee at £400, we looked at the following factors:

- expected number of eligible complaints (cases) per year of approximately 14,000;
- that the waiver will apply in 10% of cases (meaning fees are reimbursed or not collected from 10% of lawyers with 'chargeable' cases);
- options for number of complaints allowed per year and firm for free (either zero or two 'free' cases);
- less than 100% rate of compliance with case fee payment; and
- that around 10% is the desired proportion of OLC cost recovered via case fees at start up.

We are aware that these are assumptions only and can be subject to challenge. They are however, the best information available to us at this stage as these figures have been based on existing complaint handling operations and benchmarked from other comparable Ombudsman schemes and other relevant organisations. We are conscious that these figures do not map across exactly to our new scheme.

We remain keen to keep the costs of having a case fee structure low both for the Legal Ombudsman itself and also to keep administration costs low for the lawyers who use our service.

**Q5. Do you have any comments on the attached initial consultation impact assessment? Do you think there is likely to be any other potential impact of implementing the case fee that we have not captured in the attached impact assessment? Please give your reasons and provide any evidence that you think will help us measure any impact.**

We have revised the impact assessment in light of the results of the consultation to compare the flat fee option with the idea of the two stage structure of the fee that emerged during the consultation process. The impact assessment remains largely qualitative as we did not receive the breadth of statistical evidence during the consultation to allow us to make more specific quantitative assessments.

The revised impact assessment sets out our early thinking, our assumptions and describing what we see as the likely impact of each option, including an evaluation of the option of 'doing nothing'. This is a hypothetical scenario as we are required by law to charge a case fee. It does provide a useful point of comparison against which to benchmark the other options.

**Q6. Are there any other points or issues you wish to raise in relation to the case fee level or structure? Do you think there is anything missing? Is there anything you disagree with? Please give your reasons.**

We heard views about the other factors that are likely to influence behaviour of lawyers to encourage early resolution of complaints and will consider these as we develop the service. These views were a useful reminder that case fees are not the only way in which we should be able to encourage early resolution of complaints. Working with the profession to raise standards, guidance on good complaints handling, and the potential reputational impacts of having a complaint not resolved satisfactorily are also likely to be ways in which the Ombudsman service can encourage behaviours.

We also heard views to say that the Legal Ombudsman should not charge complainants to use the service. The Act does not allow us to charge complainants and we agree we should be free to complainants. In addition, while the Act does allow us to consider a charge on 'vexatious complainants' we have no plans to do so, though we did not say so in the context of the case fee consultation. This accords with good practice in Ombudsman schemes.

## **Conclusion**

Setting a flat fee has the advantage of operating with a simple fee structure: fee decisions will be clear, easy to make, and non-contentious, which should contribute to keep lawyers costs as well as Legal Ombudsman administrative costs down, not the least by minimising distracting disputes about amounts and chargeability of fees. As the Legal Ombudsman is a new service, starting simply is important; there are many unknowns about how the scheme will work in practice and the volume of activity required to make sure the new scheme will be a success from its start supports adopting a flat fee structure for this initial period.

This proposed case fee structure has been included in Chapter Six of the Scheme Rules. We have now written to the Lord Chancellor to ask for his consent under the Legal Services Act for this structure. The Legal Services Board gave its consent in December 2009.

## Setting a fair case fee: consultation responses

The people and organisations who wrote to us in response to our *Setting a fair case fee* consultation are:

ACCA

Bar Council

Chartered Institute of Patent Attorneys

ILEX Professional Standards

Law Society

Legal Complaints Service

Legal Services Consumer Panel

Personal Injury Bar Association

Sole Practitioners Group

Solicitors Regulation Authority

Others who commented on the proposed structure of the case fee as part of their response to the Scheme Rules consultation are:

Legal Services Commission

Legal Services Ombudsman

ROCAS

These responses are all available to see on our website:

[www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

## Summary: intervention & options

**Agency:**  
Office for Legal Complaints/  
Legal Ombudsman

**Title:**  
Impact assessment of Legal Ombudsman case fees

**Stage:** Decision

**Version:** Final

**Date:** December 2009

**Related Publications:** OLC Consultation paper – Setting a fair case fee and related consultation impact assessment; consultation responses received from external stakeholders

**Available to view or download at:**

<http://www.officeforlegalcomplaints.org.uk> or [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

### What is the problem under consideration? Why is government intervention necessary?

The Office for Legal Complaints (OLC) has been established by the Legal Services Act 2007 to set up an independent, impartial, 'single-point-of-entry' Ombudsman scheme for all consumer legal complaints. The Ombudsman scheme is required under the Act to charge case fees for its service, and this impact assessment (IA) relates to options for charging such fees on lawyers (authorised persons) whose customers make a complaint to the OLC following an unsuccessful attempt to resolve their dispute bilaterally in-house. In addition, the OLC will be funded by an industry-wide levy (not covered by this IA). The public consultation on case fees commenced on 5 October 2009 and closed on 4 December. Responses to this consultation are posted on the OLC website. A discussion group, attended by a range of stakeholders, was also held to help develop OLC thinking in relation to setting a fair case fee. The responses to this process have informed this revised impact assessment which focuses on the structure of the case fee and indicative fee levels.

### What are the policy objectives and the intended effects of the Legal Ombudsman case fee policy?

- Comply with the requirements of the Act, recover a proportion of the OLC cost (around 10% as a starting point, to be reviewed within the first two years of operation of the service), and contribute to improving the quality of law firms' service;
- Provide a case fee structure which is fair and minimises disproportionate impact on certain areas of the profession (e.g. criminal/ family/ immigration/ family law), or on small firms / sole practitioners, which might impact access to justice;
- Ensure the case fee structure has a constructive behavioural impact, i.e.:
  - encouraging good in-house complaints handling before complaints are raised with the Ombudsman scheme,
  - encouraging, where complaints are brought to the scheme, early and informal resolution wherever possible;
- Minimise unnecessary operational and administrative complexity and costs.

### What policy options have been considered? Please justify any preferred option.

**Option 0:** No case fees charged at all (hypothetical, as the OLC is required by the Act to charge case fees)

**Option 1:** Flat fee (£400) charged for each referral

**Option 2:** Two stage fee with a flat fee (£250) charged for each complaint, with an additional fee of £150 added to the flat fee (making a total fee of £400) if a case is resolved by an ombudsman decision.

Many consultation responses indicated that this was the preferred structure for a sliding scale option. For each option, we propose not to charge a fee for the first two cases a firm incurs in any financial year. **After listening to views and evidence our preferred model remains Option one.** This option offers simplicity and clarity through the flat fee structure, minimising distracting and costly disputes about fees (and thus administrative/operational costs). There is mixed evidence about the potential benefit of a two stage fee structure to drive early resolution of a case; having to pay some form of fee in itself will drive good complaint resolution behaviour. A relatively low initial fee level of £400 (compared to other Ombudsman schemes) should ensure the impact on small firms, sole practitioners and firms working in contentious areas of law is proportionate.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The OLC will review the fee structure and the level of the fee within the first two years of the Ombudsman scheme commencing operation (by the end of 2012). The aim of the review will be to assess evidence to support increasing the proportion of funding derived from the case fee over time (including levels of compliance), while ensuring any adverse impacts are minimised.

## Summary: analysis & evidence

**Policy Option:**  
**Option zero**  
**(hypothetical)**

**Description:** No case fees charged at all. Legal Ombudsman running cost will be recovered through a levy on the law profession, and case fees charged to law firms against which a complaint has been raised. The Act requires the OLC to charge case fees. This option is, therefore, purely hypothetical.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups': No administrative or other costs if case fee is not charged. The Act precludes this as anything other than a hypothetical option.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ n/a		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ -		<b>Total Cost (PV)</b> £ -
Other <b>key non-monetised costs</b> by 'main affected groups': Extra costs to every member of the law profession in terms of levy, picking up the cost that case fees would otherwise weigh somewhat more towards the firms that generate complaints. Increased operating costs to the Legal Ombudsman, which would have to deal with increased complaint volumes, as the lack of a case fee means there is no incentive to law firms to resolve complaints in-house before they get escalated to a chargeable Ombudsman service.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups': No income to the OLC from case fees. All costs to be covered by levy.
	<b>One-off</b>	<b>Yrs</b>	
	£ n/a		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 0		<b>Total Benefit (PV)</b> £    0
Other <b>key non-monetised benefits</b> by 'main affected groups': Possibly positive impact on access to justice: Small law firms, sole practitioners and firms operating in areas of law which are known to generate more complaints than others (e.g. immigration, mental health, family etc.) will not be deterred from accepting 'contentious' cases for fear of being faced with greater costs (both actual and opportunity costs) with a disproportionate amount of complaint case fees.			

**Key Assumptions/Sensitivities/Risks:** The recovery of OLC cost through 'levy-only' would, with 140,000 lawyers, mean a levy of roughly £130-150 per lawyer (authorised person) as the Legal Ombudsman running costs budget is £19.9M.

Price Base Year	Time Period Years 1	<b>Net Benefit Range</b> (NPV) <b>£ 0</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ 0</b>	
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		Q3/2010		
Which organisation(s) will enforce the policy?		Legal Ombudsman		
What is the total annual cost of enforcement for these organisations?		£ unknown		
Does enforcement comply with Hampton principles?		n/a		
Will implementation go beyond minimum EU requirements?		n/a		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		n/a		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£ n/a	Decrease	£n/a	<b>Net</b> £ n/a

Key: Annual costs and benefits: Constant Prices    (Net) Present Value

## Summary: analysis & evidence

**Policy Option:**  
**Option one**

**Description:** Flat fee (£400) for each case with two free cases per firm per year. The Legal Ombudsman budget will be recovered through the levy and case fees charged to law firms (charging of case fees is subject to the waiver provisions in the Act).

<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups':</p> <p>The costs will be the administrative costs of implementing the fee scheme for both the Legal Ombudsman and authorised persons (lawyers). There may also be costs of enforcement if compliance is less than 100%.</p>
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ n/a		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
<p>Other <b>key non-monetised costs</b> by 'main affected groups': Small firms, sole practitioners and firms working in more contentious areas of law (which are likely to raise more complaints) could be disproportionately affected and be hesitant to take on 'contentious' cases for fear of faced with greater costs (both actual and opportunity costs) due to a high number of complaints. This might put some small businesses' survival at risk, or could affect access to justice. Keeping the fee low, and offering two 'free' cases per year is designed to mitigate this effect.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups':</p> <p>n/a</p>
	<b>One-off</b>	<b>Yrs</b>	
	£ n/a		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
<p>Other <b>key non-monetised benefits</b> by 'main affected groups': Compared to Option zero, annual payments are more weighted towards those generating complaints. Paying a fee should generally drive good complaints resolution behaviour and legal service quality. The simple, not contentious fee structure will minimise OLC administrative costs for fee disputes. The waiver provisions should help counter any disproportionate impact on small firms, sole practitioners and firms operating in contentious areas of law.</p>			

**Key Assumptions/Sensitivities/Risks:** This option assumes the levy covers around 90% of costs (approximately £120-30 per lawyer). This assumes efficient case fee collection and high levels of compliance with the fee structure by the profession.

Price Base Year	Time Period Years 1	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England and Wales	
On what date will the policy be implemented?		Q3/2010	
Which organisation(s) will enforce the policy?		Legal Ombudsman	
What is the total annual cost of enforcement for these organisations?		£ not known	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?			
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£ n/a	
Will the proposal have a significant impact on competition?		Not anticipated	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium    Large
Are any of these organisations exempt?	No	No	N/A    N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£ not known	Decrease	£ not known	<b>Net</b> £ not known

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## Summary: Analysis & Evidence

**Policy Option:  
Option two**

**Description:** A two stage process where a flat fee (£250) for each case with two free cases per firm per year. An additional charge of £150 payable if an Ombudsman decision is required (bringing the fee to a maximum of £400). The second stage uplift would not be charged if a lawyer had agreed to a provisional decision (before the case was considered by an Ombudsman). Both elements are subject to the waiver provisions in the Act.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups': There will be one off and ongoing administrative costs of implementing the fee scheme for both the Legal Ombudsman and authorised persons (lawyers). There may also be costs of enforcement if compliance is less than 100%. The administrative burden is likely to be greater under this model both for the Legal Ombudsman and lawyers (authorised persons). It is also likely to mean that less than 10% of costs of the Ombudsman scheme would be collected via the case fee structure.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ n/a		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
<p><b>Other key non-monetised costs</b> by 'main affected groups': Small firms, sole practitioners and firms working in more contentious areas of law could be disproportionately penalised, as more of their cases are likely to go on to later dispute stages. This could have a greater impact on access to justice than Option 1. During the consultation process many people argued that the two stage process is likely to encourage earlier resolution of complaints. We looked at other Ombudsman schemes and there is mixed evidence as to whether this is an effective way of influencing behaviour; the waiver provision in the Act gives incentive for early resolution of complaints. This option may also increase the administrative burden on the Ombudsman scheme or lawyers as there could be scope for argument about the level of fee to be charged.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups': n/a
	<b>One-off</b>	<b>Yrs</b>	
	£ n/a		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
<p><b>Other key non-monetised benefits</b> by 'main affected groups': Compared to Option 0, lawyers benefit from annual payments being more weighted towards those generating lengthy complaints. This fee structure should generally drive good complaints resolution behaviour and legal service quality, particularly driving early complaint resolution behaviour, minimising OLC operative costs. The waiver provision in the Act, along with providing for two 'free' cases per year could help counter some of the disproportionate impact on small firms, sole practitioners and firms operating in contentious areas of law.</p>			

**Key Assumptions/Sensitivities/Risks:** This option assumes the same amount collected via the levy as option 1, though depending on the numbers resolved at the different stages less than this may be collected via the case fee. There is little clear evidence as to whether this option provide an incentive to resolve a complaint at an earlier stage of the process.

Price Base Year	Time Period Years	<b>Net Benefit Range</b> (NPV) £ 0 (remainder of cost recovered by levy)	<b>NET BENEFIT</b> (NPV Best estimate) £ 0 ((remainder of cost recovered by levy)
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What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		Q3/2010			
Which organisation(s) will enforce the policy?		Legal Ombudsman			
What is the total annual cost of enforcement for these organisations?		£ not known			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?					
What is the value of the proposed offsetting measure per year?		£			
What is the value of changes in greenhouse gas emissions?		£			
Will the proposal have a significant impact on competition?		Not anticipated			
Annual cost (£-£) per organisation		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£ not known	Decrease	£ not known	<b>Net</b> £ not known

Key: Annual costs and benefits: Constant Prices (Net) Present Value

# Evidence base

## Introduction and background

The Legal Ombudsman is being set up by the Office for Legal Complaints (OLC) under the Legal Services Act 2007 as an independent, impartial, 'single-point-of-entry' Ombudsman scheme for all consumer legal complaints.

Complaints about poor service may be made to the Legal Ombudsman (e.g. untimely responses, unclear fees), but the scheme will not consider complaints about (professional) conduct (these should be referred to a separate regulator.) Following filing of a complaint the Ombudsman may order compensation of up to £30,000. In some cases the outcome might be a written apology plus a small amount of compensation as a goodwill gesture.

The OLC is required to recover the costs of the Legal Ombudsman, which are capped at £19.9M. Costs will be recovered via a levy on the law profession (which is not covered by this impact assessment), plus an income from case fees. Case fees are monies charged to lawyers and law firms whose customers file a complaint about them with the Legal Ombudsman, following an unsuccessful attempt to resolve their dispute in-house. The fees, which will be charged at the end of the process, may be waived in line with the provisions in the Act.

After intensive initial design and scoping the OLC entered a phase of public consultation about the rules that will govern its scheme, including the structure of the case fee. Our consultation closed on 4 December 2009. We sought evidence to support this impact assessment as part of this consultation process, with the aim of developing a quantitative impact assessment that would assist us to evaluate the different options for the case fee structure in precise terms. We published the responses to the case fee consultation on our website – [www.officeforlegalcomplaints.org.uk](http://www.officeforlegalcomplaints.org.uk) (now also [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)). While stakeholders agreed that we were right to be mindful of disproportionate impacts on different parts of the profession, there was little concrete or statistical evidence to support our assumptions. As a consequence, this impact assessment remains a qualitative and descriptive analysis, albeit now better informed by a broader range of views than before our consultation. When we next review the case fee structure, which we commit to do before the end of 2012 (within the first two years of the operation of the Ombudsman scheme), we will look again for statistical evidence to support our assessment of any impacts.

## Policy objectives and scope of the impact assessment

### Policy objectives

The objectives behind the principle to charge a case fee are:

- Recovery of a proportion of Legal Ombudsman costs in compliance with the requirements of the Act, while contributing to improving the quality of service provided by authorised persons (called lawyers in this paper for ease of reading). Our starting point is cautious, but over time we will evaluate evidence and look to increase the proportion of income drawn from the case fee model.

We will review and consult again on our revised model by the end of 2012 which will be within two years of the Legal Ombudsman starting handling complaints.

- Provide a case fee structure which is fair and minimises disproportionate impact on certain areas of the profession (e.g. small firms or sole practitioners, whose economic shape might not easily tolerate exceedingly high case fees or large amounts of complaints filed against them, and firms operating in contentious areas of the law, such as immigration, criminal, family, or mental health, which are likely to generate more complaints than other, less emotional areas). Existing complaints data and the responses we received in relation to this consultation indicates that these are factors that are likely to be at play and the way in which the case fee is structure needs to take care to avoid promoting these potentially adverse impacts.
- Ensure the case fee structure has a constructive behavioural impact, i.e.:
  - encouraging good in-house complaints handling before complaints are raised with the OLC, and
  - encouraging, where complaints are brought to the Legal Ombudsman, early and informal resolution wherever possible.
- Minimise unnecessary operational and administrative complexity and costs.

### General scope

This impact assessment covers options for possible fee structures and possible outline amounts for the case fees that are currently being evaluated by the OLC.

It does not cover any aspects of recovering the Legal Ombudsman cost via industry-wide levy. This is subject to a separate consultation by the Legal Services Board.

Equally, it does not cover aspects of any desired proportion between levy vs. fee cost recovery. However, it has been suggested to start the initial phase of Legal Ombudsman operation with low case fees, recovering only a small amount of the OLC cost, with the greater part of the cost being recovered via levy. (At the consultation stage we used 10% cost recovery from case fees for illustrative purposes. Following the consultation period, we again modelling the options set out in this paper, including the option for a sliding scale with a two stage fee structure. Using these models and having re-visited our assumptions in light of stakeholder comments, the preferred structure would account for recovery of approximately 10% of cost via fees and 90% via levy, assuming efficient collection mechanisms.) The key factor to ensuring a higher level of income from case fees will a high rate of compliance by firms and lawyers. We heard evidence that current compliance rates are low. While we would hope, and will encourage a greater level of compliance with the Ombudsman scheme, this will represent a challenge to the profession as a whole to make sure that the Ombudsman scheme can afford to place a higher emphasis on case fees for its income in the future. This will also require support from Approved Regulators to encourage cooperation with the Ombudsman scheme.

The approach proposed will give the OLC time to establish its operation and understand the real (as opposed to the currently only estimated) quantitatives of its business. The consultation process confirmed that there are many aspects of the operation of the Legal Ombudsman that are unknown. Our key task is to set up the Legal Ombudsman to successfully resolve complaints and we are keen to start with a

simple structure that will allow us to focus on our service as a whole and build from as strong a foundation as possible. We will review our approach to the case fee structure within the first two years of operation (by the end of 2012). This will allow us the opportunity to re-consider our approach and use the experience of being up and running to examine whether we should adjust the case fee structure with a view to increasing the amount we collect via the case fee. We would also seek to evaluate the evidence of any adverse impacts to help us refine the structure of the fees.

For the purpose of this impact assessment the amounts proposed for Legal Ombudsman case fees has been estimated using the following factors:

- expected number of complaints (cases) per year: approximately 14,000
- % of case fees reimbursed to lawyers or firms under the waiver provisions: 10%
- options for number of complaints allowed per year and firm for free: 2
- rate of compliance with case fee payment: less than 100%
- desired proportion of OLC cost recovered via case fees: around 10%

Figures have been based on existing complaint handling operations and benchmarked from other comparable Ombudsman schemes and other relevant organisations.

### Scope of the Proposal

The options for case fee structure and amounts evaluated in this impact assessment are the following:

- **Option zero:** base case. No fees charged for Legal Ombudsman service. This option is hypothetical, as the OLC is required by the Legal Services Act 2007 to charge case fees.
- **Option one:** flat fee of £400 charged for each complaint filed with the Ombudsman scheme and allowing two free cases per firm per financial year.
- **Option two:** two stage fee: a base fee of £250 would apply to all complaints which had been accepted for investigation by the Ombudsman scheme. If a case is resolved by an Ombudsman decision, an additional uplift of £150 will be charged, unless the firm or lawyer had agreed to the proposed resolution at the provisional decision stage (when the uplift would not be charged). Both these elements are subject to each firm having an allowance of two 'free' cases per financial year (counted as the first two cases received in a year). Fees would be collected at the end of the process.

The fee would be payable once a complaint had been formally accepted as a case by the Legal Ombudsman and would be collected at the end of the process. The fee would apply to all complaints that are in jurisdiction and are not dismissed or discontinued at any stage.

This impact assessment evaluates advantages and disadvantages, costs and benefits of a flat fee compared to the two stage fee approach. It also assesses the pros and cons and the impact of allowing two free cases per year.

## Stakeholder groups and organisations in the scope of the proposal

The sector affected by this proposal is the legal profession (and others caught by the definition of authorised persons in the Legal Services Act), which will ultimately pay for the service provided by the Legal Ombudsman.

Key stakeholders are lawyers and law firms. This includes a population of approx. 140,000, including solicitors, barristers, legal executives, notaries, trade mark attorneys, licensed conveyancers, patent attorneys, and costs lawyers.

The Legal Ombudsman is the other main organisation that will be affected by these proposals.

The Ministry of Justice and Legal Services Board may also be affected as each organisation has a direct relationship with the Legal Ombudsman in specific areas.

## Policy rationale for proposal

The Legal Ombudsman is being set up by the OLC under the Legal Services Act 2007 as an independent, impartial, 'single-point-of-entry' Ombudsman scheme for all consumer legal complaints. The Ombudsman scheme is required under the Act to charge case fees for its service, and this impact assessment (IA) relates to options for charging such fees on lawyers (authorised persons) whose customers make a complaint to the Legal Ombudsman following an unsuccessful attempt to resolve their dispute bilaterally in-house. In addition, the Legal Ombudsman will be funded by an industry-wide levy (not covered by this IA). The public consultation on case fees commenced on 5 October 2009 and closed on 4 December. Responses to this consultation are posted on the OLC website. A discussion group, attended by a range of stakeholders was also held to help develop OLC thinking in relation to setting a fair case fee. The responses to this process have informed this revised impact assessment which focuses on the structure of the case fee and indicative fee levels.

## Cost benefit analysis

This section sets out the potential advantages, disadvantages and costs of Options zero, one and two.

The Legal Ombudsman is required by the Legal Services Act 2007 to charge case fees for its complaints resolution service. Even though this makes the base case option of not charging fees a purely hypothetical one, charging case fees is seen by the Legal Ombudsman as a favourable option to drive constructive complaint handling behaviour by lawyers at the in-house complaints handling stage. Knowing that customer complaints escalated to the Legal Ombudsman are chargeable is likely to motivate law firms to resolve complaints satisfactorily in-house, whenever possible. This is bound to increase or maintain the quality of our legal services, as well as to minimise the volume of complaints reaching the Legal Ombudsman, thus minimising Legal Ombudsman cost of operation.

One main concern arising from the principle of charging case fees regards access to justice: certain areas of the law, such as immigration, mental health, family, or criminal law, through their emotional and contentious nature, are likely to generate more complaints than other areas. Firms operating in these areas might hesitate to take on

cases seen as contentious, not wanting to incur the risk of accumulating complaints and a high total of case fee charges. This may be particularly true for small law firms or sole practitioners, whose economic viability may be more vulnerable if charged with high case fees. The case fee option preferred here involves a flat fee of £400; an amount sufficiently high to be motivating quality in-house complaint resolution, but reasonable compared to case fees of £1,000 currently charged in other Ombudsman schemes, and thus relieving some of the disproportionate impact of case fees on small firms. Allowing two free cases per firm per financial year was also recognised during the consultation process as another way we could give confidence to sole practitioners or firms working in these sectors that they need not be nervous of the new ombudsman scheme or of any unintended disproportionate impact on their practice. The fact that firms, post-investigation, may have their case fees waived should further mitigate this concern.

The key cost of a case fee charging structure is the administrative burden it will impose both on lawyers as well as on the Legal Ombudsman. Each of the options will involve an administrative cost. However, the cost is likely to be lowest for Option one, and slightly higher in Option two. The two stage model does mean there will be more administrative costs for the OLC.

Net present value is zero both for charging and not charging case fees. However, charging case fees means that a proportion of the total OLC cost can be recovered through them, as opposed to recovering it entirely through the industry-wide levy. It also means that more of the burden to recover costs is put on where they arise, thus further driving good complaint resolution behaviour in law firms.

### **Flat fee compared to a two stage model – option one compared to option two**

Both the flat and two stage fee structures do not penalise lawyers or firms with good in-house complaint handling procedures, as, due to the waiver provisions in the Act, the fees they may incur can be waived or reimbursed. (Current modelling estimates that the waiver of a case fee will happen in around 10% of cases.) For both approaches, payment compliance might be an issue. The analysis accounts for this by conservatively assuming that compliance may be less than 100%.

Setting a flat fee presents the advantages of operating with a simple fee structure: fee decisions are clear, easy to make, and non-contentious, which should contribute to keep lawyers costs as well as OLC administrative costs down, not the least by minimising distracting disputes about amounts and chargeability of fees. As the Legal Ombudsman is a new service, starting simply is important; there are many unknowns about how the scheme will work in practice and the volume of activity required to make sure the new scheme will be a success from its start supports adopting this option for this initial period.

A flat fee approach does not consider the impact of timing of resolution (as the two stage approach does). Many stakeholders argued that a two stage approach would reward those who strive for an early, informal complaint resolution in the process, and who contribute to saving some operational costs. We looked at the experience of other Ombudsman schemes after hearing these views during the consultation period and the evidence of how a sliding scale might influence behaviour is not conclusive. While no direct studies have been done, the experience of other schemes that have adopted a two tier structure suggests does not clearly suggest that this approach to a case fee

fuels the desired behavioural change. Instead, these experiences suggested that companies may take a commercial approach, and decide that that small percentage of cases that may go to the Ombudsman scheme is worth the cost of the lower initial case fee, and that the costs of offering a settlement before Ombudsman decision is worth the reduced opportunity costs of handling complaints earlier in the process. Rather than promoting good complaints handling, this structure may drive perverse behaviour in firms. Stakeholders such as the current Legal Services Ombudsman in her scheme rules response echoed these concerns in their feedback to us. As some of the responses to the consultation noted, charges and fees may not be the best way of influencing behaviour.

In addition, the duration of a complaint might not always entirely depend on the willingness of a lawyer to settle early and save themselves some case fees, but also on the complexity, contentiousness and emotional charge of each case, which might lead it to go on to a late stage in the OLC process no matter how constructively the lawyers have behaved. This would burden a disproportionate and unjustified case fee cost to lawyers operating in more contentious areas of the law, where complex and emotionally charged cases are more likely to arise. For small firms, this could affect their economic viability.

Both flat and two stage fees might put unwanted disproportionate pressure on small firms, sole practitioners and law firms operating in more contentious areas of the law, thus impacting access to justice. To meet this concern, we propose to allow each firm two free cases per financial year. Coupled with the application of the waiver provision set out in the Act, this should assist to mitigate any disproportionate impact. See considerations below for detailed discussion of this issue.

The two stage approach has some disadvantages in that it introduces more complexity and scope for contention about the level of fee that is payable into the Legal Ombudsman process. This could mean some increase the OLC operative and administrative costs, which we are keen to keep to a minimum.

**For all these considerations, this impact assessment tends towards adopting a flat fee structure (Option one) for the Ombudsman scheme.**

### Free cases or not?

Allowing for a small number (two) of free cases per lawyer (or firm) per year has the advantage of acknowledging that even lawyers or firms with good in-house complaints handling procedures might end up with an occasional complaint reaching the Legal Ombudsman. It sends the signal of Legal Ombudsman 'good will', in that such lawyers or firms are not penalised for occasional complaints.

The discussion group that we held with a range of stakeholders (including the profession and consumer groups) indicated that, despite there being little evidence to support analysis, there seemed to be sufficient anecdotal concern to justify a small number – two – free cases as a legitimate subsidy to assist small firms and those who practice in more contested areas of the law.

However, allowing free cases introduces complexity of administration into the Legal Ombudsman process, and will diminish the total amount of OLC cost recovered through case fees to some extent. Equivalently, the proportion of total costs recovered through the levy will rise.

The current, qualitative considerations and general support from stakeholders for this proposition brings us to the conclusion that allowing two free cases per year is warranted. On balance, it is important as a gesture of good will, and one which should increase confidence in the scheme, and adjusting unwanted pressures on some of the lawyer population, than on limiting free cases to hit a 10% of cost recovery figure.

## **Assumptions**

This impact assessment makes the following assumptions:

- that the OLC will receive approximately 14,000 cases per year which will be subject to a case fee;
- that the amount collected from the case fee is assumed to remain in the indicative bands shown indicated in the consultation paper (between £200 and £400), which will have an impact on the amount collected via the levy; and
- that case fees remain the same regardless of whether free cases are offered. This implies that offering free cases increase the proportion of total costs recovered through the levy.

## **Option zero - do nothing: charge no case fees**

### **Description**

Charging no case fees at all could be considered the “Do-Nothing” option. For this kind of proposal it is, however, a purely hypothetical option, as the Legal Ombudsman (as the scheme established by the OLC) is required by the Legal Services Act 2007 to charge case fees as part of the recovery of its costs.

In the hypothetical case that the Legal Ombudsman did not charge any case fees, the implication would be that its entire cost would be recovered via levy on the legal profession.

### **Costs**

- Spreading the burden of the Legal Ombudsman cost evenly (through levy) across all members of the law profession would not take into account any weighting of the cost towards firms who generate the complaints. Whilst it is not within the mission of the Legal Ombudsman to use case fees to promote a blame culture via a ‘polluter pays’ principle, such case fees are still intended to be used as a behavioural instrument to motivate lawyers and law firms to keep to a high quality of service. The absence of case fees might indeed lead to an increase of complaints volume (and hence operative cost) at the Legal Ombudsman, as lawyers might choose more readily to escalate complaints to the Legal Ombudsman, rather than deal with them satisfactorily in-house first.

### **Benefits**

- Benefits of such an arrangement might include safeguarding access to justice, as small businesses / sole practitioners and firms operating in contentious areas of the law, where complaints are more likely to arise, would not be deterred from taking on potentially more contentious cases by the prospect of high complaint numbers and case fee charges.

## Net Impact

- As outlined above, the base case is a hypothetical option only, as the Legal Ombudsman is required by the Legal Services Act 2007 to charge case fees as part of the recovery of its costs. While the likely impacts of charging no fee are outlined above, this has been done for presentational purposes only.

## Option one: flat fee of £400 with two free cases per firm per financial year.

### Description

- Flat fee of £400 for each case with two free cases per firm per year. The OLC budget of £19.9M will be recovered through the levy and case fees charged to law firms against which a complaint has been raised, subject to the waiver provisions in the Act.

### Costs

- Cost to lawyers: £400 case fee per complaint, plus annual levy (not in scope for this impact assessment).
- Cost to Legal Ombudsman: Cost of enforcing case fee payment.
- Cost to the industry: Possibly unwanted disproportionate impact on small firms, sole practitioners and firms working in more contentious areas of law.

### Benefits

- Simple case fee structure, minimum fee disputes and administrative/complexity costs.
- Driving positive behaviour of satisfactory in-house complaint resolution in lawyers.
- Low fee (compared to fees of around £1,000 charged by other complaints handlers), reimbursement for exonerated firms and (Option 1b) two free complaints per financial year mitigate unwanted disproportionate pressure on small firms, sole practitioners and firms operating in more contentious areas of law, affecting access to justice.

## Option two: two stage fee

### Description

- A lawyer will pay the annual levy (see Option 0), plus a two stage fee. The first stage is a low (£250) base fee. If a case reaches an Ombudsman decision an additional fee of £150 will be payable (a maximum of £400). Again, firms will be allowed two 'free' complaints per firm per year (which will apply to both stages of the fee). The second stage fee will not be charged if a lawyer or firm has sought to resolve the complaint informally, but the case continues to an Ombudsman for other reasons. All complaints are chargeable subject to the waiver provisions in the Act.

## Costs

- Cost to Legal Ombudsman: cost of enforcing case fee payment. Some additional administrative / complexity cost for case fee decision making and handling case fee disputes.
- Cost to the industry: Possibly unwanted disproportionate impact on small firms, sole practitioners and firms working in more contentious areas of law, affecting access to justice. Mitigated by the allowance of two free cases per year and how the second stage is structured.

## Benefits

- Possible positive behaviour in lawyers towards satisfactory in-house complaint resolution and early stage Legal Ombudsman process resolution.
- Increased weighting towards those generating lengthy complaints.
- Low fee (compared to actual fee of £1,000), reimbursement for firms who fulfil the waiver criteria in the Act and two free complaints per financial year mitigate unwanted disproportionate pressure on small firms, sole practitioners and firms operating in more contentious areas of law, affecting access to justice.

## Summary of options

A flat fee structure has the dual advantages of simplicity and low administrative costs, as well as being a less risky option for the Legal Ombudsman while it is in its start up phase.

It is unclear whether the two stage approach would encourage behavioural benefits that outweigh the risk of the process being dogged by disputes about the level of fee that is payable and the additional administrative costs of this option. We acknowledge that there was a strong appetite from a range of representatives of the legal profession who engaged with this consultation for this option. As the Legal Services Act asks us to look to ombudsman best practice we believe we must take seriously the lack of conclusive evidence that this approach will encourage early resolution of complaints.

Both options will drive lawyer behaviour towards good quality complaints resolution processes and resolving complaints in house before they get escalated to the Legal Ombudsman.

Both might have an unwanted, disproportionate effect on small businesses, sole practitioners and law firms operating in more contentious fields of the law. Low case fee amounts, reimbursements or waiving the fee and two free cases per year will mitigate some of these effects for both flat and sliding fees. A sliding scale structure, however, might penalise the above members of the lawyers' profession more than a flat fee structure.

Allowing for two free cases a year is preferred over charging for all cases, as it further mitigates unwanted pressure on members of the law profession more 'vulnerable' to complex complaints, and shows a sign of good will by the Ombudsman, acknowledging that even good law firms might get an occasional complaint.

Following this our consultation process and having conducted this further, final impact assessment, the Legal Ombudsman favours implementing a flat fee structure at the inception of the scheme, as it combines the simplicity and potential to minimise fee disputes and administrative costs of the latter with an clear incentive for influencing behaviour and encouraging early resolution of complaints. We will review this structure within the first two years of operation of the Legal Ombudsman – this means a review and consultation will occur before the end of 2012.

## **Enforcement and implementation**

The case fee structure will be implemented by the Legal Ombudsman. The Act provides the Legal Ombudsman with enforcement powers through the courts, if these are required. The Act also allows the Legal Ombudsman to charge interest on unpaid case fees.

## **Specific impact tests**

### **Rural proofing**

The proposed case fee structure should not have a significant impact on rural communities or rural areas. Possible impacts are caught by the small business impact assessment.

### **Environmental tests**

There is not likely to be a significant, if any, specific environmental impact of implementing a case fee structure.

### **Competition assessment**

There is no anticipated impact on competition. We are aware that there are possibly some risks of greater impact on sole practitioners and lawyers working in more contentious areas of law and have developed ways of mitigating this impact.

### **Sustainable development**

Of the five principles of sustainable development this proposal will have some impact on ensuring a strong, healthy and just society. The creation of an Ombudsman scheme for legal services is a positive impact, as it will increase access to justice in this sector. As noted in the competition assessment and elsewhere in this impact assessment, there may be some other impacts on access to justice.

### **Small firms impact test**

Our assumption that there are possibly some risks of greater impact on sole practitioners and lawyers working in more contentious areas of law was supported by stakeholder views during our consultation process. We asked for views on the likely impacts and also asked for evidence to assist us evaluate the impact. While stakeholder views, including those that we believed may be more heavily impacted, supported the steps we had taken to minimise any impact, the consultation process revealed that there is little concrete evidence to support our decision making at this stage. We have committed to collecting evidence after the Ombudsman scheme is operational and will review the structure of the fee within the first two years of operation in light of this evidence base.

## **Legal aid and justice impact test**

The concerns about access to justice and the possible impact on lawyers working in contentious areas of law are also relevant in terms of legal aid and any impact on the justice system.

## **Human rights**

The case fee structure sits within the scheme rules for the Legal Ombudsman. As the scheme rules are drafted to ensure compliance with European human rights requirements, it is unlikely that there will be an impact on human rights. We did not hear views during our public consultation stage that indicated that there was a negative impact on human rights.

## **Equality impact assessment**

The case fee structure sits within the scheme rules for the Legal Ombudsman. A draft of the scheme rules was published for public consultation with an initial equality impact assessment. In addition, the possible impact on sole practitioners, small firms and lawyers working in more contentious areas of law may also have an equality impact as these are fields with a higher proportion of women lawyers and black and minority ethnic lawyers. As stated in the small business section, we will evaluate our approach after a period of operation when we have gathered additional evidence.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No